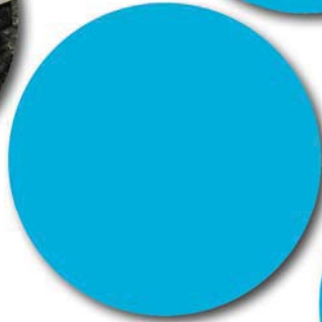




**STOPPING
HARM
CAUSED BY
ALCOHOL**



COMPANY CONSTITUTION

Foundation for Alcohol Research and Education Limited

ABN 91 096 854 385

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1. DEFINITIONS

1.1. In this Constitution:

- (a) "Act" means the *Australian Charities and Not-for-profits Commission Act (2012)*;
- (b) "Board" means the Directors;
- (c) "By-Laws" means any by-laws made by the Board pursuant to Clause 31;
- (d) "Chief Executive Officer" means the Chief Executive Officer of the Foundation;
- (e) "Chair" means the Chair of the Board;
- (f) "Constitution" means this Constitution of the Foundation or as otherwise amended;
- (g) "Deputy Chair" means the Deputy Chair of the Board;
- (h) "Director" means a director of the Foundation and "Directors" has a corresponding meaning;
- (i) "Financial year" means the year ending 30 June each year;
- (j) "General Meeting" means the Annual General Meeting or any Special General Meeting of the Foundation;
- (k) "Member" means a person (either an individual or a body corporate) whose name is entered in the company register as a member of the Foundation.
- (l) "Objects" means the objects of the Foundation set out in Clause 3;
- (m) "Public Fund" means the Foundation for Alcohol Research and Education Public Fund established under Clause 8;
- (n) "Special Resolution" means a resolution:
 - (i) for which notice has been given in accordance with the Act; and
 - (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.
- (o) "Tax Act" means the *Income Tax Assessment Act 1936 (Cth)* or the *Income Tax Assessment Act 1997 (Cth)*, as the context requires.

2. NATURE OF COMPANY AND LIABILITY

2.1. Name of the Foundation

The name of the company is "Foundation for Alcohol Research and Education Limited" ("the Foundation").

2.2. The nature of the Foundation

The Foundation:

- (a) is a public company limited by guarantee under the Act;
- (b) is established solely for the Objects referred to in Clause 3;
- (c) will apply its profits (if any) or other income to promoting the Objects; and
- (d) is not carried on for the purpose of profit or gain to the Members.

3. OBJECTS

3.1. Charitable purpose

The Foundation may only pursue charitable purposes associated with its Objects, and must do so predominantly in Australia.

3.2. The objects of the Foundation are to:

- (a) Promote health and social wellbeing by stopping harm caused by alcohol in Australia, including alcohol-caused disease and injury, and alcohol's harm to others.
- (b) Support evidence-based alcohol-related public health policy, including prevention, treatment and rehabilitation.
- (c) Promote the prevention of alcohol harm, particularly among vulnerable population groups such as children, young people, women and Aboriginal and Torres Strait Islander peoples.
- (d) Promote community awareness and provide education about the harmful effects of alcohol consumption and its impact on chronic disease.
- (e) Identify, commission, conduct and disseminate research that will lead to a better understanding of what works to stop harm caused by alcohol.

3.3. In furtherance of Clause 3.2, the Objects of the Foundation include doing all other things as may be incidental or ancillary to the attainment of its objects set out in Clause 3.2.

4. POWERS

4.1. The Foundation has the powers set out in the Act but only to the extent necessary or convenient to carry out, or incidental to carrying out, the Objects.

5. DOCTRINE OF ULTRA VIRES

Removed

6. INCOME AND PROPERTY

6.1. Income and property to only be used in promotion of the Objects

The income and property of the Foundation must be applied solely towards the promotion of the Objects.

6.2. Members not to receive income or property of the Foundation

No portion of the income or property of the Foundation will be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member, other than in accordance with Clauses 6.4 and 6.5

6.3. Provision of services

Clause 6.2 does not prevent a Member being the recipient of services from the Foundation in accordance with the Objects.

6.4. Remuneration of Directors

No remuneration or other benefit in money or money's worth will be paid or given by the Foundation to any Member in their capacity as a Director unless such remuneration or benefit is authorised by Special Resolution of the Foundation in General Meeting.

6.5. Members may receive payments in good faith

Subject to Clauses 6.2 and 6.3, nothing in this Constitution prevents payment in good faith to any Member:

- (a) for any services actually rendered to the Foundation as an employee or otherwise;
- (b) for goods supplied to the Foundation in the ordinary and usual course of business; or
- (c) for any out-of-pocket expenses incurred by any Member on behalf of, and approved by, the Board,

provided any such payment does not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

7. ADDITION, ALTERATION OR AMENDMENT OF CONSTITUTION

7.1. Subject to Clause 7.2, the members may amend this Constitution by passing a special resolution.

7.2. The members must not pass a special resolution that amends this Constitution if passing it causes the company to no longer be a charity.

8. ESTABLISHMENT AND OPERATION OF PUBLIC FUND

8.1. Public Fund

The Foundation will establish a public fund called the "Foundation for Alcohol Research and Education Public Fund" to which the public will be invited to make gifts and donations of money and property to support the Foundation's Objects.

