



Foundation
AQUINAS COLLEGE

Constitution of Aquinas College Foundation Inc.

ABN 93 078 219 075

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PART 1 — PRELIMINARY

The name of the Association is Aquinas College Foundation Inc (**Foundation**).

1. Terms used

In these rules, unless the contrary intention appears —

Act means the *Associations Incorporation Act 2015*.

Annual General Meeting means the meeting of members referred to in Rule 47.

Approved Fund means any fund established or conducted by the Foundation.;

Auditor means an auditor appointed by the Foundation pursuant to Rule 62 and section 87 of the Act.

Books of the Foundation includes the following —

- (a) all registers;
- (b) Financial Records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document;
- (d) any other record of information.

By Laws means by-laws made by the Foundation under Rule 63.

Chairperson means the Foundation Board member holding office as the chairperson of the Foundation.

College means the school known as Aquinas College at Perth in the State of Western Australia.

College Community includes all members of EREA, present and past staff of the College, its present and past students, and their respective families and friends.

College Council means the Aquinas College School Advisory Council.

Commissioner means the person for the time being designated as the Commissioner under section 153 of the Act.

Foundation Board Meeting means a meeting of the Foundation Board.

Foundation Board Member means a member of the Foundation Board.

Deputy Chairperson means the Foundation Board member holding office as the deputy chairperson of the Foundation.

EREA means Edmund Rice Education Australia, as incorporated under the Roman Catholic Church Communities Act 1942 (NSW).

Executive Officer means the person holding the office of Executive Officer of the Foundation and includes a person appointed acting Executive Officer.

Financial Records means all financial records of the Foundation and includes —

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain —
 - (i) the methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements.

Financial Report means Financial Statements, reports and other information required to be produced pursuant to the Act.

Financial Statements means the financial statements in relation to the Foundation required under Part 5 Division 3 of the Act.

Financial Year, of the Foundation, has the meaning given in Rule 2.

Foundation means the Aquinas College Foundation Incorporated.

Foundation Board means the management committee of the Foundation.

Foundation Board Member means a person who is a member of the Foundation and has been appointed to the Foundation Board.

General Meeting, of the Foundation, means a meeting of the Foundation that all members are entitled to receive notice of and to attend and is either a Special General Meeting or an Annual General Meeting.

Grievance Procedures means the dispute resolutions procedures set out in Division 3 of these Rules.

Principal means the Principal of the College from time to time and is an ex officio member of the Foundation Board.

Mediator means a person appointed to act as a mediator pursuant to Rule 19 below.

Member means a person who is a member of the Foundation.

Objects means the objects of the Foundation as set out in Rule 4.

Office Holder means a person who is a Foundation Board member and who holds one of the positions stipulated in Rule 24, being the Chairperson and the Deputy Chairperson.

Foundation Board Member means a person who is a member of the Foundation Board.

Register of Members means the register of members referred to in section 53 of the Act.

Reviewer means a reviewer appointed by the Foundation pursuant to Rule 62 and section 87 of the Act.

Rules means these rules of the Foundation, as in force for the time being.

Special General Meeting means a general meeting of the Foundation pursuant to Rule 48.

Special Resolution means a resolution passed by the Members at a General Meeting in accordance with section 51 of the Act.

Staff Member means a person who is employed by the College.

Sub-committee means a subcommittee appointed by the Foundation Board under rule 52(1)(a).

Tier 1 Association means an incorporated association to which section 64(1) of the Act applies.

Tier 2 Association means an incorporated association to which section 64(2) of the Act applies.

Tier 3 Association means an incorporated association to which section 64(3) of the Act applies.

2. Financial year

The Financial Year of the Foundation is the period of 12 months commencing on 1 January each year.

PART 2 — ASSOCIATION TO BE NOT FOR PROFIT BODY

3. Not-for-profit body

- (1) The property and income of the Foundation must be applied solely towards the promotion of the objects or purposes of the Foundation and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any member, except in good faith in the promotion of those objects or purposes.
- (2) A payment may be made to a member out of the funds of the Foundation only if it is authorised under subrule (3).
- (3) A payment to a Foundation Board Member out of the funds of the Foundation is authorised if it is —
 - (a) the payment in good faith to the Board Member as reasonable payment for out-of-pocket expenses for travel and accommodation in connection with the performance of the Board Member's functions; or
 - (b) The payment is authorised by resolution of the Foundation at a General Meeting.

PART 3 — OBJECTS OF THE ASSOCIATION

4. Objects

The Objects for which the Foundation is established are to support and assist the College; to encourage and foster the interest and financial support of past students, parents of students and friends of the College; and to preserve, improve and develop its standards, services, property and facilities, and in particular, and without limitation:

- (1) to encourage the making of gifts, bequests and legacies to or for the benefit of the Foundation or the College;
- (2) to enlist the support including the financial support of the College Community and friends of the College for activities calculated to improve the education provided by the College including the engagement by the College of staff with special skills; carrying out of research, provision of scholarships, bursaries, education allowances, visits from distinguished scholars and others able to contribute to the education of the students or the staff of the College;
- (3) to raise money for the acquisition of land or any other property, or the acquisition, construction or maintenance of buildings used or to be used by the College and to acquire, construct or maintain the same;
- (4) to provide financial assistance for the acquisition by the College of library books, works of art, and educational plant and equipment of all kinds;
- (5) to provide financial assistance to the College for any of its purposes;
- (6) to raise money by any method that seems to the Foundation desirable (including the undertaking of or participating in commercial ventures of all kinds);
- (7) to assist the College to preserve, maintain and develop appropriate standards and facilities;

- (8) to act as trustee of any trusts or Approved Funds which are currently in existence or which may in the future be established for the benefit of the College, if so appointed by any existing trustee or other person with power to appoint or nominate a trustee;
- (9) to extend invitations to past students, parents of students and friends of the College to become contributors to the Foundation and through such contribution to participate and join more actively and effectively in supporting and assisting the College to promote and carry out the activities of the College;
- (10) to solicit donations and gifts to or for the benefit of the College or any of its funds or accounts or any trusts or funds established to benefit the College from past students, parents of students and friends of the College and from any other source deemed appropriate to the promotion of the objects of the Foundation; and
- (11) to support and encourage by financial assistance and otherwise the social, cultural and sporting activities of the College;
- (12) to do all such things as are incidental or conducive to the attainment of the Objects or any of them.

