

FLINDERS FOUNDATION INCORPORATED

RULES

1. Name

The name of the incorporated association is **Flinders Foundation Incorporated**.

2. Definitions and Interpretation

2.1 In these Rules, unless the contrary intention appears:

ACNC Act means the *Australian Charities and Not-For-Profit Commission Act, 2012* (Cth).

Alternate has the meaning given in Rule 6.

Available Research Funds means:

- (a) all funds given to the Foundation on the condition that they be used for research purposes; and
- (b) such other funds allocated by the Directors to the Research Committee for the purpose of research.

Associations Act means the *Associations Incorporation Act, 1985* (SA).

Board means the Board of Directors of the Foundation, which Board constitutes the committee of management for the purposes of the Associations Act.

Committee Chairperson has the meaning given in Rule 8.5.

Director means a member of the Board.

FMC means the Flinders Medical Centre.

Flinders University means The Flinders University of South Australia.

Flinders University Director has the meaning given in Rule 5.2(c).

Foundation means Flinders Foundation Incorporated.

General Manager means the person engaged as the senior executive of the Foundation.

Initial Term has the meaning given in Rule 5.4.

SALHN means the Southern Adelaide Local Health Network, an incorporated hospital under the *Health Care Act, 2008* (SA), or if that body is dissolved, an incorporated hospital which takes over its functions.

SALHN Director has the meaning given in Rule 5.2(a).

Research Committee means the Research Committee specified in Rule 8.

Research Director has the meaning given in Rule 5.2(b).

Research Nominee has the meaning given in Rule 8.2(h).

Special Majority Vote means a vote or resolution passed:

- (a) in the case of Rules 3.1(e), 3.1(f) and 19.1, by not less than three quarters of all Directors;
- (b) in the case of Rules 5.5(b), 5.7(e), 5.7(f) and 5.11(b), by not less than three quarters of the Directors (excluding the Director who is the subject of the vote or resolution); and
- (c) in the case of Rules 5.8 and 5.9, by not less than three quarters of the Directors who, being entitled to do so, attend and vote at the meeting at which the vote or resolution is put.

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

2.2 In these Rules, a reference to any legislation or any provision of any legislation includes all regulations, orders and instruments issued under the legislation or provision, and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision.

2.3 The Board will be the sole authority for the interpretation of these Rules and of by-laws which the Board is authorised and empowered to make. The decision of the Board upon any question of interpretation or of any matter affecting the Foundation and not provided for by these Rules, will be final and conclusive.

3. Objectives and Powers

3.1 The objectives of the Foundation are:

- (a) to raise funds for and otherwise promote and advance ongoing and future research in medical, health and related fields at, or under the auspices of FMC and/or the Faculty of Health Sciences of Flinders University;
- (b) to advance and promote, raise and provide funding for human medical treatment, health and medical research and improved health outcomes;
- (c) to raise funds for, make donations or in other ways to support and otherwise foster the objectives of FMC in accordance with the strategic plan, policies and priorities of SALHN;
- (d) to undertake and execute any trusts established for the purpose of supporting any of the objectives of the Foundation;
- (e) such other objectives reasonably incidental to the above objectives determined by Special Majority Vote; and
- (f) such other objectives, determined by Special Majority Vote, as may be substantially similar to the above objectives but which relate to a health service other than the FMC provided that such other health service is engaged in similar activities to the FMC.

3.2 For the purpose of carrying out its objectives, the Foundation:

- (a) will have all the powers conferred by section 25 of the Associations Act;
- (b) without limiting Rule 3.2(a), will have power to give any indemnity and, if the Foundation thinks fit, to give security for any such indemnity over all or any part of the assets of the Foundation; and
- (c) may do all other things that may be incidental or conducive to attaining those objectives.

4. **Membership**

The members of the Foundation shall be those persons who comprise the Board of the Foundation from time to time.

5. **Board of Directors**

5.1 The Board:

- (a) will direct and control the business and affairs of the Foundation;
- (b) may, subject to these Rules and the Associations Act, exercise all powers and functions as may be exercised by the Foundation;
- (c) subject to these Rules and the Associations Act, has power to perform all acts and things as appear to the Board to be necessary or desirable for the proper management of the business and affairs of the Foundation; and
- (d) may, subject to these Rules and in accordance with the Associations Act and the ACNC Act, make a code of conduct or charter for Directors.

