

**Corporations Act 2001 Cth
A Company Limited By Guarantee**

**Constitution of
Social Education, Action and Research
Concerning Humanity Foundation (SEARCH
Foundation)**

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Corporations Act 2001
A Company Limited by Guarantee
CONSTITUTION
OF
Social Education, Action and Research Concerning Humanity
Foundation (SEARCH Foundation)
(“The Foundation”)
ACN 050 096 976

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution

“Annual Subscription” means the sum fixed by the Committee in each year to be paid by each Member for membership of the Foundation in that year;

“Appendix” means the Appendix to this Constitution;

“Ballot Envelope” means the envelope marked “Ballot Envelope” into which a completed ballot paper is to be placed in accordance with clauses 31 and 67;

“Business Day” means a day which is not a Saturday, Sunday or public holiday in the State;

“Committee” means the board of Committee Members of the Foundation under this Constitution;

“Committee Members” means those members of the Committee elected or appointed in accordance with this Constitution;

“Corporation” means any body corporate, whether formed or incorporated within or outside the State;

“Declaration Envelope” means the envelope having provision on the outside for the Member’s name and signature, and for insertion therein of the Ballot Envelope containing the completed ballot papers issued to Members by the Foundation in accordance with clauses 31 and 67;

“Direct Vote”/“Direct Voting” means the system of voting prescribed by clauses 31, 43.2, 50 and 67 whereby Members can vote for resolutions or for the election of office bearers or Committee Members by marking ballot papers appropriately or by voting on an On-Line Voting System;

“Entrance Fee” means the fee payable by a person applying to become a Member of the Foundation;

“Financial Member” means a Member who at any given time has paid to the Foundation the annual subscription due as from the second day of January in that year;

“Law” means the *Corporations Act 2001 Cth* or any other statutory modification, amendment or re-enactment thereof for the time being in force and applicable to the Foundation and any reference to any provision thereof is to that provision so modified, amended or re-enacted;

“Member” means a person admitted to membership of the Foundation in accordance with this Constitution;

“Office” means the registered office of the Foundation from time to time;

“Officer” means an officer as defined in section 9 of the Law;

“On-Line Voting System” means an on-line system for Direct Voting established by the Committee pursuant to clause 26;

“Preferential Method” means for the purposes of clause 67 in relation to the election of office bearers and other Members of the Committee a compulsory preferential voting system whereby all candidates for a particular office are listed with a box along side the name of each candidate, with Members being required to insert in all boxes numbers signifying their preference for election of candidates to the particular office;

“President” means the Committee Member holding that office for the time being under this Constitution;

“Regulations” means regulations of the Committee made pursuant to this Constitution;

“Register” means the register of Members kept under the Law;

“Returning Officer” means the person being a Financial Member who is appointed pursuant to clause 28.5 for the purpose of managing the election of office bearers and other Committee Members in accordance with clause 67;

“Seal” means the common seal of the Foundation;

“Secretary” means the Committee Member holding that office for the time being under this Constitution;

“Special Majority” in relation to a resolution of the Committee means with the approval of not less than three quarters in number of the members of the Committee entitled to vote on the resolution.

“Vice President” means the Committee Member holding that office for the time being under this Constitution.

2 Interpretation

In this Constitution headings are for convenience only and do not affect meaning and unless the contrary intention appears:

- (a) words importing the singular number include the plural number and vice versa;
- (b) words importing any gender include all other genders;
- (c) a reference to a person includes a corporation, a partnership, a body corporate, an unincorporated Foundation and a statutory authority;
- (d) where any word or phrase is given a defined meaning any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
- (e) a reference to a clause is to a clause of this Constitution; and
- (f) any power, right, discretion or authority conferred upon any person or groups of persons under this Constitution may be exercised at any time and from time to time.

3 APPLICATION OF CORPORATIONS ACT

3.1 The Replaceable Rules in the Law do not apply to the Foundation.

3.2 Except in so far as a contrary intention appears anywhere in this Constitution:

- (a) an expression used in a particular Part or Division of the Law which is given a special meaning by any provision of that Part or Division for the purposes of that Part or Division (or any part thereof) has, in any of this Constitution which deals with a matter dealt with by that Part or Division (or part thereof), the same meaning as in that Part or Division;
- (b) an expression which is given a general meaning by any provision of the Law has the same meaning in this Constitution; and
- (c) if at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that does not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Constitution.

3.3 This Constitution may only be varied or repealed in accordance with s.136 of the Law the text of which is set forth in the Appendix.