8.2. Use of the Public Fund

(a) Subject to Clause 9, all gifts of money or property for the Foundation's principal objects, and all money derived from the money or property in the Public Fund must be credited to the Public Fund.

(b) The Public Fund must not receive any money or property other than as permitted under Clause 8.2(a)

8.3. A separate bank account in the name of the Public Fund must be maintained for the Public Fund.

8.4. Winding up of the Public Fund

At the first occurrence of:

(a) the winding-up of the Public Fund; or

(b) the Foundation ceasing to be a deductible gift recipient within the meaning of section 30-227 of the *Income Tax Assessment Act 1997*;

any surplus assets of the Public Fund must be transferred to funds, authorities or institutions:

(c) having public charitable objects similar to the Objects re charitable at law; and

(d) which fall within the description of an item in any of the tables in Subdivision 30-B of the Tax Act, which have been established for charitable purposes, and which are endorsed as deductible gift recipients under or for the purposes of the Tax Act, and

(e) which prohibit the distribution of their income and property among their members to an extent at least as great as is imposed on the Foundation in this Constitution.

8.5. Receipts

Receipts issued for gifts to the Public Fund must state:

(a) the number of the receipt;

(b) the date the donation was received;

(c) the name and Australian Business Number (ABN) of the Foundation;

(d) the name of the Public Fund;

(e) the signature of a person authorised to act on behalf of the Public Fund;

(f) the name of the donor; and

(g) that the amount is for a gift.

8.6. Administration of the Public Fund

(a) The Public Fund must be administered by a committee of no fewer than three Directors, which may or not be the Board.

(b) A majority of those Directors forming a committee administering the Public Fund must be 'responsible persons' as defined by the Australian Taxation Office.

8.7. Records and financial statements

- (a) The Foundation must keep and maintain proper books of account and records (which are written up in accordance with generally accepted accounting standards and principles consistently applied) relating to all receipts and outgoings for the Public Fund.
- (b) For each financial year, the Foundation must have financial statements (including a profit and loss account and balance sheet) prepared by a suitably qualified person (in accordance with generally accepted accounting standards and principles consistently applied) which detail the affairs of the Public Fund for that financial year.

8.8. Alteration of this rule

The Foundation must notify the Deputy Commissioner of Taxation of any change to this rule or any change to this Constitution which affects the operation of the Public Fund in accordance with this rule.

9. ESTABLISHMENT AND OPERATION OF OTHER FUNDS

9.1. Winding up of a fund created under this Clause 9

At the first occurrence of:

- (a) the winding-up of a fund created under this constitution, or
- (b) the Foundation ceasing to be a deductible gift recipient within the meaning of section 30-227 of the Tax Act

any surplus assets of any funds created by the Foundation must be transferred to funds, authorities or institutions:

- (a) having public charitable objects similar to the Objects
- (b) which fall within the description of an item in any of the tables in Subdivision 30-B of the Tax Act, which have been established for charitable purposes, and which are endorsed as deductible gift recipients under or for the purposes of the Tax Act, and
- (c) which prohibit the distribution of their income and property amongst their members to an extent at least as great as is imposed on the Foundation in this Constitution.

10. MEMBERSHIP

10.1. Initial Members

The initial Members of the Foundation shall be those persons who are identified as Members in the application for incorporation of the Foundation to the Australian Securities and Investments Commission.

10.2. New Members

- (a) The Members may by Special Resolution admit a person as a new Member and determine in their discretion that Member's rights, privileges and obligations.

- (b) If the Members admit a person as a Member, the Secretary must as soon as possible notify the person of their admission as a Member.

10.3. Minimum number of Members

The number of Members must not be less than five, however the Foundation may by Special Resolution, increase or reduce the minimum number of Members.

11. EFFECT OF MEMBERSHIP

11.1. Consequences of Membership

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Foundation and that they are bound by and must comply with:
- i. this Constitution and the By-Laws; and
 - ii. any determination, resolution or policy which may be made or passed by the Board or any duly authorised committee in accordance with this Constitution;
- (b) this Constitution and the By-Laws are necessary and reasonable for promoting the Objects; and
- (c) subject only to this Constitution, they are entitled to all the rights, advantages, privileges and services of the Foundation membership.

11.2. Obligation of Members

The Foundation and its Members agree:

- (a) to operate with mutual trust and confidence in pursuit of the Objects;
- (b) to do all things reasonably necessary to enable the Objects to be achieved; and
- (c) to at all times act for the advantage of the Foundation in its pursuit of the Objects.

12. LIABILITY OF MEMBERS

12.1. Liability of Members to be limited by guarantee

The liability of the Members of the Foundation is limited to the amount of any guarantee made by a Member under this Clause 12.

12.2. Guarantee to be \$50

Every Member undertakes to contribute to the assets of the Foundation in the event of it being wound up:

- (a) while that Member is a Member; or
- (b) within one year after ceasing to be a Member,

for payment of the debts and liabilities of the Foundation contracted before the time at which that Member ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding \$50.00.