PART 4 — MEMBERS

Division 1 — Membership

5. Criteria for membership

- (1) The Foundation must have at least six Members and each of those Members shall have full voting rights.
- (2) In order to be eligible to be a Member of the Foundation, a person must agree in writing to support the Objects and purposes of the Foundation.
- (3) The Members of the Foundation will be:
 - (a) the College Council chair or the College Council chair's nominee;
 - (b) the Principal of the College or the Principal's nominee;
 - (c) up to two persons appointed in writing by the College Council from time to time to be Foundation Board Members and any person appointed in writing by the College Council to fill a casual vacancy on the Foundation Board in relation to those two positions as provided for in Rule 33 below; and
 - (d) at least four and up to five persons appointed by the Foundation Board from time to time to be Foundation Board Members and any person nominated by the Foundation Board to fill a casual vacancy on the Foundation Board in relation to those positions as provided for in Rule 33 below.
- (4) No person may be a Member:
 - (a) for longer than a period of 10 years, save for:

- (i) the College Council chair, who may remain as a Member in that ex officio capacity so long as the person remains the College Council chair; and
- (ii) the Principal of the College, who may remain as a Member in that ex officio capacity so long as the person remains Principal of the College;
- (b) if they are a bankrupt or a person whose affairs are under insolvency laws within the meaning of section 13D of the *Interpretation Act* 1984 (WA);
- (c) if they are not of sound mind or are a person whose estate is liable to be dealt with in any way under the law relating to guardianship;
- (d) if, save and except for the Principal of the College, they are a Staff Member; and/or
- (e) if they are ineligible to be a member of a 'management committee' pursuant to the provisions of Part 4 of the Act.

6. When membership ceases

- (1) A person ceases to be a member when any of the following takes place —
 - (a) the person dies;
 - (b) the person resigns from the Foundation under Rule 7;
 - (c) the person is the nominee of the College Council Chair or the Principal of the College as provided for in Rule 5(3) above and that nomination is withdrawn;
 - (d) the person is expelled from the Foundation under Rule 11; or
 - (e) in the case of persons appointed to the Foundation Board by the College Council or the Foundation Board (as provided for in Rule 5(3) above) the person's term as a Foundation Board member has come to an end.
- (2) The Executive Officer must keep a record, for at least one year after a person ceases to be a member, of —
 - (a) the date on which the person ceased to be a member; and
 - (b) the reason why the person ceased to be a member.

7. Resignation

- (1) A Member may resign from membership of the Foundation by giving written notice of the resignation to the Executive Officer or the Chairperson.
- (2) The resignation takes effect —
 - (a) when the Executive Officer or Chairperson receives the notice; or
 - (b) if a later time is stated in the notice, at that later time.

8. Rights not transferable

- (1) The rights of a Member are not transferable and end when membership ceases.

Division 3 — Register of Members

9. Register of Members

- (1) The Executive Officer, or another person authorised by the Foundation Board, is responsible for the requirements imposed on the Foundation under section 53 of the Act to maintain the register of members and record in that register any change in the membership of the Foundation.
- (2) The Register of Members must contain:
 - (a) the full name of each Member;
 - (b) a contact postal, residential or email address of each Member;

- (c) the class of membership held by the Member; and
 - (d) the date on which the person became a Member.
- (3) Any change in membership of the Foundation must be recorded in the register within 28 days after the change occurs.
- (4) The Register of Members must be kept in the office of the Executive Officer, or at another place determined by the Foundation Board.
- (5) Inspecting the Register of Members:
 - (a) Any Member is able to inspect the Register of Members free of charge, at such time and place as is mutually convenient to the Foundation and the Member.
 - (b) A Member must contact the Executive Officer to request to inspect the Register of Members.
 - (c) The Member may make a copy of details from the Register of Members but has no right to remove the Register for that purpose.
- (6) Copy of the Register of Members:
 - (a) A Member may make a request in writing to the Foundation Board for a copy of the Register of Members.
 - (b) The Foundation Board may require a Member who requests a copy of the Register of Members to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Foundation.
 - (c) The Foundation may charge a reasonable fee to the Member for providing a copy of the Register of Members, with the amount to be determined by the Foundation Board from time to time.
 - (d) If the Board denies a Member's request for a copy of the Register of Members, the Member may request the appointment of a mediator under Rule 19 and the initiating of the procedures set out in Rules 19 and 20.
- (7) When Using the Information in the Register is Prohibited:
 - (a) A Member must not use or disclose the information on the register:
 - (i) to contact, send material to the Foundation or a Member for the purpose of advertising for political, religious, charitable or commercial purposes, or
 - (ii) for any other purpose unless the use of the information is approved by the Foundation Board and for a purpose that is:
 - A. directly connected with the affairs of the Foundation; or
 - B. related to administering the Act.

PART 5 — DISCIPLINARY ACTION, DISPUTES AND MEDIATION

Division 1 — Term used

10. Term used: member

In this Part —

Member, in relation to a member who is expelled from the Foundation, includes former member.

Division 2 — Disciplinary action

11. Suspension or expulsion

- (1) The Foundation Board may decide on a simple majority, to suspend a Member's membership or to expel a Member from the Foundation if —
 - (a) the Member contravenes any of these rules including, but not limited to, in their capacity as a Member of the Foundation Board; or
 - (b) the Member acts detrimentally to the interests of the Foundation.
- (2) The Executive Officer must give the Member written notice of the proposed suspension or expulsion at least 14 days before the Foundation Board meeting at which the proposal is to be considered by the Foundation Board.
- (3) The notice given to the Member must state —
 - (a) when and where the Foundation Board meeting is to be held; and
 - (b) the grounds on which the proposed suspension or expulsion is based; and
 - (c) that the Member, or the member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Foundation Board about the proposed suspension or expulsion.
- (4) At the Foundation Board meeting, the Foundation Board must —
 - (a) give the Member, or the Member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Foundation Board about the proposed suspension or expulsion; and
 - (b) give due consideration to any submissions so made; and
 - (c) decide —
 - (i) whether or not to suspend the Member's membership and, if the decision is to suspend the membership, the period of suspension; or
 - (ii) whether or not to expel the Member from the Foundation.
- (5) A decision of the Foundation Board to suspend the Member's membership or to expel the member from the Foundation takes immediate effect.
- (6) The Foundation Board must give the Member written notice of the Foundation Board's decision, and the reasons for the decision, within 7 days after the Foundation Board meeting at which the decision is made.
- (7) A Member whose membership is suspended or who is expelled from the Foundation may, within 14 days after receiving notice of the Foundation Board's decision under subrule (6), give written notice to the Executive Officer requesting the initiating of the Grievance Procedures set out in Division 3 below to attempt to resolve the dispute.
- (8) If notice is given under subrule (7), the Member who gives the notice and the Foundation Board are the parties to the dispute.