4 OBJECTS

4.1 The objects for which the Foundation is established are to:

- (a) promote greater understanding in the community of the main factors affecting social life, influencing social development, and advancing social well-being;

- (b) oppose the domination of Australia's economy by national and international corporations;
 - (c) without limiting the generality of the objects of the Foundation, carry out research and educational activity in respect of:
 - (i) theories of the functioning of society;
 - (ii) the role of science and technology in social development;
 - (iii) the role of art in social life;
 - (iv) the relationship between humanity and the environment;
 - (v) social justice, equality and democracy as factors effecting social development;
 - (vi) the part played by the above factors, and by social and democratic movements, in the development of Australian society.
 - (d) establish and fund facilities for carrying out research into any of the above objects of the Foundation;
 - (e) publish newspapers, magazines, books and research reports, and utilise all forms of media for the purpose of increasing community awareness in respect of the objects of the Foundation;
 - (f) assist the activity of other persons, organisations and publications which, in the opinion of the Committee, will contribute to increasing community awareness in respect of the Foundation's objects.
- 4.2 None of the above objects shall be construed so as to limit or be limited by any other object.
- 4.3 The Foundation may also do anything which is ancillary or incidental to the above objects including and without limiting the generality thereof:
- (i) holding or arranging competitions and providing or contributing towards the provision of prizes, awards and distinctions in that regard and the granting of any such prize, awards or distinction to a Member if awarded in good faith shall be deemed not to be in breach of clause 6.1;
 - (ii) subscribing to, becoming a member of and or co-operating or amalgamating with any other association or organisation (whether incorporated or not) the objects of which are similar to those of the Foundation, In this regard, the Foundation shall not subscribe to support with its funds or amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Foundation by this Constitution.

5 POWERS

Solely for the purpose of carrying out its objects and not otherwise, the Foundation has the power to do all such things as are necessary, incidental or conducive to the attainment of those objects and, for that purpose and not otherwise, the Foundation has the legal capacity of an individual with all consequential powers as conferred by section 124 of the Law.

6 APPLICATION OF INCOME

- 6.1 The income and property of the Foundation must be applied solely towards the promotion of the objects of the Foundation. No income or property may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to Members.
- 6.2 Subject to this clause and provided any necessary approval under any applicable legislation in relation to charities and charitable fundraising has been obtained nothing contained in this Constitution will prevent the payment in good faith of remuneration approved by the Committee to any Officer, employee or Member of the Foundation (including any firm or corporation in which any such Officer, employee or Member has an interest) in return for any services actually rendered or for any goods supplied to the Foundation in the ordinary and usual way of business, nor prevent the payment of interest, in good faith, on money borrowed by the Foundation from any Member, or reasonable and proper rent for the premises let by any Member to the Foundation. The salary to be paid to any employee of the Foundation shall however not exceed the relevant figures for average weekly earnings as published from time to time by the Australian Bureau of Statistics.
- 6.3 A member of the Committee may be paid remuneration for services actually rendered. The Committee may subject to clause 6.2 fix the amount of remuneration of each member of the Committee according to workload.
- 6.4 Except as provided above, no Committee Member will be paid any fee, commission, honorarium or other remuneration for acting as a Committee Member other than reasonable out-of-pocket expenses.

7 CONTRIBUTION OF MEMBERS

Each Member of the Foundation undertakes to contribute to the property of the Foundation, in the event of the Foundation being wound up while that person is a Member or within one year after that person ceases to be a Member, for payment of the debts and liabilities of the Foundation contracted before that person ceases to be a Member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$20.

8 NO DISTRIBUTION OF PROPERTY

If upon the winding up or dissolution of the Foundation there remains, after satisfaction of all debts and liabilities, any property whatsoever, the same will not be paid to or distributed among the Members of the Foundation, but will be given or transferred to some other institution or institutions having objects similar to the objects of the Foundation, and whose constitution or rules prohibit 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 under this Constitution. Such institution or institutions shall be chosen by the Members in general meeting.

9 MEMBERS AND APPLICATIONS FOR MEMBERSHIP

- 9.1 The present Members and such other persons as the Committee shall admit to membership of the Foundation in accordance with this Constitution shall be Members of the Foundation.
- 9.2 Every applicant for membership of the Foundation shall be proposed by one Member and seconded by another Member to both of whom the applicant shall be personally

known. The application for membership shall be made in writing signed by the applicant and his/her proposer and seconder and shall be in such form as the Committee may from time to time prescribe. The Committee shall have power if its so elects to permit applications for membership to be made on line electronically by the applicant, using the Foundation's web site (if any), email or other Committee approved method, by submitting required information including the applicant's details and contact details of the proposer and seconder.

10 FURTHER INFORMATION

An applicant for membership of the Foundation shall provide in writing such other information in addition to that contained in any form of application as the Committee may require.

11 DECISIONS ON APPLICATIONS FOR MEMBERSHIP

At the next meeting of the Committee after receipt of any application for membership, such application shall be considered by the Committee which shall thereupon determine upon the admission or rejection of the application. The Committee shall not be required to give any reason for the rejection of an application.

12 NOTIFICATION OF ACCEPTANCE

The Committee may adopt procedures for the Foundation to notify acceptance of membership applications and entry of names in the Register.

13 ONE-CLASS OF MEMBERS

The Committee may classify Members for administrative purposes but the rights and entitlements of all Members under this Constitution shall be identical.

14 MEMBERSHIP NOT TRANSFERABLE

Membership of the Foundation shall not be transferable whether by operation of law or otherwise and all rights and privileges of membership of the Foundation shall cease upon the person ceasing to be a Member whether by resignation, death or otherwise.