13. SUBSCRIPTIONS AND FEES

13.1. The Board may determine subscriptions and fees for Membership of the Foundation

- (a) The Board may determine from time to time subscriptions and fees to be paid by Members to the Foundation, including but not limited to annual membership fees, capitation fees and levies.
- (b) Any subscriptions and fees determined by the Board under Clause 13.1(a) and the basis of, time for and manner of payment for those subscriptions and fees must be prescribed in the By-Laws.

13.2. Consequences of failure to pay monies due to the Foundation

If a Member fails to pay all monies due and payable by that Member to the Foundation under Clause 13.1.

- (a) that Member's rights under this Constitution will be immediately suspended from the expiry of time prescribed for the payment of those monies, subject to the Board's discretion; and
- (b) such rights will be suspended until all monies are fully paid (or as otherwise decided by the Board in its sole discretion); and
- (c) the Board must deal with the Member at its discretion and in line with any applicable By-Laws and may suspend, disqualify, discipline or retain (but not impose a financial penalty) that Member as a Member, or impose such other conditions and/or requirements as the Board considers appropriate.

13.3. Natural Justice to be excluded to penalties imposed under Clause 13.2.

If the Board exercises its discretion under Clause 13.2 and imposes a penalty on a Member whom has not paid all monies due and payable by that Member to the Foundation, the principles of natural justice are expressly excluded and do not apply to the imposition of that penalty.

14. REGISTRATION OF MEMBERS

14.1. The Foundation must establish and maintain a register of Members. The register of Members must be kept by the Company Secretary and must contain:

- (a) for each current Member:
 - i. name
 - ii. address

- iii. any alternative address nominated by the Member for the service of notices; and
- iv. date the member was entered on to the register.

(b) for each person who stopped being a Member in the last 7 years:

- i. name
- ii. address
- iii. any alternative address nominated by the Member for the service of notices, and
- iv. dates the membership started and ended.

14.2. Inspection of Register

- (a) Having regard to privacy and confidentiality considerations, a Member may request, and the Foundation must provide within seven (7) days of such a request, an extract of the register.
- (b) A request for an extract of the register must be made in writing to the Foundation in accordance with any applicable By-Laws and the Act, which may require a request to be accompanied by a reasonable fee for the cost of copying and providing the extract.
- (c) Members must notify the Secretary in writing of any change in that Member's contact details as soon as practicable but in any event no later than 30 days after the change occurring.

15. REMOVAL AND CESSATION OF MEMBERSHIP

15.1. Cessation of Membership

A person ceases to be a Member if the person:

- (a) dies;
- (b) ceases to be a Director of the Foundation;
- (c) resigns from Membership of the Foundation under Clause 15.2; or
- (d) is removed from the Foundation under Clause 15.3;

with such cessation of Membership taking effect immediately upon the occurrence of the relevant event giving rise to the cessation of Membership.

15.2. Resignation of Members

- (a) A Member who has paid all amounts due and payable by that Member to the Foundation may resign from Membership of the Foundation by giving written notice to the Foundation. The resignation comes into effect upon receipt of the notice by the Foundation.
- (b) If a Member resigns from the Foundation, the Member must fulfil all his or her obligations to the Foundation up to and including the date of resignation.

- (c) Where a person ceases to be a Member of the Foundation, the Company Secretary must arrange for an appropriate entry to that effect to be made in the Register of Members recording the date on which the Member ceased to be a Member.

15.3. Removal from Membership

- (a) The Members may remove another Member by Special Resolution.
- (b) At least two month's written notice must be given of any General Meeting to consider a Special Resolution to remove a Member.
- (c) A Member the subject of a Special Resolution under this Clause 15.3 shall be allowed to make written representations to the General Meeting and the Foundation must unless it is impractical to do so:
 - i. state, in any notice of the resolution given to Members of the Foundation, that the representations have been made; and
 - ii. send a copy of the representations to every Member of the Foundation to whom the notice of the meeting has been or is sent.
- (d) A Member the subject of a Special Resolution under this Clause 15.3 may make reasonable oral representations to the General Meeting.
- (e) The Directors and Members do not have to give reasons for recommending the removal of any Member from the Register.

16. MEETINGS

16.1. Annual General Meetings

An Annual General Meeting of the Foundation must be held in accordance with the Act and this Constitution on a date and at a venue to be determined by the Board.

16.2. All other meetings to be Special General Meetings

All General Meetings other than the Annual General Meeting must be Special General Meetings and held in line with this Constitution and the Act.

16.3. Powers of the General Meeting

The Foundation in General Meeting must act in accordance with the Objects. The Foundation in General Meetings will act in the best interests of the Foundation and may in addition to its other powers and functions under the Act:

- (a) alter the Constitution (subject to Clause 7);
- (b) determine the remuneration of the Foundation's Directors;
- (c) appoint the auditors of the Foundation;
- (d) accept or reject the Annual Report;
- (e) pass or reject Special Resolutions; and

- (f) be the final arbiter on matters referred to it by the Board.

17. NOTICE OF GENERAL MEETINGS

17.1. Notice of General Meetings to be in writing

The Board must give written notice of every General Meeting individually to:

- (a) each and every Member;
- (b) each and every Director;
- (c) the Company Secretary;
- (d) the Chief Executive Officer; and
- (e) the Foundation's auditors,

at least 21 days prior to the date on which that meeting is to be held.