12. Consequences of suspension

- (1) During the period a Member's membership is suspended, the Member loses any rights (including voting rights) arising as a result of membership.
- (2) When a Member's membership is suspended, the Executive Officer must record in the Register of Members:
 - (a) that the Member's membership is suspended; and
 - (b) the date on which the suspension takes effect; and
 - (c) the period of the suspension.

- (3) When the period of the suspension ends, the Executive Officer must record in the Register of Members that the Member's membership is no longer suspended.

Division 3 — Resolving disputes

13. Terms used

In this Division —

party to a dispute includes a person —

- (a) who is a party to the dispute; and
- (b) who ceases to be a Member within 6 months before the dispute has come to the attention of each party to the dispute.

14. Application of Division

The procedure set out in this Division (the Grievance Procedure) applies to disputes —

- (a) between Members; or
 - (b) between one or more Members and the Foundation,
- that arise under the Rules or relate to the Rules of the Foundation.

15. Parties to attempt to resolve dispute

The parties to a dispute must attempt to resolve the dispute between themselves as expeditiously as possible and within 14 days after the dispute has come to the attention of each party.

16. How the Grievance Procedure is started

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 15, any party to the dispute may start the Grievance Procedure by giving written notice to the Executive Officer of:
 - (a) the parties to the dispute; and
 - (b) the matters that are the subject of the dispute.
- (2) Within 14 days after the Executive Officer is given the notice, a Foundation Board meeting must be convened to consider and determine the dispute.
- (3) The Executive Officer must give each party to the dispute written notice of the Foundation Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (4) The notice given to each party to the dispute must state —
 - (a) when and where the Foundation Board meeting is to be held; and
 - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Foundation Board about the dispute.
- (5) If:
 - (a) the dispute is between one or more Members and the Foundation; and
 - (b) any party to the dispute gives written notice to the Executive Officer stating that the party:
 - (i) does not agree to the dispute being determined by the Foundation Board; and
 - (ii) requests the appointment of a mediator under rule 18,

the Foundation Board must not determine the dispute and shall immediately refer the dispute to a Mediator.

17. Determination of dispute by Foundation Board

- (1) At the Foundation Board meeting at which a dispute is to be considered and determined, the Foundation Board must —
 - (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Foundation Board about the dispute; and
 - (b) give due consideration to any submissions so made; and
 - (c) determine the dispute.
- (2) The Foundation Board must give each party to the dispute written notice of the Foundation Board's determination, and the reasons for the determination, within 7 days after the Foundation Board meeting at which the determination is made.
- (3) A party to the dispute may, within 14 days after receiving notice of the Foundation Board's determination under subrule (1)(c), give written notice to the Executive Officer requesting the appointment of a mediator under Rule 18.
- (4) If notice is given under subrule (3), each party to the dispute is a party to the mediation.

Division 4 — Mediation

18. Application of Division

- (1) This Division applies if written notice has been given to the Executive Officer requesting the appointment of a Mediator:
 - (a) by a member under Rule 11(7); or
 - (b) by a party to a dispute under Rule 16(5)(b)(ii) or 17(3).
- (2) If this Division applies, a Mediator must be chosen or appointed under Rule 19.

19. Appointment of mediator

- (1) The Mediator must be a person chosen:
 - (a) if the appointment of a Mediator was requested by a Member under Rule 11(7), by agreement between the Member and the Foundation Board; or
 - (b) if the appointment of a Mediator was requested by a party to a dispute under rule 21(5)(b)(ii) or 22(3), by agreement between the parties to the dispute.
- (2) If there is no agreement for the purposes of subrule (1)(a) or (b), then, subject to subrule (3), the Foundation Board must appoint the Mediator.
- (3) The person appointed as Mediator by the Foundation Board must:
 - (a) not be a Member of the Foundation;
 - (b) be an Australian Legal Practitioner under the *Legal Profession Uniform Law* and/or a person who has experience in mediating disputes of the nature of the dispute the subject of the referral;
 - (c) not be a party to the dispute; and/or
not be biased in favour of or against any party to the dispute.

20. Mediation process

- (1) The mediation must occur as quickly as reasonably possible.
- (2) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (3) Each party to the mediation must give the Mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (4) In conducting the mediation, the Mediator must —
 - (a) give each party to the mediation every opportunity to be heard; and
 - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
 - (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (5) The Mediator cannot determine the matter that is the subject of the mediation.
- (6) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (7) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the Mediator.

21. If mediation results in decision to suspend or expel being revoked

If:

- (a) mediation takes place because a Member whose membership is suspended or who is expelled from the Foundation gives notice under rule 11(7); and
- (b) as the result of the mediation, the decision to suspend the Member's membership or expel the Member is revoked,

that revocation does not affect the validity of any decision made at a Foundation Board meeting or general meeting during the period of suspension or expulsion.

22. Inability to Resolve Disputes

If a dispute cannot be resolved under the Grievance Procedures set out in this Constitution, any party to the dispute may apply to the State Administrative Tribunal to determine the dispute in accordance with the Act or otherwise at law.

PART 6 — FOUNDATION BOARD

Division 1 — Powers of Foundation Board

23. Foundation Board

- (1) The Foundation Board Members are the persons who have the power to manage the affairs of the Foundation, for the attainment of its Objects.
- (2) Subject to the Act, these rules, the by-laws (if any) and any resolution passed at a general meeting, the Foundation Board has power to do all things necessary or convenient to be done for the proper management of the affairs of the Foundation.

- (3) The Foundation Board must take all reasonable steps to ensure that the Foundation complies with the Act, these rules and the by-laws (if any).

Division 2 — Composition of Foundation Board and duties of members

24. Foundation Board Members

- (1) The Foundation Board shall be comprised of each of the Members of the Foundation.
- (2) The Office Holders of the Foundation are —
 - (a) the Chairperson; and
 - (b) the Deputy Chairperson.
- (3) A person must not hold 2 or more of the offices mentioned in subrule (3) at the same time.

25. Chairperson

- (1) It is the duty of the Chairperson to consult with the Executive Officer regarding the business to be conducted at each Foundation Board meeting and General Meeting.

The Chairperson has the powers and duties relating to convening and presiding at Foundation Board meetings and presiding at General Meetings provided for in these rules.

26. Executive Officer

- (1) The Foundation Board may appoint a person to the office of Executive Officer and define the powers, authorities, discretions and duties of the Executive Officer and of any other officer or employee of the Foundation and may from time to time alter or limit any of those powers, authorities, discretions or duties as it thinks fit. The Executive Officer is not a Member of the Foundation Board and is not a Foundation Board Member.
- (2) The Executive Officer is the chief executive officer of the Foundation.
- (3) The duties and role of the Executive Officer will be as determined by the Foundation Board from time to time.