15 FEES

Members shall pay such Entrance Fee and Annual Subscription and other fees in such amounts and at such times as the Committee may from time to time determine. Upon the introduction of this Constitution the Entrance Fee and the Annual Subscription will each be \$25.

16 LEVIES

In order to provide additional funds required for the operation of the Foundation, the Committee may determine that levies are to be paid by Members and may fix the amount and the dates for payment thereof but until so determined no levies shall be payable by Members.

17 DIFFERENCE FEES OR LEVIES PAYABLE

If at any future time the membership of the Foundation is divided into different classes of members, in determining fees or levies under this clause, the Committee may

differentiate between classes of Members as to the amounts of fees or levies payable.

18 PROCEDURES REGARDING FEES

The Committee may adopt procedures for the collection, direction or deduction of fees and levies.

19 RULES APPLYING TO MEETINGS OF A CLASS OF MEMBERS

The provisions from time to time contained in this Constitution concerning meetings will apply, so far as they are capable of application and with the necessary changes, to every meeting of a class of Members but so that the necessary quorum shall be 15 Members of the class or an attorney of such a Member. Any Member of the class present in person or by proxy or attorney may demand a poll.

20 NON PAYMENT OF FEES OR LEVIES

If any fees or levies payable by a Member shall remain unpaid for a period of 3 calendar months after notice of such default is given to the Member by the Foundation, the Committee by resolution may suspend all the privileges of membership (including the right to vote) of that Member, provided that the Committee may reinstate the privileges of membership of that Member on payment of all arrears if the Committee thinks fit to do so. If any fees or levies remain unpayable for a period of thirty-six calendar months after notice of such default is given then the Committee may by a resolution terminate the membership of the Member in accordance with clauses 21 and 23 of this Constitution.

21 CESSATION OF MEMBERSHIP

A Member's membership of the Foundation shall cease:

- (a) if the Member resigns that membership by giving notice in writing addressed to the Secretary and such resignation shall be effective from the date of receipt of the notice by the Secretary; or
- (b) if the membership of the Member is terminated pursuant to clause 20 or by reason of non-compliance or misconduct under clause 23 of this Constitution and such termination shall be effective from the date of the subject resolution of the Committee.

22 CONTINUING RIGHTS, LIABILITIES ETC

22.1 The termination of a Member's membership (whether by resignation, expulsion or otherwise) shall not in any way prejudice, lessen or affect the accrued rights, duties, liabilities and obligations of that Member whether they:

- (a) arose under this Constitution or otherwise; and
- (b) are existing at the date of such termination or arose or crystallised after that date out of, or by reason of, facts or circumstances occurring or in existence at or before that date.

- 22.2 Without limiting the generality of this clause, termination of a Member's membership shall not relieve a Member from any obligation to record or account for or pay any levies or fees which became due and payable before the date of termination.
- 22.3 Upon termination of a Member's membership the obligation of that person to contribute upon a winding up of the Foundation shall cease in accordance with clause 7.

23 NON-COMPLIANCE WITH CONSTITUTION, MISCONDUCT

- 23.1 If any Member shall wilfully refuse or neglect to comply with the provisions of this Constitution, the Committee may subject to this clause by resolution censure, suspend or expel the Member from the Foundation.
- 23.2 The Committee must not pass a resolution censuring, suspending or expelling a Member until:
- (a) the Member has been given at least four week's notice of the meeting of the Committee at which such a resolution is to be put which shall state the nature of the allegations against the Member and the intended resolution;
 - (b) if required by either the Member or the Foundation, the provisions for mediation of any dispute in this clause have been applied; and
 - (c) the Member has had the opportunity of giving orally or in writing any explanation or defence, or call any witness the Member may think fit at such meeting.

24 POWERS OF FOUNDATION

- 24.1 The direction of the Foundation is vested in the Committee.
- 24.2 The Committee may exercise all powers and do all such acts and things which the Foundation is authorised or permitted to exercise and do and which are not by this Constitution or by statute directed or required to be exercised or done by the Foundation in general meeting.
- 24.3 In addition to the role and duties of the Committee under the Law and under general law, the role and duties of the Committee shall include:
- (a) serving as the mechanism for the effective management of the Foundation's activities and services to ensure appropriate allocation and usage of its resources;
 - (b) acting on behalf of the Foundation in all financial matters and doing all other things necessary for the prudent conduct of the Foundation's financial affairs;
 - (c) subject to this Constitution, making all decisions in respect of the employment by the Foundation of any person;
 - (d) receiving reports from the staff of the Foundation; and
 - (e) arranging payment, subject to this Constitution, to the Officers or Committee Members of the Foundation for services performed.

25 COMMITTEE MAY APPOINT ATTORNEY OR AGENT

- 25.1 The Committee may, by resolution, power of attorney, or other written instrument, appoint any person or persons to be attorney or agent of the Foundation for such purposes, with such powers, authorities and discretions being powers, authorities and discretions vested in or exercisable by the Committee for such period and subject to such conditions as they think fit.
- 25.2 The appointment may be on such terms for the protection and convenience of persons dealing with the attorney or agent as the Committee think fit and may also authorise the attorney or agent to delegate all or any of the powers, authorities and discretions vested in him.