17.2. Service of notice of General Meetings

the Foundation may give the notice of a General Meeting to a person entitled to notice under Clause 17.1 either:

- (a) personally; or
- (b) by sending it by post to the address for that person appearing in the register kept by the Foundation or the alternative address (if any) nominated by that person; or
- (c) by sending it to the fax number or electronic address (if any) nominated by that person;
or
- (d) by sending it to the person by other electronic means (if any) nominated by that person;
or
- (e) by any other form of communication permitted by the Act,

and the date of service shall be determined in accordance with Clause 35.

17.3. Content of notice of General Meetings

A notice of a General Meeting given under this Clause 17 must state the place, day and time of the General Meeting, together with:

- (a) the agenda for the meeting;
- (b) notice of the business to be transacted at the meeting;
- (c) any notice of motion received from any Member or the Board in accordance with this Constitution;
- (d) relevant accounts and reports in line with this Constitution and the Act;
- (e) if a Member is entitled to appoint a proxy – a statement setting out:

- i. that the Member has a right to appoint a proxy;
 - ii. that the proxy does or does not need to be a Member; and
- (f) the date on which the notice is sent.

18. ENTITLEMENT AT GENERAL MEETINGS

18.1. Entitlement to attend, speak and vote at General Meetings

At a General Meeting, each Member is entitled to attend, speak and vote.

18.2. Directors may attend and debate at all General Meetings

In addition to any rights or entitlements under Clause 18.1, each Director is entitled to attend and speak at all General Meetings.

18.3. Member must not have any outstanding debts to the Foundation

Despite any other Clause of this Constitution, no Member can be represented at, or take part in, a General Meeting, unless all monies then due and payable by that Member to the Foundation are fully paid and received by the Foundation.

19. NOTICES OF MOTION

19.1. Any Member may give a notice of motion for special business

Subject to anything else in this Clause 19, any Member may give the Foundation a written notice of motion, requiring an issue or resolution to be included as special business at a General Meeting

19.2. the Foundation must include a notice of motion as special business

If a notice is given under Clause 19.2, the Foundation must include the issue or resolution referred to in the notice of motion as special business at the next General Meeting.

19.3. Time for a notice of motion to be included as special business in General Meeting

Despite Clause 19.2, a notice of motion from Members under Clause 19.1 is only valid if submitted in writing (in the required form) to the Company Secretary at least 14 days (excluding receiving date and meeting date) before the General Meeting to which the notice of motion relates.

20. SPECIAL GENERAL MEETINGS

20.1. Board may convene Special General Meetings

The Board may, by resolution and whenever it thinks fit, convene a Special General Meeting of the Foundation and, where but for this Clause more than 15 months would elapse between Annual General Meetings, must convene a Special General Meeting before the expiration of that period.

20.2. Members may request Special General Meetings

The Board must convene a Special General Meeting on the requisition in writing of more than five per cent of voting Members, and such Special General Meeting must be:

- (a) called no later than 21 days after the requisition and in accordance with the Act and the Constitution; and
- (b) held no later than two months after the requisition.

20.3. A Members' requisition for a Special General Meeting must:

- (a) state the business to be transacted at that meeting;
- (b) identify any resolutions (including Special Resolutions) that are to be raised at the meeting;
- (c) be signed by the Members making the requisition; and
- (d) be delivered to the Foundation.

20.4. The requisition may consist of several documents in a like form, each signed by one or more of the Members making the requisition.

20.5. Members may convene Special General Meetings

- (a) If the Board fails to convene a Special General Meeting under Clause 20.2, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than 3 months after the date on which the request was made.
- (b) The cost and expense of convening a Special General Meeting under this Clause 20.5 must be borne by the Members calling and holding that meeting.
- (c) A Special General Meeting convened by Members under this Constitution must be convened in the same manner, or as nearly as possible as that, in which General Meetings are convened by the Board.

20.6. Members' rights to requisition and convene a General Meeting not allowed if a meeting already called

If Members requisition a Special General Meeting in accordance with this Clause 20 and notice has already been given for a General Meeting that is to be held within the next 28 days, the Board shall not convene a Special General Meeting and the business sought by the Members in the requisition notice made under this Clause 20 shall be included in the business of the General Meeting already called.

21. PROCEEDINGS AT GENERAL MEETINGS

21.1. Conduct of General Meetings to be determined by the Board

Subject to this Constitution and the Act, the conduct of the General Meeting is to be determined by the Board.

21.2. Quorum Present

No business can be transacted at any General Meeting unless a quorum of a majority of Members is present at the time when the meeting proceeds to business.

21.3. Chair of the General Meeting

(a) The Chair must, subject to this Constitution, preside as Chair at every General Meeting of the Foundation.

(b) If the Chair is not present at a General Meeting, or is unable to preside, the Deputy Chair shall preside as Chair for that meeting only.

(c) If neither the Chair nor Deputy Chair are present at a General Meeting, the present Members will elect:

- i. one of the remaining Directors; or
- ii. if there are no remaining Directors willing or able to preside, a Member, who must, subject to this Constitution, preside as Chair for that meeting only.

21.4. Role of the Chair

(a) The Chair is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

(b) The Chair does not have a casting vote.

21.5. If there is no Quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the Chair specifies. If the Chair does not specify one 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.