Division 3 — Election of Foundation Board Members and tenure of office

27. Appointment of office holders

- (1) The Chairperson is appointed by the Members at the Annual General Meeting and is appointed for a period of two years with such term to commence at the Annual General Meeting at which the Chairperson is appointed as an Office Holder, PROVIDED THAT no person is to be appointed as Chairperson unless that appointment has been approved in writing by the College Council beforehand.
- (2) The Deputy Chairperson is appointed by the Members at the Annual General Meeting, to serve for a term of 1 year with that term to commence at the Annual General Meeting at which the Deputy Chairperson is appointed as an Office Holder.

28. Limitation on Period of Leadership

A Member who has been Chairperson for two (2) consecutive terms of two (2) years is ineligible for re-appointment as the Chairperson for a minimum of three (3) years after that Member's appointment as Chairperson ends.

29. Responsibilities and Obligations of the Members of the Foundation Board

(1) Obligations of the Foundation Board:

The Foundation Board Members must take all reasonable steps to ensure the Foundation complies with its obligations under the Act and these Rules.

(2) Responsibilities of Foundation Board Members:

- (a) A Foundation Board Member must exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise in the circumstances.
 - (b) A Foundation Board Member must exercise his or her powers and discharge his or her duties in good faith in the best interests of the Foundation and for a proper purpose.
 - (c) A Foundation Board Member or former Foundation Board Member must not improperly use information obtained because he or she is a Foundation Board Member to:
 - (i) gain an advantage for himself or herself or another person; or
 - (ii) cause detriment to the Foundation.
 - (d) A Foundation Board Member or former Foundation Board Member must not improperly use his or her position to:
 - (i) gain an advantage for himself or herself or another person; or
 - (ii) cause detriment to the Foundation.
 - (e) A Foundation Board Member having any material personal interest in a matter being considered at a Foundation Board Meeting must:
 - (i) as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Foundation Board;
 - (ii) disclose the nature and extent of the interest at the next General Meeting of the Foundation; and
 - (iii) must not be present while the matter is being considered at the Foundation Board Meeting or vote on the matter.
 - (f) Subrule (2)(e) does not apply in respect of a material personal interest that:
 - (i) exists only because the Foundation Board Member belongs to a class of persons for whose benefit the Foundation is established; or
 - (ii) that the Foundation Board Member has in common with all, or a substantial proportion of, the Members of the Foundation.
 - (g) The Executive Officer must record every disclosure made by a Foundation Board Member under subrule (2)(e) in the minutes of the Foundation Board Meeting at which the disclosure is made.
- (3) No Foundation Board Member shall make any public statement or comment or cause to be published any words or article concerning the conduct of the Foundation unless the person is authorised by the Foundation Board to do so and such authority is recorded in the minutes of the Foundation Board Meeting.

30. Notification of Foundation Board Members

- (1) At the Annual General Meeting, the Foundation must record the Members of the Foundation Board for the next year.

31. Term of office

- (1) The term of office of a Foundation Board Member who is:
 - (a) the College Council chair or the College Council chair's nominee; or
 - (b) the Principal of the College or the Principal's nominee,begins when the person becomes a Member and ends when they cease to be a Member.
- (2) The term of office of a person appointed to the Foundation Board by the College Council or the Foundation Board (as provided for in Rule 5(3) above) begins when the person is appointed as a Member and ends at the second Annual General Meeting after that appointment, PROVIDED that the person may be appointed for subsequent two year terms so long as they remain eligible to be a Member under the provisions of Rule 5(4) above;
- (3) If a Foundation Board Member is appointed to fill a casual vacancy under Rule 33, the term of office of that Foundation Board Member shall continue from the date of their appointment to fill that vacancy and for the remainder of the term of the Member whose position is being filled as a casual vacancy.

32. When membership of Foundation Board ceases

- (1) A person ceases to be a Member of the Foundation Board if the person ceases to be a Member.

33. Filling casual vacancies

- (1) The Foundation Board must appoint a Member to fill a position on the Foundation Board that has become vacant when that position has been appointed by the Foundation Board (as provided for in Rule 5(3) above) and the term of office set out in Rule 31(2) has not come to an end.
- (2) The College Council must appoint a Member to fill a position on the Foundation Board that has become vacant when that position has been appointed by the College Council (as provided for in Rule 5(3) above) and the term of office set out in Rule 31(2) has not come to an end.
- (3) Subject to the requirement for a quorum under Rule 42, the Foundation Board may continue to act despite any vacancy in its membership.
- (4) If there are fewer Foundation Board Members than required for a quorum under Rule 42, the Foundation Board may act only for the purpose of convening a general meeting.

34. Validity of acts

The acts of the Foundation Board or a subcommittee, or of a Foundation Board Member or member of a subcommittee, are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Foundation Board member or member of a subcommittee.

35. Payments to Foundation Board members

- (1) In this Rule and Rule 36 —
Foundation Board Member includes a member of a sub-committee;
Foundation Board meeting includes a meeting of a sub-committee.

- (2) The Foundation may pay from its funds a Foundation Board Member's travelling and other expenses as properly incurred:
 - (a) in attending Foundation Board Meetings or sub-committee meetings;
 - (b) in attending any General Meetings of the Foundation; and
 - (c) in connection with the Foundation's business.
- (3) The Foundation may also pay to Foundation Board Members from the funds of the Foundation, such other remuneration for their services as authorised by resolution of the Members at a General Meeting.
- (4) A Foundation Board Member must not accept any other payments or remuneration in whatever form or kind for performing any other work for the Foundation other than as permitted by this Rule.

36. Indemnity for Foundation Board Members

- (1) The Foundation indemnifies each and every Foundation Board Member against any liability incurred in good faith by a Foundation Board Member in the course of performing their duties as a Foundation Board Member pursuant to the Rules and the Act.
- (2) The indemnity in Rule 36(1) does not extend to a liability incurred by a Foundation Board Member that arises due to:
 - (a) any lack of good faith;
 - (b) any conduct that amounts to a breach of the Act;
 - (c) any conduct that amounts to a breach of these Rules;
 - (d) any criminal or quasi-criminal liability including, but not limited to, a fine or other pecuniary penalty imposed by a court or tribunal;
 - (e) any liability in respect of and to extent that the Foundation Board Member has received a payment under an insurance policy; and/or
 - (f) any liability as to which the Foundation Board Member is not permitted to be indemnified by law.