26 REGULATIONS – ON-LINE VOTING

- 26.1 Subject to any express requirement in this Constitution for approval by Members, the Committee has power (but only by Special Majority) to pass resolutions making, amending or repealing Regulations from time to time. Regulations may be made in respect of any matter affecting the affairs or the governance of the Foundation but shall at all times be constituted with the terms of this Constitution. Regulations made in accordance with this Constitution bind Members, the Committee and Officers of the Foundation.
- 26.2 Without limiting the generality of the powers given to the Committee pursuant to clause 26.1 the Committee shall in particular have the power by Regulation to establish an On-Line Voting System for Direct Voting and it also shall have the power to repeal and vary any such On-Line Voting System. Where this power is exercised by the Committee it shall ensure that full details of the operation of the On-Line Voting System are provided to members when a notice of meeting is given pursuant to clauses 31 and 67.

27 MANNER OF AUTHORISING CHEQUES ETC TO BE PRESCRIBED

The Regulations may provide for the manner in which the Foundation signs or authorises:

- (a) cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments and receipts for money received by the Foundation; and
- (b) online banking or financial transactions, including funds transfers, direct debits or direct credits.

28 CONVENING OF GENERAL MEETINGS

- 28.1 The Committee may convene a meeting of the Members whenever it thinks fit.
- 28.2 Any three Committee Members may convene a meeting of the Members whenever they think fit.
- 28.3 The Committee must convene a general meeting on the request of Members in accordance with section 249D of the Law.
- 28.4 A general meeting may be convened by the Members in accordance with section 249E and 249F of the Law.

28.5 Before a notice convening a general meeting is sent to Members pursuant to clause 31 the Committee shall ensure that a Returning Officer has been duly appointed to hold office until the general meeting has been concluded.

28.6 The text of sections 249D, 249E and 249F of the Law is set forth in the Appendix.

29 ANNUAL GENERAL MEETING

Annual General Meetings must be held in compliance with the Law.

30 NOTICE PERIOD

Subject to the provisions of the Law relating to agreements for shorter notice and to the provisions for notice prescribed in clauses 31(d) and 67, at least 21 days' notice must be given of a meeting of Members.

31 CONTENTS OF NOTICE

A notice of a meeting of the Foundation's Members shall specify:

- (a) the place, day and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) where at the time of issue of the notice of meeting the Committee is aware of resolutions which are to be put to the meeting then the text of each of those resolutions will be set forth in the notice which shall be accompanied by a ballot paper:
 - (i) also stating the text of such resolutions and having along side the text of each resolution two boxes to enable the Member by Direct Voting to vote for or against the resolution;
 - (ii) a notation advising the Members that the resolutions can be voted upon by Direct Voting, and
 - (iii) advising of the date by which the ballot paper with the resolutions has to be returned to the Foundation if a Direct Vote is to be valid.
- (d) where at the time of issue of a notice of general meeting of Members an On-Line Voting System has been approved by the Committee in accordance with clause 26.2, the details of the On-Line Voting System shall be included in the notice which shall inform Members that they are at liberty to vote on the resolutions to be put to the meeting by using the On-Line Voting System;
- (e) such other information as is required by section 249L of the Law; and
- (f) if the general meeting in respect of which the notice convening is being issued is being called for the purpose of electing office bearers or Committee Members. Further, in that event the notice shall invite Members to nominate for election as office bearers or Committee Members, and shall have attached thereto the form of nomination. The notice shall indicate that nominations will close at the expiration of two weeks from the date of the notice and shall also set forth the text of the resolutions to be put to the general meeting.

32 FAILURE TO GIVE NOTICE

Subject to the Law, the accidental omission to give notice of any meeting of Members to or the non-receipt of that notice by any of the Members will not invalidate any resolution passed at that meeting.

33 NOTICE OF ADJOURNED MEETING IN CERTAIN CIRCUMSTANCES ONLY

33.1 Whenever a meeting of Members is adjourned for less than 21 days, no further notice of the time and place of the adjourned meeting need be given.

33.2 Whenever a meeting of Members is adjourned for 21 days or more, at least 3 days notice of the time and place of the adjourned meeting will be given to Members.

34 PERSONS ENTITLED TO NOTICE OF GENERAL MEETING

34.1 Notice of every general meeting will be given in accordance with this Constitution and in accordance with the Law to:

- (a) every Member;
- (b) every Committee Member; and
- (c) the auditors of the Foundation.

34.2 No other person is entitled to receive notices of general meetings.

35 PERSONS ENTITLED TO ATTEND GENERAL MEETINGS

35.1 All Members, are entitled to attend meetings as well as any other persons entitled to attend under the Law.

35.2 The chairperson may require any person to leave and remain out of any meeting who in the opinion of the chairperson is not complying with his or her reasonable directions.

36 POSTPONEMENT OR CANCELLATION OF MEETING

The Committee may whenever it thinks fit postpone or cancel any meeting of Members unless that is not permitted by the Law.

37 PROCEEDINGS AT GENERAL MEETINGS

The business of an annual general meeting is:

- (a) to receive and consider the annual financial report and any other accounts, reports and statements as are required to be laid before the meeting; and
- (b) to transact any other business which under this Constitution or by the provisions of the Law ought to be or may be transacted at an annual general meeting.