21.6. If no Quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

21.7. When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of a General Meeting.

21.8. It is not necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

21.9. Poll

(a) At any General Meeting a resolution put to the vote of the meeting will be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- i. by the Chair of the meeting; or
- ii. by over half the Members present at the meeting.

21.10. Recording of Determinations of Votes

Unless a poll is demanded then:

(a) a declaration by the Chair of that meeting that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority lost; and

(b) an entry to that effect is made in the book containing the minutes of the proceedings of the Foundation,

will be conclusive evidence of that fact without proof of the number of the votes recorded in favour of or against the resolution.

21.11. Where Vote by Poll demanded

If a poll is duly demanded it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair of that meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

21.12. Vote to be lost if voting is equal

Where voting is equal the Chair of that meeting shall have a second casting vote.

21.13. Resolutions not in Meeting

(a) The Foundation may pass a resolution without a General Meeting being held if all Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) Any such resolution may consist of one or several documents in like form each signed by one or more of the Members entitled to vote.

(c) The resolution is deemed to be passed when the last Member signs.

21.14. Members do not need to be physically present at a Special General Meeting

Without limiting the power to hold Special General Meetings in accordance with this Constitution, a Special General Meeting may be held even where one or more of the Members entitled to vote are not physically present at the meeting, provided:

(a) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication; and

- (b) notice of the meeting is given to all persons entitled to notice pursuant to this Constitution and the Act; and
- (c) if a failure in communications prevents Clause 21.14(a) from being satisfied by a quorum then the meeting must be suspended until Clause 21.14(a) is satisfied again. If such is not satisfied within 15 minutes from the interruption the meeting will be deemed to have terminated; and
- (d) no meeting will be invalidated merely because no Member entitled to vote is physically present at the place for the meeting specified in the notice of meeting.

21.15. Circulating resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. 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. The resolution is passed when the last Director signs.

22. VOTING BY PROXY

- 22.1.** Members entitled to vote may vote at a General Meeting by proxy in accordance with this Clause 22.
- 22.2.** The instrument appointing a proxy must:
 - (a) be in writing by the Member appointing the proxy;
 - (b) confer authority on the holder of the proxy to demand, or join in demanding, a written poll; and
 - (c) be in the form determined by the Board from time to time.
- 22.3.** A Member appointing a proxy is entitled (but not obliged) to direct a proxy to vote in favour of or against any proposed resolution.
- 22.4.** Unless otherwise instructed under Clause 22.2(c), a proxy may vote as that proxy thinks fit.
- 22.5.** An instrument appointing a proxy must be deposited at the registered office of the Foundation, or at any other place that is specified for that purpose in the notice convening the General Meeting:
 - (a) at least 48 hours before the time for the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote; or
 - (b) in the case of a poll, at least 48 hours before the time appointed for the taking of the poll; and
 - (c) failure to comply with this Clause 22.5 will result in the instrument appointing the proxy being deemed invalid.
- 22.6.** A vote in line with the terms of a proxy is valid despite:
 - (a) the previous death or unsoundness of mind of the Member appointing the proxy; or

(b) revocation of the proxy or power under which the instrument was executed,

provided no notice in writing of that death, unsoundness of mind or revocation is received by the Foundation at its registered office, or at any other place that is specified for that purpose in the notice convening the General Meeting, before the commencement of that meeting or adjourned meeting.

23. APPOINTMENT AND RETIREMENT OF DIRECTORS

23.1. Number of Directors

(a) Until otherwise determined in accordance with this Constitution, the number of Directors must not be less than five nor more than 11.

(b) The Foundation may, by Special Resolution, increase or reduce the number of Directors.

23.2. Appointment of Directors

The Foundation may by ordinary resolution appoint a Director to office, provided the total number of Directors does not exceed the total number of Directors allowed under Clause 23.1.

23.3. Duration of Appointment

The term of appointment of each Director shall be for a period until the third Annual General Meeting after the Annual General Meeting of his or her appointment.

23.4. Eligible for reappointment

(a) Directors are eligible for re-appointment at the expiry of each term of appointment subject to Clause 23.4(b).

(b) a person is not eligible for re-appointment as a Director if that person:

- i. has previously served three terms as a Director; or
- ii. has previously served two terms and is currently serving a third term as a Director.

23.5. First Directors

Notwithstanding Clause 23.4 the initial term or terms of appointment of those First Directors shall not impact a First Director's eligibility for re-appointment under Clause 23.4. That is, for the avoidance of doubt, First Directors are eligible for re-appointment in accordance with Clause 23.4 after the Annual General Meeting of 2010 and any term or terms of appointment served prior to the Annual General Meeting of 2010 do not preclude First Directors from re-appointment in accordance with Clause 23.4. For the purpose of this Clause 23.5 First Directors means those Directors named in the application or registration of the Foundation or any Directors appointed prior to the Annual General Meeting of 2010.

23.6. Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting at which that Director retires, but subject to Clause 23.4 is eligible for re-election.

24. REMOVAL FROM OFFICE AND VACANCIES OF DIRECTORS

24.1. Retirement of Directors

A Director may resign upon written notice to the Foundation.

24.2. Removal of Directors

The Members may by Ordinary resolution remove any Director before the expiration of the Director's period of office, and may by an Ordinary Resolution appoint another person in the place of that Director.