37. Record of Office Bearers:

- (1) In this rule "Address" means:
 - (a) a residential or business address; or
 - (b) a post office box address; or
 - (c) an email address.
- (2) The Foundation must maintain a record of:
 - (a) the names and addresses of the persons who:
 - (i) are Foundation Board Members; or
 - (ii) hold other offices of the Foundation provided for by these Rules; and
 - (iii) the name and address of any person who is authorised to use the common seal

- of the Foundation; and
- (iv) the name and address of any person who is appointed or acts as trustee on behalf of the Foundation.
- (3) The Foundation must, upon the request of a Member, make available the record for the inspection of the Member.
 - (4) A Member may make a copy of or take an extract from the record but does not have a right to remove the record for that purpose.
 - (5) The Foundation may charge a reasonable fee to the Member for producing a copy of the records, with the amount to be determined by the Foundation Board from time to time.
 - (6) A Member must not use or disclose information in the record maintained under this Rule except for a purpose:
 - (a) that is directly connected with the affairs of the Foundation; or
 - (b) that is related to the administration of this Act.

Division 4 — Foundation Board meetings

38. Foundation Board meetings

- (1) The Foundation Board must meet at least 3 times in each year on the dates and at the times and places determined by the Foundation Board.
- (2) The date, time and place of the first Foundation Board meeting that takes place after each Annual General Meeting must be determined by the Foundation Board Members as soon as practicable after that meeting takes place.
- (3) Special Foundation Board meetings may be convened by the Chairperson or any 2 Foundation Board members providing notice of the meeting to all other Foundation Board Members.

39. Notice of Foundation Board meetings

- (1) Notice of each Foundation Board meeting must be given to each Foundation Board member at least 48 hours before the time of the meeting.
- (2) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (3) Unless subrule (4) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (4) Business that has not been described in the notice may be conducted at the meeting if the Foundation Board Members at the meeting unanimously agree.

40. Procedure and order of business

- (1) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson must preside as chairperson of each Foundation Board meeting.
- (2) If the Chairperson and Deputy Chairperson are absent or are unwilling to act as chairperson of a meeting, the Foundation Board Members at the meeting must choose one of them to act as chairperson of the meeting.

- (3) The procedure to be followed at a Foundation Board meeting must be determined from time to time by the Foundation Board.
- (4) The order of business at a Foundation Board meeting may be determined by the Foundation Board members at the meeting.
- (5) Any person who is not a Foundation Board Member may attend a Foundation Board meeting if invited to do so by the Foundation Board, including any Staff Member.
- (6) A person invited under subrule (5) to attend a Foundation Board meeting —
 - (a) has no right to any agenda, minutes or other document circulated at the meeting; and
 - (b) must not comment about any matter discussed at the meeting unless invited by the Foundation Board to do so; and
 - (c) cannot vote on any matter that is to be decided at the meeting.

41. Use of technology to be present at Foundation Board meetings

- (1) The presence of a Foundation Board Member at a Foundation Board meeting need not be by attendance in person but may be by that Foundation Board Member and each other Foundation Board Member at the meeting being simultaneously in contact by telephone, video conferencing or other means of instantaneous communication.
- (2) A Foundation Board Member who participates in a Foundation Board meeting as allowed under subrule (1) is taken to be present at the meeting and, if the Foundation Board Member votes at the meeting, the member is taken to have voted in person.

42. Quorum for Foundation Board meetings

- (1) Subject to rule 33(4), no business is to be conducted at a Foundation Board meeting unless a quorum of 4 Foundation Board Members is present.
- (2) If a quorum is not present within 30 minutes after the notified commencement time of a Foundation Board meeting —
 - (a) in the case of a special meeting — the meeting lapses; or
 - (b) otherwise, the meeting is adjourned to the same time, day and place in the following week.
- (3) If —
 - (a) a quorum is not present within 30 minutes after the commencement time of a Foundation Board meeting held under subrule (2)(b); and
 - (b) at least 2 Foundation Board Members are present at the meeting,

those members present are taken to constitute a quorum.

43. Voting at Foundation Board meetings

- (1) Each Foundation Board Member present at a Foundation Board meeting has one vote on any question arising at the meeting.
- (2) A motion is carried if a majority of the Foundation Board Members present at the Foundation Board meeting vote in favour of the motion.
- (3) If the votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.

- (4) A vote may take place by the Foundation Board Members present indicating their agreement or disagreement or by a show of hands, unless the Foundation Board decides that a secret ballot is needed to determine a particular question.
- (5) If a secret ballot is needed, the chairperson of the meeting must decide how the ballot is to be conducted.

44. Minutes of Foundation Board meetings

- (1) The Foundation Board shall cause minutes to be kept in books and/or in electronic form provided for the purpose of recording the proceedings of Annual General Meetings and of meetings of the Foundation Board.
- (2) The minutes must record the following —
 - (a) the names of the Foundation Board Members present at the meeting;
 - (b) the name of any person attending the meeting under rule 40(5);
 - (c) the business considered at the meeting;
 - (d) any motion on which a vote is taken at the meeting and the result of the vote.
- (3) The Chairperson must ensure that the minutes of each Foundation Board meeting and General Meeting are reviewed and signed as correct by —
 - (a) the Chairperson of the next General Meeting; or
 - (b) the Chairperson of the next Foundation Board meeting.
- (4) When the minutes of a Foundation Board meeting or General Meeting have been signed as correct they are, until the contrary is proved, evidence that —
 - (a) the meeting to which the minutes relate was duly convened and held; and
 - (b) the matters recorded as having taken place at the meeting took place as recorded; and
 - (c) any appointment purportedly made at the meeting was validly made.

Division 5 — Sub-committees and subsidiary offices

45. Subcommittees and subsidiary offices

- (1) To help the Foundation Board in the conduct of the Foundation's business, the Foundation Board may, in writing, appoint one or more Sub-committees.
- (2) A Sub-committee may consist of the number of people, whether or not Members, that the Foundation Board considers appropriate.
- (3) Subject to any directions given by the Foundation Board a Sub-committee may meet and conduct business as it considers appropriate;

46. Delegation to Sub-committees and holders of subsidiary offices

- (1) In this rule —

non-delegable duty means a duty imposed on the Foundation Board by the Act or another written law.

- (2) The Foundation Board may, in writing, delegate to a Sub-committee the exercise of any power or the performance of any duty of the Foundation Board other than —
 - (a) the power to delegate; and
 - (b) a non-delegable duty.
- (3) A power or duty, the exercise or performance of which has been delegated to a Sub-committee, may be exercised or performed by the Sub-committee in accordance with the terms of the delegation.
- (4) The delegation may be made subject to any conditions, qualifications, limitations or exceptions that the Foundation Board specifies in the document by which the delegation is made.
- (5) The delegation does not prevent the Foundation Board from exercising or performing at any time the power or duty delegated.
- (6) Any act or thing done by a Sub-committee, under the delegation has the same force and effect as if it had been done by the Foundation Board.
- (7) The Foundation Board may, in writing, amend or revoke the delegation.