38 SPECIAL BUSINESS

- 38.1 All other business transacted at an annual general meeting and all business transacted at any other meeting of Members will be deemed special.
- 38.2 Except pursuant to the provisions of the Law, with the prior approval of the Committee, or with the permission of the chairperson, no person may, as regards any special business of which notice has been given, move at any meeting of Members any resolution (other than a resolution in the same terms as specified in that notice) or any amendment of a resolution.

39 QUORUM

- 39.1 A quorum for a general meeting shall be 15 persons present at the meeting, each being a Financial Member or attorney of a Financial Member entitled to vote at that meeting.
- 39.2 No business can be transacted at any meeting of Members unless the requisite quorum is present at the commencement of the meeting.
- 39.3 If a quorum is present at the beginning of a meeting of Members it is deemed present throughout the meeting unless the chairperson otherwise declares on the chairperson's own motion or at the instance of a Member, the attorney of a Member or the proxy of a Member.

40 CHAIRPERSON

The President shall preside as chairperson at every meeting of Members. If the President is not in attendance at the meeting the Vice President shall preside as chairperson.

41 IF QUORUM ABSENT

- 41.1 If half an hour after the time appointed for a meeting of the Members a quorum is not present, a meeting convened by the Committee on a request of Members or by the Members as is provided by the Law will be dissolved, but in any other case the meeting will be adjourned to such other day, time and place as the Committee may by notice to the Members appoint, but failing such appointment, then to the same day in the next week at the same time and place as the meeting adjourned.
- 41.2 If at any such adjourned general meeting a quorum is not present after half an hour from the time appointed for that adjourned general meeting, then the meeting may proceed with the Members present being deemed to constitute a quorum.

42 CHAIRPERSON HAS A CASTING VOTE

In the case of an equality of votes at any general meeting, the chairperson has a casting vote both on a show of hands and on a poll, in addition to the vote or votes to which the chairperson is entitled as a Member, proxy or attorney of a Member.

43 VOTING: SHOW OF HANDS OR POLL

- 43.1 Subject to clause 43.2, at any meeting of Members a resolution put to the vote of the meeting will be decided on a show of hands unless before a vote is taken or before or

immediately after the declaration of the result of the show of hands a poll is demanded:

- (a) by the chairperson;
- (b) by at least 5 Members, present in person or by proxy or attorney, having the right to vote at the meeting; or
- (c) by any Member or Members present in person or by proxy or attorney, who are together entitled to at least 5% of the votes that may be cast on that resolution on a poll,

but no poll will be demanded on any resolution concerning the election of a chairperson of a meeting or the adjournment of any meeting.

43.2 Notwithstanding clause 43.1 the chairperson shall on either a show of hands or a poll take into account the votes validly cast by Members using Direct Voting and shall indicate to the meeting the number of votes in respect of each resolution which have been so cast and in which way.

44 REQUISITE MAJORITIES

Subject to:

- (a) the requirements of this clause; and
- (b) any provision of the Law requiring a special resolution,

a resolution will be taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half.

45 DECLARATION BY CHAIR PERSON THAT RESOLUTION CARRIED

A declaration by the chairperson that a resolution has on a show of hands been carried or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book of proceedings of the Foundation will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution but subject to due compliance with clause 43.2.

46 CONDUCT OF POLL

46.1 If a poll has been demanded under this Constitution, it will be taken in such manner and at such time and place as the chairperson directs, and either at once or after an interval or adjournment or otherwise.

46.2 The result of the poll will be deemed to be the resolution of the general meeting at which the poll was demanded.

46.3 The demand for a poll may be withdrawn.

47 CONTINUATION OF MEETING OF NOTWITHSTANDING POLL

The demand for a poll shall not prevent the continuance of the meeting or the transaction of any business other than the resolution on which a poll has been demanded.

48 ADJOURNMENT OF GENERAL MEETINGS

- 48.1 The chairperson must adjourn a meeting of Members from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so.
- 48.2 No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

49 GENERAL CONDUCT OF MEETINGS

- 49.1 Subject to the requirements of the Law, the chairperson will be responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- 49.2 The chairperson may make rulings, and may adjourn the meeting without putting the question (or any question) to the vote if such action is required to ensure the orderly conduct of the meeting.
- 49.3 The chairperson must comply with any relevant Regulations and may require the adoption of any other procedures which are in the chairperson's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Foundation, whether on a show of hands or on a poll.
- 49.4 The chairperson may determine conclusively any dispute concerning the admission, validity or rejection of a vote.
- 49.5 Persons in possession of visual-recording, pictorial-recording or sound-recording devices or placards, banners or articles considered by the Committee or the chairperson to be dangerous, offensive or liable to cause disruption, or persons who refuse to produce or to permit examination of any articles in their possession or the contents thereof, may be refused admission to any general meeting or may be required to leave and remain out of the meeting.
- 49.6 Nothing contained in this clause will be taken to limit the powers conferred on the chairperson by law.