24.3. Vacancy

In addition to the circumstances (if any) in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director at the time:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) 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;
- (d) is absent without the consent of the Board from all Board meetings held during a period of six months;
- (e) without the prior consent or later ratification of the Foundation in General Meeting, holds any office of profit under the Foundation;
- (f) is directly or indirectly interested in any contract or proposed contract with the Foundation and fails to declare the nature of that interest;
- (g) would otherwise be prohibited from being a director of a corporation under the Act; or
- (h) retires, resigns or is removed from office under this Clause 24.

24.4. Casual Vacancies

- (a) Any casual vacancy occurring in the office of Director will be filled by the Board from appropriately qualified persons within three months of the vacancy arising.
- (b) Any such vacancy can only be filled for the remainder of the outgoing Director's term under this Constitution.
- (c) Any casual vacancy occurring in the office of Director may only be filled by the Board from appropriately qualified persons.
- (d) The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with Clause 23.1.

- (e) A Director appointed under this Clause holds office until the conclusion of the next annual general meeting of the Foundation but is eligible for election at that meeting.

25. CHAIR, DEPUTY CHAIR

25.1. Chair

- (a) The Directors shall appoint from among their number a Chair.
- (b) The term of appointment of a Director as Chair shall be:
- i. Three years with the option to be re-appointed for a second term of three years; or
 - ii. a period equal to the remainder of the person's term of appointment as Director, whichever is the shorter, but the person is eligible to be re-appointed as Chair.
- (c) The Chair may:
- i. resign by notice in writing to the Board; or
 - ii. be removed by resolution passed by at least 75 per cent of the Directors.
- (d) The Chair shall be deemed to have vacated his or her position if he or she ceases to be a Director.

25.2. Deputy Chair

- (a) The Directors shall appoint from amongst their number a Deputy Chair.
- (b) The term of appointment of a Director as Deputy Chair shall be:
- i. Three years with the option to be re-appointed for a second term of three years; or
 - ii. a period equal to the remainder of the person's term of appointment as Director, whichever is the shorter, but the person is eligible to be re-appointed as Deputy Chair.
- (c) The Deputy Chair may:
- i. resign by notice in writing to the Board; or
 - ii. be removed by resolution passed by at least 75 per cent of the Directors.
- (d) The Deputy Chair shall be deemed to have vacated his or her position if he or she ceases to be a Director.

26. PROCEEDINGS OF DIRECTORS

26.1. Convening of Directors' meetings

A Director may at any time, and the Company Secretary must on the request of a Director, convene a meeting of the Directors.

26.2. Notice of Directors' meetings

- (a) Notice of each meeting of the Directors must be given to each Director at least 24 hours before the meeting or at another time determined by resolution of the Directors.
- (b) Despite that requirement:
 - i. all Directors may waive in writing the required period of notice for a particular meeting; and
 - ii. it is not necessary to give a notice of a meeting of Directors to a Director who is out of Australia or who has been given leave of absence.

26.3. Mode of meeting for Directors

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

26.4. Quorum at Directors' meetings

Unless otherwise determined by the Directors, a majority of Directors is required to be present in person or by proxy to constitute a quorum.

26.5. Voting at Directors' meetings

Unless this Constitution provides otherwise, questions arising at a meeting of Directors must be decided by a majority of votes of Directors present (in person or by proxy) and voting. A decision of the majority is for all purposes a decision of the Directors.

26.6. Chair

- (a) The Chair must, subject to this Constitution, preside as Chair at every meeting of the Directors.
- (b) If the Chair is not present at a Directors' meeting, or is unable to preside, the Deputy Chair shall preside as Chair for that meeting only.
- (c) If neither the Chair nor Deputy Chair are present at a Directors' meeting, the present Members will elect:
 - i. one of the remaining Directors; or
 - ii. if there are no remaining Directors willing or able to preside, a Member, who must, subject to this Constitution, preside as Chair for that meeting only.

26.7. Chair's vote at Directors meetings

The Chair has a second or casting vote at meetings of Directors in the event of an equal number of votes cast in person or proxy on a resolution. The Chair, in his or her discretion, may choose not to have a second or casting vote.

27. CONFLICTS OF INTEREST OF DIRECTORS

27.1. Directors must declare any real or potential conflicts of interest

A Director must declare to the Board an interest in any matter, whether contractual, disciplinary, financial or otherwise, in which a conflict of interest arises or may arise and shall, unless otherwise determined by the Board, absent his or her self from discussion of such matter and will not be permitted to vote in respect of such matter.

27.2. Board to discuss any unclear conflicts of interest

If there is uncertainty as to whether it is necessary for a Director to absent his or her self from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter must be adjourned or deferred.

27.3. Register of declared conflicts of interest

The Company Secretary must maintain a register of declared conflicts of interest.

27.4. Each Director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under 27.5.

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

27.5. A Director may still be present and vote if:

- (a) their interest arises because they are a member of the Foundation, and the other members have the same interest
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the Director incurs as a Director of the Foundation (see Clause 36.3)
- (c) their interest relates to a payment by the Foundation under Clause 36 or any contract relating to an indemnity that is allowed under the Corporations Act
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (e) Directors who do not have a material personal interest in the matter pass a resolution that:
 - i. identifies the Director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Foundation, and
 - ii. says that those Directors are satisfied that the interest should not stop the director from voting or being present.