5.2 The Board will be comprised of at least 5, but not more than 10, Directors, of whom:

- (a) one will be appointed by SALHN (**SALHN Director**) provided that the appointment is approved by the Board;
- (b) one will be appointed by the Research Committee from amongst its members (**Research Director**) provided that the appointment is approved by the Board;
- (c) one will be appointed by the Council of Flinders University (**Flinders University Director**) provided that the appointment is approved by the Board; and
- (d) not less than 2 nor more than 7 will be appointed by the Directors from time to time pursuant to these Rules.

5.3 The person appointed as:

- (a) the SALHN Director may be removed at any time by SALHN and replaced with another person;
- (b) the Research Director may be removed at any time by the Research Committee and replaced with another person; and
- (c) the Flinders University Director may be removed at any time by the Council of Flinders University and replaced with another person,

by written notice given to the Chairperson, provided that the replacement is approved by the Board.

- 5.4 Subject to Rules 5.5 and 5.7, a Director will hold office for a period of 4 years.
- 5.5 If, at or prior to the expiration of a Director's 4 year period in office:
- (a) that Director offers to continue in office as a Director; and
 - (b) the Board, by Special Majority Vote, approves that Director continuing in office,
- then that Director will continue to hold office, subject to Rule 5.7, for a further period of 4 years.
- 5.6 For clarity rule 5.5 may be applied in relation to a person on more than one occasion.
- 5.7 The office of a Director becomes vacant if the Director:
- (a) resigns from office as Director by written notice given to the Chairperson;
 - (b) is removed by the Director's appointors and replaced with another person approved by the Board;
 - (c) is disqualified under the Associations Act or disqualified from being a responsible person by the ACNC Act;
 - (d) is permanently incapacitated by ill health;
 - (e) (and the Director's Alternate) is, without the prior approval of the Board, absent from, or does not participate in accordance with Rule 7.7 in 3 consecutive meetings of the Board (unless the Board resolves to the contrary by Special Majority Vote); or
 - (f) is the SALHN Director, the Research Director or the Flinders University Director, and ceases to represent the respective appointor, whether by cessation of employment or otherwise;
 - (g) is appointed by the Directors as a representative of a donor, sponsor or otherwise, and ceases to represent that body, whether by cessation of employment or otherwise; or
 - (h) is removed from office by a Special Majority Vote.
- 5.8 Upon:
- (a) the expiration of the term of office of a Director; or
 - (b) the office of a Director becoming vacant under Rule 5.7,
- the Board, by Special Majority Vote:
- (c) must, where the Board would otherwise be comprised of less than 5 Directors; and
 - (d) may, where the Board would otherwise be comprised of 5 or more, but less than 10, Directors,
- appoint a new Director.
- 5.9 If, at any time, the Board is comprised of less than 10 Directors, the Board may, by

Special Majority Vote, appoint such additional Directors as will not lead to the maximum number of Directors referred to in Rule 5.2 being exceeded.

5.10 The Board will appoint a Chairperson from amongst its number.

5.11 The position of Chairperson will become vacant if the relevant Director:

- (a) resigns that position by written notice given to the Board; or
- (b) is removed from that position by a Special Majority Vote.

6. Alternate Directors

A Director may by written notice to the Chairperson appoint another person (**Alternate**) to act for the Director during the Director's inability for any time to act as a Director, provided that the appointment is approved by the Board. The Alternate:

- (a) may be removed by the Alternate's appointor by written notice to the Chairperson;
- (b) is entitled to notice of Directors' meetings;
- (c) if the Alternate's appointor is not present, is entitled to attend Directors' meetings, count towards a quorum and speak and vote on all resolutions on which the Alternate's appointor could vote;
- (d) if the Alternate is already a Director, has a separate vote on behalf of the Alternate's appointor in addition to the Alternate's own vote;
- (e) may exercise all the powers (except the power to appoint an Alternate) and perform all the duties of a Director insofar as the Alternate's appointor had not exercised or performed them;
- (f) vacates office as the Alternate, if the Alternate's appointor ceases to be a Director; and
- (g) whilst acting as an Alternate, is an officer of the Foundation and not the agent of the Alternate's appointor.

7. Proceedings of the Board

7.1 The Board will meet for the dispatch of business at least four times in each calendar year and, subject to these Rules, will determine its own procedures.

7.2 The Chairperson or any three Directors may call a meeting of the Board at any time.

7.3 All Directors are to receive written notice of all Board meetings specifying the general nature of the business to be transacted at the meeting.