50 NUMBER OF VOTES

Subject to any special rights or restrictions for the time being attaching to any class of Members and any other provision of this Constitution (including and without limiting the generality thereof, the provisions as to Direct Voting prescribed by clause 43.2):

- (a) on a show of hands at a meeting of Members every person present who is either a Member, a proxy or an attorney of a Member has one vote; and
- (b) on a poll at a meeting of Members every Member present in person or by proxy or attorney has one vote.

51 VOTES OF INCAPACITATED MEMBERS

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Member's committee or trustee or such other person as properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

52 NO VOTE IF FEES UNPAID

A Member will not be entitled to vote on any question, either personally, by proxy or by attorney at any meeting of Members, or on a poll or by Direct Voting if the Committee has resolved pursuant to either clause 20 or clause 23 or otherwise under this Constitution to suspend that Member's voting rights and those rights have not been reinstated in accordance with this Constitution.

53 CHAIRPERSON TO DETERMINE DISPUTES RE VOTES

In the case of any dispute as to the admission or rejection of a vote, the chairperson may determine the dispute and such determination made in good faith will be conclusive.

54 OBJECTIONS TO QUALIFICATION TO VOTE

- 54.1 No objection to the qualification of any person to vote will be raised except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at that meeting is valid for all purposes.
- 54.2 Any objection to the qualification of any person to vote at a meeting of Members made in due time will be referred to the chairperson, whose decision made in good faith is final and conclusive.

55 PROXY NOT TO VOTE IF MEMBER PRESENT

If a Member is present at a meeting of the Foundation and a proxy or attorney for such Member is also present, the proxy or attorney is not in respect of the membership to which the proxy or attorney relates entitled to vote on a show of hands or on a poll.

56 NO VOTE IF CONTRARY TO LAW

Notwithstanding any other clause, a Member shall not be entitled to vote, and any vote purported to be cast by the Member or any proxy or attorney for the Member, shall be disregarded on a particular resolution where such a vote is prohibited by the Law.

57 PROXIES

57.1 RIGHT TO APPOINT PROXY/ATTORNEY

A Member is entitled to appoint another person (whether a Member or not) as the Member's proxy or attorney as the case may be to attend and vote instead of the Member at the meeting.

- 57.2 A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.

58 PROXY OR ATTORNEY MUST BE WRITTEN

An instrument appointing a proxy or attorney:

- (a) must be in writing executed under the hand of the appointer or of the appointer's attorney duly authorised in writing; and
- (b) may contain directions as to the manner in which the proxy or attorney, as the case may be, is to vote in respect of any particular resolution or resolutions.

59 COMMITTEE OR CHAIRPERSON DECIDE VALIDITY

Subject to the Law, the Committee's or chairperson's decision as to the validity of a proxy or power of attorney or a facsimile thereof shall be final and binding.

60 AUTHORITY CONFERRED ON PROXY OR ATTORNEY

Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney will be taken to confer authority:

- (a) to agree to a meeting being convened by shorter notice than is required by the Law or by this Constitution;
- (b) to agree to a resolution being proposed and passed as a resolution at a meeting of which less than 21 days' notice has been given;
- (c) even though the instrument may refer to specific resolutions and may direct the proxy or attorney how to vote on those resolutions:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (ii) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting;
- (d) to speak on any proposed resolution on which the proxy or attorney may vote; and
- (e) to demand or join in demanding a poll on any resolution on which the proxy or attorney may vote.

61 POWER OF ATTORNEY AND PROXY FORM TO BE DEPOSITED BEFORE MEETING

61.1 An instrument appointing an attorney or a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of that power or authority certified as a true copy by statutory declaration must be deposited at the Office not less than 48 hours before the time scheduled for commencement of the meeting (or any adjournment of that meeting) at which the person named in the instrument intends to vote.

61.2 Unless the relevant notice of meeting of Members specifies that a signed original must be deposited, deposit of the following will constitute valid deposit of any signed document:

- (a) A fax or photocopy of the document;
- (b) A scanned copy of the document attached to an email, but only if the sending of proxies by email is notified as acceptable in the notice of meeting.

62 VOTE BY PROXY VALID NOTWITHSTANDING INTERVENING DEATH ETC. OF MEMBER

A vote given in accordance with the terms of an instrument appointing a proxy or attorney will be valid notwithstanding the previous death or unsoundness of mind of the principal, or revocation of the proxy or power of attorney if no intimation in writing of the death, unsoundness of mind or revocation has been received at the Office, not less than 48 hours before the time scheduled for the commencement of the meeting at which the person named in the proxy or power of attorney, as the case may be, intends to vote.

63 MEMBER MAY INDICATE WHETHER PROXY IS TO VOTE FOR OR AGAINST RESOLUTION

- 63.1 Any form of proxy sent out by the Foundation to Members in respect of a proposed general meeting of Members will make provision for the Member to indicate whether the Member wishes to vote for or against any resolution.
- 63.2 The Member may but need not give an indication or direction as to the manner in which a proxy is to vote in respect of a particular resolution.
- 63.3 Where an indication or direction is given, the proxy is not entitled to vote on the resolution on behalf of that Member except in accordance with that indication or direction.