28. CHIEF EXECUTIVE OFFICER

28.1. The Board to appoint a Chief Executive Officer

The Chief Executive Officer is to be appointed by the Board for such term and on such conditions as it thinks fit.

28.2. Obligations of the Chief Executive Officer

The Chief Executive Officer must:

- (a) as far as practicable attend all Board meetings and General Meetings;
- (b) regularly report and be accountable to the Board on the activities of, and issues relating to, the Foundation.

28.3. Powers of the Chief Executive Officer

- (a) Subject to the Act, this Constitution, the By-Laws and any directive of the Board, the Chief Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of the Foundation.
- (b) No resolution passed by the General Meeting will invalidate any prior act of the Chief Executive Officer or the Board which would have been valid if that resolution had not been passed.

29. COMPANY SECRETARY

29.1. The Board shall appoint a person, who may but does not need to be a Director, as Company Secretary on such terms and for such duration as the Board considers fit.

29.2. The Company Secretary shall:

- (a) as far as practicable attend all Board meetings and General Meetings;
- (b) prepare the notice of and agenda for all Board meetings and all General Meetings;
- (c) ensure minutes of the proceedings of all Board meetings and General Meetings are recorded and prepared; and
- (d) fulfil all obligations of the company secretary under the Act.

30. DELEGATIONS

30.1. Board may Delegate Functions

- (a) The Board may by instrument in writing create or establish or appoint from among the Directors or otherwise, committees, individual officers or consultants to carry out such duties and functions and with such powers as the Board determines.
- (b) The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:
 - i. this power of delegation; and
 - ii. a function imposed on the Board or the Chief Executive Officer by the Act, any other law or this Constitution.

30.2. Delegated function to be exercised in accordance with terms of delegation

A function, the exercise of which has been delegated under this Clause 30, may whilst the delegation remains unrevoked, be exercised from time to time in line with the terms of the delegation.

30.3. Procedure of delegated entity

(a) The procedures for any delegated entity must, with any necessary or incidental amendment, be the same as those applicable to meetings of the Board.

(b) Unless stated in the delegation instrument, the quorum for the delegated entity will be determined by the entity, but must be at least one half of the total number of the entity's members.

30.4. Delegation may be conditional

A delegation under this Clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

30.5. Revocation of delegation

The Board may by instrument in writing, revoke wholly or in part any delegation made under this Clause 30, and may amend, repeal or veto any decision made by such body or person under this Clause.

31. BY-LAWS

31.1. Board to formulate By-Laws

(a) The Board may (by itself or by delegation to a committee) formulate, approve, issue, adopt, interpret and amend such By-Laws for the proper advancement, management and administration of the Foundation and the advancement of the Objects as it thinks necessary or desirable.

(b) Such By-Laws must be consistent with this Constitution and the *Australian Charities and Not-for-profits Commission Act (2012)*.

31.2. By-Laws binding

All By-Laws made under this Clause 31 are binding on the Foundation and its Members.

32. RECORDS AND ACCOUNTS

32.1. Chief Executive Officer to keep records

The Chief Executive Officer, in consultation with the Company Secretary, must establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Foundation and the Board and must produce these as appropriate at each Board meeting or General Meeting.

32.2. Records Kept in accordance with the Act

(a) Proper accounting and other records must be kept in line with the *Australian Charities and Not-for-profits Commission Act (2012)*, generally accepted accounting principles and/or any applicable code of conduct.

(b) The books of account must be kept in the care and control of the Chief Executive Officer.

32.3. The Foundation to retain records

The Foundation must retain such records for at least seven years after the completion of the transactions or operations to which they relate.

32.4. Board to submit accounts

The Board must submit to the Annual General Meeting the accounts of the Foundation in line with this Constitution and the *Australian Charities and Not-for-profits Commission Act (2012)*.

32.5. Accounts conclusive

The accounts when approved or adopted by the Foundation in Annual General Meeting are conclusive except as regards any error discovered in them within three months after such approval or adoption.

32.6. Accounts to be sent to Members

The Chief Executive Officer must cause to be sent to all persons entitled to receive notice of Annual General Meetings of the Foundation in line with this Constitution, a copy of the accounts, the Board's report, the auditor's report and every other document required under the *Australian Charities and Not-for-profits Commission Act (2012)* (if any).

32.7. Inspection of accounts

Subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed in accordance with this Constitution, the accounts must be open to inspection (but not copying) by persons on the Board.

33. EXECUTION OF DOCUMENTS

33.1. The Foundation may execute a document if the document is signed by:

(a) two (2) Directors; or

(b) a Director and the Company Secretary.

34. AUDITORS AND AUDIT COMMITTEES

34.1. A properly qualified auditor or auditors will be appointed pursuant to Clause 16.3 and the remuneration of such auditor or auditors fixed by the Board.

34.2. The auditor's duties will be regulated in accordance with the *Australian Charities and Not-for-profits Commission Act (2012)*, or if no relevant provisions exist under the Act in accordance with generally accepted principles, or any applicable code of conduct.