7.4 Notice of Board meetings will be served on each Director by:

- (a) delivering it personally to the Director;
- (b) sending it by pre-paid post addressed to the Director at the Director's usual or last known place of business or place of abode;

- (c) sending it to the Director by facsimile to the number notified for that purpose by the Director; or
- (d) sending it by email to the email address notified for that purpose by the Director,

at least 5 days before the date of the proposed meeting.

- 7.5 A quorum for a meeting of the Board will be a majority of the Directors present in person. If within half an hour after the time appointed for the meeting a quorum is not present, the meeting will stand adjourned to the same day in the next week at the same time and place, and the Directors present at that meeting will constitute a quorum.
- 7.6 Meetings of the Board will be chaired by the Chairperson, but if the Chairperson is absent from any meeting of the Board, a Director appointed by the Directors then present, will occupy the chair.
- 7.7 A Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Directors need not be physically present in the same place for a Board meeting to be held. A Director who participates in a meeting held in accordance with this Rule 7.7 is taken to be present and entitled to vote at the meeting.
- 7.8 At all meetings of the Board, each Director present will have one vote on all motions submitted, except that the chairperson of the meeting will, in the case of equality of votes, have a second or casting vote.
- 7.9 If all of the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of, or opposed to, or abstain from, a resolution in terms set out in the document, and a majority of those Directors (being of such magnitude as may be required by these Rules or by the Associations Act in connection with the subject matter of the particular resolution) state that they are in favour of that resolution, then a resolution in those terms will be taken to have been passed at a Board meeting held on the day on which the document was last signed by a Director. For the purposes of this Rule 7.9, two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents. Any document referred to in this Rule 7.9 may be in the form of a facsimile transmission.
- 7.10 A Director must disclose any actual, apparent or potential conflict of interest, and subject to that disclosure, must not take part in any decision of the Board, as prescribed by the Associations Act.
- 7.11 All acts done at a Board meeting or by a person acting as a Director will, despite that it may afterwards be discovered:
 - (a) that there was a defect in the election or appointment of any such Director; or
 - (b) that the Director was disqualified,be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 7.12 Provided there is a quorum, the Board may act regardless of any vacancy in the

office of Director.

7.13 The Board may, by resolution, co-opt any person to the Board but any such person will not have a right to vote on a question before the Board.

7.14 Minutes of the business conducted at any meeting of the Board will be:

- (a) produced within one month after the relevant meeting and saved on file;
- (b) confirmed at the next meeting and signed by the chairperson of that meeting; and
- (c) so confirmed, will be conclusive evidence of the matters set out in those minutes.

8. Research Committee

8.1 The Board must establish a Research Committee, the function of which will be to make recommendations to the Board in relation to the allocation of available research funds to research projects.

8.2 The membership of the Research Committee shall comprise at least five but not more than 12 persons.

8.3 The Board in its discretion may appoint upon the recommendation of the Chairperson to be drawn from persons holding the following positions:

- (a) The highest ranking executive of Flinders Foundation;
- (b) Dean (Research) of the College of Medicine and Public Health, Flinders University;
- (c) Dean (Research) of the College of Nursing and Health Sciences, Flinders University;
- (d) Dean (Research) of the College of Science and Engineering, Flinders University;
- (e) The Research Director of the Southern Adelaide Local Health Network Office for Research;
- (f) Five to six active researchers (comprising both clinical and scientific researchers).

8.4 Appointment to the Research Committee shall be for a term of two years unless earlier terminated by resolution of the Board.

8.5 Upon recommendation from the Research Committee, the Board shall appoint a Committee Chairperson and a Deputy Chairperson who will hold office for a period of two years, but upon retirement will be eligible for re-appointment. The Chairperson should not be 8.3 (a) above.

8.6 The Committee Chairperson, any three members of the Research Committee, or the Board, may call a meeting of the Research Committee at any time.

8.7 A quorum for a meeting of the Research Committee will be five members present in person.

8.8 Meetings of the Research Committee will be chaired by the Committee Chairperson, but if the Committee Chairperson is absent from any meeting of the Research Committee, a member of the Research Committee appointed by members of the Research Committee then present, will occupy the chair.