PART 7 — GENERAL MEETINGS OF FOUNDATION

47. Annual general meeting

- (1) The Foundation Board must determine the date, time and place of the Annual General Meeting.
- (2) If it is proposed to hold the Annual General Meeting more than 6 months after the end of the Foundation's financial year, the Executive Officer must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the financial year and obtain the necessary permission no later than 5 months after the end of the financial year.
- (3) The ordinary business of the Annual General Meeting is as follows —
 - (a) to confirm the minutes of the previous Annual General Meeting and of any Special General Meeting held since then if the minutes of that meeting have not yet been confirmed;
 - (b) to receive and consider —
 - (i) the Foundation Board's annual report on the Foundation's activities during the preceding financial year; and
 - (ii) if the Foundation is a Tier 1 Association, the Financial Statements of the Foundation for the preceding financial year presented under Part 5 of the Act; and
 - (iii) if the Foundation is a Tier 2 Association or a Tier 3 Association, the Financial Report of the Foundation for the preceding financial year presented under Part 5 of the Act;
 - (iv) if required to be presented for consideration under Part 5 of the Act, a copy of the report of the reviewer's or auditor's report on the Financial Statements or Financial Report;
 - (c) to elect the office holders of the Foundation and other Foundation Board Members; and
 - (d) if applicable, to appoint or remove a reviewer or auditor of the Foundation in accordance with section 87 of the Act.
- (4) Any other business of which notice has been given in accordance with these rules may be conducted at the Annual General Meeting.

48. Special General Meetings

- (1) The Foundation Board may convene a Special General Meeting.

- (2) The Foundation Board must convene a Special General Meeting if at least 20% of the Members require a special general meeting to be convened.
- (3) The Members requiring a Special General Meeting to be convened must —
 - (a) make the requirement by written notice given to the Executive Officer; and
 - (b) state in the notice the business to be considered at the meeting; and
 - (c) each sign the notice.
- (4) The Special General Meeting must be convened within 28 days after notice is given under subrule (3).
- (5) If the Foundation Board does not convene a Special General Meeting within that 28-day period, the Members making the requirement (or any of them) may convene the Special General Meeting.
- (6) A Special General Meeting convened by Members under subrule (5) —
 - (a) must be held within 3 months after the date the original requirement was made; and
 - (b) may only consider the business stated in the notice by which the requirement was made.

49. Notice of General Meetings

- (1) The Executive Officer or, in the case of a Special General Meeting convened under rule 55(5), the Members convening the meeting, must give to each Member —
 - (a) at least 21 days' notice of a General Meeting if a Special Resolution is to be proposed at the meeting; or
 - (b) at least 14 days' notice of a General Meeting in any other case.
- (2) The notice must —
 - (a) specify the date, time and place of the meeting; and
 - (b) indicate the general nature of each item of business to be considered at the meeting; and
 - (c) if the meeting is the Annual General Meeting, include the names of the Members, if any, who have been approved by the College Council for election to the Foundation Board under Rule 30; and
 - (d) if a Special Resolution is proposed —
 - (i) set out the wording of the proposed resolution as required by section 51(4) of the Act; and
 - (ii) state that the resolution is intended to be proposed as a Special Resolution; and
 - (iii) comply with Rule 50(7).

50. Proxies

- (1) Subject to subrule (2), a Member may appoint an individual who is a Member as his or her proxy to vote and speak on his or her behalf at a General Meeting.
- (2) A Member may be appointed the proxy for not more than 5 other Members.
- (3) The appointment of a proxy must be in writing and signed by the Member making the appointment.
- (4) The Member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.
- (5) If no instructions are given to the proxy, the proxy may vote on behalf of the Member in any matter as the proxy sees fit.

- (6) If the Foundation Board has approved a form for the appointment of a proxy, the Member may use that form or any other form —
 - (a) that clearly identifies the person appointed as the Member's proxy; and
 - (b) that has been signed by the Member.
- (7) Notice of a General Meeting given to a member under Rule 49 must —
 - (a) state that the Member may appoint an individual who is a Member as a proxy for the meeting; and
 - (b) include a copy of any form that the Foundation Board has approved for the appointment of a proxy.
- (8) A form appointing a proxy must be given to the Executive Officer before the commencement of the General Meeting for which the proxy is appointed.
- (9) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Foundation not later than 24 hours before the commencement of the meeting.

51. Use of technology

- (1) The presence of a Member at a General Meeting need not be by attendance in person but may be by that Member and each other Member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.
- (2) A Member who participates in a General Meeting as allowed under subrule (1) is taken to be present at the meeting and, if the Member votes at the meeting, the member is taken to have voted in person.
- (3) Any resolution in writing signed or electronically transmitted by all Members will be as valid and effectual as if it had been passed at a meeting of the Foundation Board duly convened and held. Any such resolution may consist of several documents in like form each signed or electronically transmitted by one or more Members.

52. Presiding member and quorum for General Meetings

- (1) 30% of the Members personally present (being Members entitled to vote under these Rules at a General Meeting) will constitute a quorum for the conduct of business at a General Meeting.
- (2) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson must preside as chairperson of each General Meeting.
- (3) If the Chairperson and Deputy Chairperson are absent or are unwilling to act as chairperson of a General Meeting, the Foundation Board Members at the meeting must choose one of them to act as chairperson of the meeting.
- (4) No business is to be conducted at a General Meeting unless a quorum is present.
- (5) If a quorum is not present within 30 minutes after the notified commencement time of a General Meeting —
 - (a) in the case of a Special General Meeting — the meeting lapses; or
 - (b) in the case of the Annual General Meeting — the meeting is adjourned to —
 - (i) the same time and day in the following week; and
 - (ii) the same place, unless the chairperson specifies another place at the time of the adjournment or written notice of another place is given to the Members before the day to which the meeting is adjourned.
- (6) If —
 - (a) a quorum is not present within 30 minutes after the commencement time of an Annual General Meeting held under subrule (5)(b); and

- (b) at least 2 Members are present at the meeting,
those Members present are taken to constitute a quorum.

53. Adjournment of General Meeting

- (1) The chairperson of a General Meeting at which a quorum is present may, with the consent of a majority of the Members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting subrule (1), a meeting may be adjourned —
 - (a) if there is insufficient time to deal with the business at hand; or
 - (b) to give the Members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 49.