- 34.3.** The accounts of the Foundation including the profit and loss accounts and balance sheet must be examined by the auditor or auditors at least once in every year.
- 34.4.** The Directors must establish and maintain an audit committee with functions that include:
- (a) helping the Foundation and Directors comply with financial reporting requirements under the *Australian Charities and Not-for-profits Commission Act (2012)* and financial management and accountability with respect to the Foundation's operations including its administration of the Public Fund; and
 - (b) providing a forum for communication between the Directors, the senior managers of the Foundation and internal and external auditors of the Foundation.

35. NOTICES

- 35.1.** Notices may be given to any Member or person on the Board by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the person's registered address or facsimile number or electronic mail address.
- 35.2.** Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected three days after posting.
- 35.3.** Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected on the next business day after receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- 35.4.** Where a notice is sent by electronic mail, service of the notice is deemed to be effected on the next business day after the electronic mail was sent provided that there is no indication in writing that the electronic mail was not able to be sent.
- 35.5.** Notice of every General Meeting must be given in the manner authorised and to the persons entitled to receive notice under this Constitution.

36. INDEMNITY AND INSURANCE

- 36.1.** Persons to whom this Clause apply
- This Clause applies to:
- (a) each person who is or has been a Director, Company Secretary or Chief Executive Officer of the Foundation; and
 - (b) to such other officers or former officers of the Foundation as the Board in each case determines.
- 36.2.** Indemnity
- (a) The Foundation must indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this Clause 36 applies for all losses or liabilities incurred by the person as an officer of the Foundation including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- i. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - ii. in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Act.
- (b) The Foundation must indemnify its Directors, the Company Secretary, the Chief Executive Officer and all the Foundation employees against all damages and costs (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:
- i. in the case of a Director, the Company Secretary or the Chief Executive Officer, performed or made whilst acting on behalf of and with the express or implied authority of the Foundation; and
 - ii. in the case of an employee, performed or made in the course of, and within the scope of their employment by the Foundation.

36.3. Insurance

The Foundation may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this Clause 36 applies against any liability incurred by that person as a Director, Company Secretary, Chief Executive Officer, officer, employee or auditor of the Foundation including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever the outcome.

37. DISSOLUTION

37.1. Dissolution of the Foundation to be in accordance with the Act

The Foundation may be wound up, deregistered or dissolved in line with the provisions of the Act.

37.2. Distribution of Property on Dissolution

- (a) If upon the winding up or dissolution of the Foundation there remains, after the satisfaction of all its debts and liabilities, any surplus assets or property, the same must not be paid to or distributed amongst the Members but must be paid to, or distributed to, an organisation or organisations, whether incorporated or unincorporated:
 - i. having public charitable objects similar to the Objects;
 - ii. is a fund, authority or institution which falls within the description of an item in any of the tables in Subdivision 30-B of the Tax Act, which has been established for charitable purposes, and which is endorsed as a deductible gift recipient under or for the purposes of the Tax Act,

- iii. which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Foundation in this Constitution.

38. GENERAL

38.1. Submission to jurisdiction

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of the Australian Capital Territory, the Federal Court of Australia and any Courts which may hear appeals from those courts.

38.2. Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, these Clauses which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, these Clauses which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

39. DISPUTE RESOLUTION

39.1. The dispute resolution procedure in this Clause applies to disputes (disagreements) under this Constitution between a Member or Director and:

- (a) one or more Members;
- (b) one or more Directors; or
- (c) the Foundation.

39.2. A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under Clause 39 until the disciplinary procedure is completed.

39.3. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

39.4. If those involved in the dispute do not resolve it under Clause 39.3, they must within ten days:

- (a) tell the directors about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

39.5. The mediator must:

- (a) be chosen by agreement of those involved; or

- (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors, or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the foundation has its registered office.

39.6. A mediator chosen by the directors under Clause 39.5(b)i:

- (a) may be a member or former Member of the Foundation;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

39.7. When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

40. DISCIPLINING MEMBERS

40.1. In accordance with this Clause, the Directors may resolve to warn, suspend or expel a Member from the Foundation if the Directors consider that:

- (a) the Member has breached this Constitution; or
- (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Foundation.

40.2. At least 14 days before the Directors' meeting at which a resolution under Clause 39 will be considered, the secretary must notify the member in writing:

- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
- (b) that this resolution will be considered at a Directors' meeting and the date of that meeting;
- (c) what the Member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the Member may provide an explanation to the Directors, and details of how to do so.

40.3. Before the Directors pass any resolution under Clause 40.1, the Member must be given a chance to explain or defend themselves by:

- (a) sending the Directors, a written explanation before that directors' meeting; and/or

(b) speaking at the meeting.

40.4. After considering any explanation under Clause 40.3, the Directors may:

(a) take no further action;

(b) warn the Member;

(c) suspend the Member's rights as a Member for a period of no more than 12 months;

(d) expel the Member;

(e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this Clause); or

(f) require the matter to be determined at a general meeting.

40.5. The Directors cannot fine a member.

40.6. The Company Secretary must give written notice to the Member of the decision under Clause 40.4 as soon as possible.

40.7. Disciplinary procedures must be completed as soon as reasonably practical.

40.8. There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this Clause.

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