64 FORM OF PROXY / ATTORNEY

Every instrument appointing a proxy or attorney whether for a specified meeting or otherwise will be in such form as the Committee may prescribe or accept.

65 FAILURE TO NAME APPOINTEE

Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson or such other person as is nominated by the Committee in the notice convening the relevant meeting of the Foundations Members.

66 APPOINTMENT AND PROCEEDINGS OF THE COMMITTEE

- 66.1 The Foundation shall have three office bearers being Members of the Committee as follows:
 - (a) President;
 - (b) Vice President;
 - (c) Honorary Treasurer.

- 66.2 The Committee shall be composed of the three office bearers plus seven other Committee Members all of whom shall be Members plus any person appointed Secretary pursuant to clause 87 being not otherwise a Committee Member.
- 66.3 A person can only occupy one office on the Committee during any one term of office.
- 66.4 The officer bearers and the Committee Members shall upon election hold office until either the next annual general meeting or until a general meeting has been convened for the expressed purpose of electing office bearers or Committee Members pursuant to clause 67. Office bearers and Committee Members upon retirement shall be eligible for re-election.

67 ELECTIONS, RESOLUTIONS & VOTING

Where a notice convening an annual general meeting or a notice convening a general meeting *inter alia* for the purposes of either of electing office bearers or Committee Members or of passing proposed resolutions has been issued to Members the subsequent election of office bearers and other Committee Members and the voting on the proposed resolutions shall take place in the following manner:

- (a) Any two Members shall be at liberty to nominate any other Financial Member to serve as an office bearer or Committee Member. Any Member so nominated shall have the right by notice in writing to the Returning Officer within seven days of close of nominations to withdraw his/her nomination.
- (b) The nomination form shall be signed by the Member and his/her proposer and seconder and shall be lodged with the Returning Officer within the two week period from the date of the notice convening the meeting in accordance with clause 31(f). Forthwith upon the expiration of such two week period the Returning Officer shall post a list of nominations in the Office for Members to view, and shall forward to all nominating candidates a list of the nominations for all positions to be elected, reminding the candidates of their right to withdraw their nomination within seven days of the close of nominations.
- (c) After seven days of close of nominations, the Committee shall cause the Returning Officer to issue to all Members by mail a list of the nominating candidates (other than candidates who have withdrawn their nominations in accordance with clause 67 (a) with names in an order determined by a random draw and with their respective movers and seconder's names indicated, together with the ballot papers. The list shall further indicate the office for which each candidate has nominated and shall inform Members that they are required to vote in the election by returning the ballot papers to the Foundation within 21 days of the date of issue by the Returning Officer of the list and the ballot papers.
- (d) The ballot paper issued to members in accordance with clause 67 (c) shall list all offices for which the election is to be held in the sequence President, Vice President, Treasurer and Committee Member. Under the designation of each office there shall be a list of names of candidates in the order of the random draw described in clause 67 (c) who have nominated therefor, and alongside each candidate's name there shall be a box. Members shall be directed to indicate their preference for each candidate in respect of that office by inserting the numbers 1, 2, 3, ... etc, the number 1 indicating their first preference. In the ballot for any particular position, if all boxes are not completed or there is a break in the sequence of numbers used by the Member, such ballot shall be invalid. Members shall be directed to complete their ballot papers in accordance with this sub-clause (d).

- (e) In addition to the list of offices for election as prescribed in clause 67(d), the ballot paper issued to Members shall also set forth any other resolutions to be put to Members at the general meeting being called. Along side each such resolution there shall be placed two boxes one for yes and one for no. Members shall be advised on the ballot paper that by Direct Voting they can either vote for these resolutions by marking the yes box or the no box accordingly or if an On-Line Voting System has been established vote for the resolutions through such On-Line Voting System.
- (f) The Returning Officer shall, together with the list and ballot paper issued to Members in accordance with clauses 67(d) and (e), provide a Ballot Envelope, a Declaration Envelope and an envelope duly addressed to the Returning Officer of the Foundation at its Office or PO Box into which the Ballot Envelope and the Declaration Envelope can be placed and mailed back to the Foundation at the Office or PO Box. To effect a valid Direct Vote for an election (other than a valid vote by an On-Line Voting System), a Member shall be required to:
 - (i) Write his/her name and affix his/her signature on the outside of the Declaration Envelope;
 - (ii) Insert the completed ballot paper inside the Ballot Envelope;
 - (iii) Insert the Ballot Envelope containing the completed ballot paper inside the Declaration Envelope;
 - (iv) Place the sealed Declaration Envelope inside the provided envelope addressed to the Returning Officer of the Foundation at the Office or PO Box and duly post the same; and
 - (v) Ensure that such provided envelope is received by the Returning Officer within 21 days of the posting out of the ballot papers to Members.

A Member's failure to vote validly for any of the resolutions on the ballot paper, not being resolutions relating to election of office bearers or Committee Members, shall not in any way invalidate the vote for office bearers or Committee Members.