54. Voting at General Meeting

- (1) On any question arising at a General Meeting —
 - (a) subject to subrule (3), each Member has one vote; and
 - (b) Members may vote personally or by proxy.
- (2) Except in the case of a Special Resolution, a motion is carried if a majority of the Members voting at a General Meeting vote in favour of the motion.
- (3) If votes are divided equally on a question, the chairperson of the meeting has a second or casting vote.

55. When Special Resolutions are required

- (1) A Special Resolution is required if it is proposed at a General Meeting —
 - (a) to affiliate the Foundation with another body; or
 - (b) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
 - (c) to alter its rules, including changing the name of the Foundation (section 30(1));
 - (d) to decide to apply for registration or incorporation as a prescribed body corporate (section 93(1));
 - (e) to approve the terms of an amalgamation with one or more other incorporated associations (section 102(4));
 - (f) to be wound up voluntarily (section 121(2)) or by the Supreme Court (section 124(a) and Schedule 4 item 9);
 - (g) to cancel its incorporation (section 129) and/or
 - (h) to pass any other Resolution that is required under the Act to be a Special Resolution
- (2) Subrule (1) does not limit the matters in relation to which a Special Resolution may be proposed.

56. Determining whether Resolution carried

- (1) In this rule —

poll means the process of voting in relation to a matter that is conducted in writing.

- (2) Subject to subrule (4), the chairperson of a General Meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been —
 - (a) carried; or
 - (b) carried unanimously; or
 - (c) carried by a particular majority; or
 - (d) lost.
- (3) If the resolution is a Special Resolution, the declaration under subrule (2) must identify the resolution as a Special Resolution.
- (4) If a poll is demanded on any question by the chairperson of the meeting or by at least 3 other members present in person or by proxy —
 - (a) the poll must be taken at the meeting in the manner determined by the chairperson;
 - (b) the chairperson must declare the determination of the resolution on the basis of the poll.
- (5) If a poll is demanded on the election of the chairperson or on a question of an adjournment, the poll must be taken immediately.
- (6) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the chairperson.
- (7) A declaration under subrule (2) or (4) must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

57. Minutes of General Meeting

- (1) The Executive Officer, or a person authorised by the Foundation Board from time to time, must take and keep minutes of each General Meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each Annual General Meeting must record —
 - (a) the names of the Members attending the meeting; and
 - (b) any proxy forms given to the chairperson of the meeting under Rule 50(8); and
 - (c) the financial statements or financial report presented at the meeting, as referred to in Rule 47(3)(b)(ii) or (iii); and
any report of the review or auditor's report on the financial statements or financial report presented at the meeting, as referred to in Rule 47(3)(b)(iv).
- (4) When the minutes of a General Meeting have been signed as correct and approved by resolution at a subsequent General Meeting, they are, in the absence of evidence to the contrary, taken to be proof that —
 - (a) the meeting to which the minutes relate was duly convened and held; and
 - (b) the matters recorded as having taken place at the meeting took place as recorded; and
 - (c) any election or appointment purportedly made at the meeting was validly made.

PART 8 — FINANCIAL MATTERS

58. Source of funds

The funds of the Foundation may be derived from entrance fees, donations, bequests, fund-raising activities, grants, interest, investment, business interests and any other sources approved by the Foundation Board.

59. Control of funds

- (1) The Foundation must open any account/s in the name of the Foundation with financial institutions from which all expenditure of the Foundation is made and into which all funds received by the Foundation are deposited.
- (2) Subject to any restrictions imposed at a General Meeting, the Foundation Board may approve expenditure on behalf of the Foundation.
- (3) The Foundation Board may authorise the Executive Officer to expend funds on behalf of the Foundation up to a specified limit without requiring approval from the Foundation Board for each item on which the funds are expended.
- (4) All payments exceeding the limit referred to in sub-clause 59(3) above pertaining to the Foundation must be signed and authorised by —
 - (a) two Foundation Board members; or
 - (b) one Foundation Board member and a person authorised by the Foundation Board.
- (5) All funds of the Foundation must be deposited into an account held by the Foundation as soon as reasonably practical.

60. Investment of Funds

The Foundation must:

- (1) Keep the money and other assets of each Approved Fund separate and distinct and to utilise the income and capital of each such Approved Fund only for the specific aims and purpose of that Approved Fund;
- (2) Formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the relevant Approved Funds including, but not limited to, the following: -
 - (a) the risk involved in making, holding and realising and the likely return from, the Approved Funds' investments having regard to its objectives and its expected cashflow requirements;
 - (b) the composition of the Approved Fund investments as a whole including the extent to which the investments are diverse or involve the Approved Fund in being exposed to risks from inadequate diversification;
 - (c) the liquidity of the Approved Fund investments having regard to expected cashflow requirements;
 - (d) the ability of the Approved Fund to discharge its existing and prospective liabilities.

61. Financial Statements and Financial Reports

- (1) For each financial year, the Foundation Board must ensure that the requirements imposed on the Foundation under Part 5 of the Act relating to the Financial Statements or Financial Report of the Foundation are met.
- (2) Without limiting subrule (1), those requirements include —
 - a. if the Foundation is a Tier 1 Association, the preparation of the Financial Statements; and
 - b. if the Foundation is a Tier 2 Association or Tier 3 Association, the preparation of the Financial Report; and
 - c. if required, the review or auditing of the Financial Statements or Financial Report, as applicable; and
 - d. the presentation to the Annual General Meeting of the Financial Statements or Financial Report, as applicable; and
 - e. if required, the presentation to the Annual General Meeting of the copy of the report of the review or auditor's report, as applicable, on the Financial Statements or Financial Report.

62. Appointment of Auditor or Reviewer

- (1) The Foundation Board must at the Annual General Meeting, or as required by the Commissioner under the Act, appoint an Auditor or Reviewer pursuant to section 87 of the Act of such recognised standing as the Foundation thinks fit for such period, and on such terms as the Foundation thinks fit.
- (2) The Foundation Board must submit the Foundation's Financial Statements or Financial Report to the Auditor or Reviewer (as required by the Act) to be audited or reviewed, as the case may be, once in each year prior to the Annual General Meeting and must attach the report of the Auditor or the review of the Reviewer to the Financial Statements or Financial Report when tabling them at the Annual General Meeting

PART 9 — GENERAL MATTERS

63. By-laws

- (1) The Foundation may, by resolution at a General Meeting, make, amend or revoke By-laws.
- (2) By-laws may —
 - (a) impose requirements relating to the financial reporting and financial accountability of the Foundation and the auditing of the Foundation's accounts; and
 - (b) provide for any other matter the Foundation considers necessary or convenient to be dealt with in the By-laws.
- (3) A By-law is of no effect to the extent that it is inconsistent with the Act, the regulations proclaimed under the Act or these Rules.
- (4) Without limiting Subrule (3), a By-law made for the purposes of Subrule (2)(a) may only impose requirements on the Foundation that are additional to, and do not restrict, a requirement imposed on the Foundation under Part 5 of the Act.
- (5) At the request of a Member, the Foundation must make a copy of the By-laws available for inspection by the Member.