9. Application of Funds

- 9.1 All funds donated or otherwise provided to the Foundation will be applied by the Board solely in furthering the objectives of the Foundation and no portion will be distributed directly or indirectly to the Directors except in payment of expenses incurred by the Directors on behalf of the Foundation.
- 9.2 Where funds are donated or otherwise provided to the Foundation for a particular purpose, the Board will, having regard to the objectives of the Foundation, endeavour to apply those funds for that purpose.

10. General Manager

The Board may appoint or employ a person (not being a Director) as General Manager of the Foundation on such terms and conditions as the Board thinks fit, and may delegate to that General Manager any of the Boards' duties, discretions and powers upon such terms and conditions, and with such powers of sub-delegation, as the Board may from time to time determine.

11. Other Officers

- 11.1 The Board may appoint such other officers as it thinks fit and may rescind any such appointments and may further determine the duties of any such officers.
- 11.2 The Board must appoint a Public Officer as required by the Associations Act.
- 11.3 If the Foundation has a General Manager, then the General Manager will be appointed as Public Officer.

12. Delegation of Power

The Board may delegate all or any of its powers to a committee or committees consisting of such number of Directors and other persons as it thinks fit and may revoke all or any of the powers delegated. Any committee or committees so formed must, in the execution of the powers so delegated, conform to any requirements which may be imposed on them by the Board.

13. Finance

- 13.1 The income and property of the Foundation will be applied or used in the conduct of the affairs of the Foundation and generally in carrying out its objectives and purposes and executing the rights and privileges of the Foundation in accordance with these Rules.
- 13.2 No portion of the income or assets of the Foundation may be transferred directly or indirectly by bonus, dividend, profit or otherwise to any Director except by way of payment for bona fide services rendered or expenses incurred on behalf of the Foundation.
- 13.3 The funds of the Foundation must not be expended except on authority of the Board.
- 13.4 Accounts must be kept and prepared of all moneys received and expended by the Foundation in such manner as to comply with the Associations Act.
- 13.5 The financial year of the Foundation will end on 31 December every year.

14. Gift Fund

- 14.1 For the purposes of section 30-125 (4) of the Tax Act, the Foundation will maintain a 'gift fund':
- (a) to which gifts of money or property for the principal purpose of the Foundation are to be made;
 - (b) to which any money received by the Foundation because of such gifts is to be credited; and
 - (c) that does not receive any other money or property.
- 14.2 The Foundation must use gifts made to the gift fund and any money received because of such gifts, only for the principal purpose of the Foundation which are the objectives listed in clause 3.1.
- 14.3 At the earlier of:
- (a) the winding up of the gift fund; and
 - (b) the revocation of the Foundation's endorsement under Subdivision 30-BA of the Tax Act,
- the Foundation must transfer any surplus assets of the gift fund to a fund, authority or institution, gifts to which can be deducted under Division 30 of the Tax Act.

15. Audit

- 15.1 The Board may (and, if required by the Associations Act, must) appoint an auditor.
- 15.2 Any auditor so appointed will hold office for such period as the Board determines.
- 15.3 An auditor has the rights and duties prescribed by the Associations Act.

16. Seal

- 16.1 The Foundation will have a common seal upon which its corporate name will appear in legible characters. The seal must not be used without the authority of the Board, and every document to which the common seal is affixed must be signed by a Director and be countersigned by another Director or an employee of the Foundation appointed by the Board to countersign the document.
- 16.2 The seal must be kept in the custody of the General Manager or any other person the Board think fit.

17. Winding Up

The Foundation may be wound up in the manner provided for in the Associations Act.

18. Application of Surplus Assets

- 18.1 If upon the winding up or dissolution of the Foundation there remains after the payment and discharge of all just debts and liabilities, any surplus assets (as defined in the Associations Act), those surplus assets will be paid to, or distributed to or amongst one or more institutions:
- (a) having objectives similar to those of the Foundation;

(b) registered as a charity under the ACNC Act; and

(c) endorsed under Division 30 of the Tax Act;

as determined by the Board at or before winding up.

19. Alteration of Rules

19.1 These Rules may be amended, rescinded or added to at any time by the Board by a Special Majority Vote.

19.2 Rule 3 may not be altered except with the prior written approval of all the Directors.

20. By-laws

The Board may make such by-laws as it deems fit and may amend them in accordance with such procedures as it may adopt for the purpose.

21. Recognition of Significant Contributions

The Board may recognise, at any time, and in such manner as it thinks fit, any contribution made by any person to the Foundation, whether by way of donation, work in support of the Foundation, or otherwise, which the Board considers to have been significant.