64. Executing documents and common seal

- (1) The Foundation may execute a document without using a common seal if the document is signed by —
 - (a) 2 Foundation Board Members; or
 - (b) one Foundation Board Member and a person authorised by the Foundation Board, including the Executive Officer.
- (2) If the Foundation has a common seal —
 - (a) the name of the Foundation must appear in legible characters on the common seal; and
 - (b) subject to the Act, a document may only be sealed with the common seal by the authority of the Foundation Board and in the presence of —
 - (i) 2 Foundation Board members; or
 - (ii) one Foundation Board member and a person authorised by the Foundation Board,and each of them is to sign the document to attest that the document was sealed in their presence.
- (3) The Executive Officer must make a written record of each use of the common seal.
- (4) The common seal must be kept in the custody of the Executive Officer or another Foundation Board member authorised by the Foundation Board.

65. Giving notices to members

- (1) In this rule —

recorded means recorded in the Register of Members.
- (2) A notice or other document that is to be given to a Member under these Rules is taken not to have been given to the Member unless it is in writing and —
 - (a) delivered by hand to the address of the Member appearing in the Register of Members; or
 - (b) sent by prepaid post to the postal address of the Member appearing in the Register of Members; or
 - (c) sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the Member.

66. Custody of books and securities

- (1) Subject to subrule (2), the Books and any securities of the Foundation must be kept in the Executive Officer's custody or under the Executive Officer's control.
- (2) The financial records and, as applicable, the Financial Statements and Financial Reports of the Foundation must be kept in the Executive Officer's custody or under the Executive Officer's control.
- (3) Subrules (1) and (2) have effect except as otherwise decided by the Foundation Board.
- (4) The Books of the Foundation must be retained for at least 7 years.

67. Record of office holders

The record of Foundation Board Members and other persons authorised to act on behalf of the Foundation that is required to be maintained under section 58(2) of the Act must be kept in the Executive

Officer's custody, under the Executive Officer's control or as otherwise determined by the Foundation Board.

68. Office of the Foundation

The office of the Foundation will be situated at the College, Mt Henry Road, Salter Point, Western Australia or at such other place as the Foundation Board may determine.

69. Inspection of records and documents

- (1) Subrule (2) applies to a Member who wants to inspect —
 - (a) the record of the names and addresses of Foundation Board members, and other persons authorised to act on behalf of the Foundation, under section 58(3) of the Act; or
 - (b) any other record or document of the Foundation save for the inspection of the Register of Members, which is dealt with in Division 3 above.
- (2) The Member must contact the Executive Officer to make the necessary arrangements for the inspection.
- (3) The inspection must be free of charge.
- (4) The Member may make a copy of or take an extract from a record or document referred to in subrule (1)(c) but does not have a right to remove the record or document for that purpose.
- (5) The member must not use or disclose information in a record or document referred to in subrule (1)(b) except for a purpose —
 - (a) that is directly connected with the affairs of the Foundation; or
 - (b) that is related to complying with a requirement of the Act.

70. Publication by Foundation Board Members of statements about Foundation business prohibited

A Foundation Board Member must not publish, or cause to be published, any statement about the business conducted by the Foundation at a General Meeting or Foundation Board meeting unless —

- (a) the Foundation Board Member has been authorised to do so at a Foundation Board meeting; and
- (b) the authority given to the Foundation Board Member has been recorded in the minutes of the Foundation Board meeting at which it was given.

71. Distribution of surplus property on cancellation of incorporation or winding up

- (1) In this rule —

surplus property, in relation to the Foundation, means property remaining after satisfaction of —

- (a) the debts and liabilities of the Foundation; and
- (b) the costs, charges and expenses of winding up or cancelling the incorporation of the Foundation,

but does not include Books relating to the management of the Foundation.

On the cancellation of the incorporation or the winding up of the Foundation, its surplus property must be distributed as determined by Special Resolution - by reference to the persons mentioned in section 24(1) of the Act – to any incorporated association responsible for the management and administration of the College or whose objects include the provision of

support and assistance to the College, or if the College has ceased to exist, to some other incorporated association associated with any college or other such educational or charitable institution, organisation, foundation or body of EREA as approved by EREA, with objects similar to or compatible with the Objects of the College, and which also prohibits the distribution of its income and property amongst its members. If EREA has been dissolved then the final distribution of the Foundation is to be as directed by the Roman Catholic Archbishop of Perth at that time.

72. Alteration of rules

If the Foundation wants to alter or rescind any of these Rules, or to make additional Rules, the Foundation may do so only by Special Resolution and by otherwise complying with Part 3 Division 2 of the Act.

73. Transitional provisions

Upon the variation to the Foundation's Rules in accordance with the terms of this document (scheduled to occur on 2 April 2025) the implementation of those variations shall occur in the manner described in Schedule 1.

SCHEDULE 1

TRANSITIONAL PROVISIONS

- A. The Members of the Foundation immediately before the variation to the Rules in accordance with the terms of this document scheduled to occur on 2 April 2025 (**Commencement of Substituted Rules**) will cease to be Members upon that variation occurring.
- B. Upon the Commencement of the Substituted Rules, the Members of the Foundation will be those persons identified in Rule 5(3).
- C. Upon the Commencement of the Substituted Rules, the Foundation Board Members existing prior to that commencement shall cease to be board members and will be replaced by those persons identified in Rule 24 PROVIDED THAT the initial term of office for those Foundation Board Members under Rules 31(2) and 31(3) shall commence at the special general meeting at which the Rules are varied in accordance with the terms of this document and shall end at the next Annual General Meeting.
- D. The appointment of the Office Holders of the Foundation upon the Commencement of the Substituted Rules will occur in accordance with Rule 27, PROVIDED THAT the initial appointment of those Office Holders shall occur at the special general meeting at which the Rules are varied in accordance with the terms of this document and the term of those initial appointments shall only be until the next Annual General Meeting.
- E. In determining whether a person has been a Member for longer than 10 years in accordance with the provisions of Rule 5(4), any period during which the person has been a Foundation Board Member prior to the Commencement of the Substituted Rules will be taken into account in reckoning that period.