- (g) The ballot paper shall state the date and hour by which all returned ballot papers must be received by the Foundation to ensure a valid vote in accordance with this clause 67.
- (h) Members shall be responsible for ensuring that ballot papers are duly received by the Returning Officer within the time limit required by clause 67(g), and in this respect the Returning Officer shall not be responsible for the loss of any ballot paper through the mail, subject to him/her having exercised reasonable care.
- (i) Any ballot paper shall be deemed informal if it has not been returned to the Returning Officer strictly in accordance with this clause 67.
- (j) The Returning Officer may issue a substitute ballot paper to a Member if the Returning Officer is satisfied that the original has been destroyed, lost, damaged or misused.
- (k) The Returning Officer shall collect the returned ballot papers and, after rejecting any that are informal, shall count the votes. The Foundation and the Returning Officer shall retain all ballot papers, envelopes and other documents for one year in safe keeping in the Foundation's Office.

- (l) In relation to the election of office bearers and Committee Members the ballot paper shall be counted using the Preferential Method. In the event of two or more candidates receiving equal votes for a position, the Returning Officer shall determine the result by lot.
- (m) The Returning Officer shall declare the result of the ballot and submit a report to the subject general meeting as provided in the agenda therefor.
- (n) The incoming office bearers and Committee Members shall commence their terms of office at the conclusion of the subject general meeting.
- (o) In case there shall not be sufficient number of candidates nominated to fill the subject positions, the Committee may fill the remaining vacancy or vacancies.
- (p) The votes marked on the boxes in respect of resolutions on the ballot paper (not being resolutions for election of office bearers or Committee Members) shall be taken into account for and against such resolutions (as the case may be) at the general meeting in accordance with clauses 43.2 and 50 and the Regulations relating to the current On-Line Voting System (if any).

68 LIMITED ABILITY OF COMMITTEE TO ACT DURING VACANCIES

The continuing Committee may act notwithstanding any vacancy in its numbers, but for as long as the number of Committee Members is below the minimum for a quorum fixed by this Constitution the Committee will not act except in emergencies or for the purpose of filling up vacancies (by appointment or by arranging an election or by-election) or convening a general meeting of the Foundation.

69 MEMBERSHIP QUALIFICATION

All candidates for elected positions on the Committee must be Financial Members at the time of their nomination in respect of the election in which they stand for office.

70 COMMITTEE TO APPOINT CERTAIN COMMITTEE MEMBERS

The Committee shall have the power to appoint any Financial Member as a Committee Member to fill a casual vacancy of an elected Committee Member but only if the vacancy arises.

71 RESIGNATION OF COMMITTEE MEMBERS

A Committee Member may resign from office on giving the Foundation notice in writing.

72 REMOVAL OF COMMITTEE MEMBER BY GENERAL MEETING

Subject to the Law, the Foundation in general meeting convened on at least 21 days notice may by ordinary resolution:

- (a) remove any elected Committee Member; and
- (b) appoint another qualified person in place of that Committee Member.

73 VACATION OF OFFICE OF COMMITTEE MEMBER: AUTOMATIC

The office of a Committee Member is vacated if that Person:

- (a) 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;
- (b) is absent without the consent of the Committee from all meetings of the Committee held during a period of 3 months and the Committee resolve that his or her office be vacated;
- (c) resigns the office of Committee Member;
- (d) is removed under the provisions of this Constitution;
- (e) ceases to be a Committee Member by virtue of a provision of this Constitution;
- (f) becomes bankrupt, or suspends payment, or liquidates by arrangement, or compounds with or assigns his or her estate for the benefit of his or her creditors; or
- (g) otherwise ceases to be, or becomes prohibited from being, a director by virtue of the Law.

74 PROCEEDINGS OF THE COMMITTEE

The Committee may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

75 QUORUM FOR MEETINGS OF COMMITTEE

75.1 A quorum for the purpose of considering a matter at a meeting will be a majority of Committee Members.

75.2 A meeting of the Committee during which a quorum is present is competent to exercise all or any of the authorities, powers and discretions under this Constitution for the time being vested in or exercisable by the Committee generally.

75.3 Where a quorum cannot be established for a meeting of the Committee (or consideration of a particular matter) a Committee Member may convene a general meeting of Members to deal with the matter or the matters in question.

76 CONVENING MEETINGS OF COMMITTEE

A Committee Member may at any time and the Secretary must on the request of a Committee Member convene a meeting of the Committee.

77 NOTICE OF MEETINGS OF COMMITTEE

77.1 Notice of every Committee meeting must be given to each Committee Member but it shall not be necessary to give notice to any person who is outside Australia.

77.2 Notice of a meeting of Committee may be given in writing or by radio, telephone, closed-circuit television or other electronic means of audio or audio-visual communication.

78 MEETINGS BY ELECTRONIC MEANS

- 78.1 Without limiting the discretion of the Committee to regulate its meetings under this Constitution, the Committee may, if it thinks fit, confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communication.
- 78.2 Notwithstanding that the Committee is not present together in one place at the time of the conference, a resolution passed by such a conference will be deemed to have been passed at a meeting of the Committee held on the day on which and at the time at which the conference was held.
- 78.3 The provisions of this Constitution relating to proceedings of the Committee apply to such conferences to the extent that they are capable of applying, and with the necessary changes.
- 78.4 A Committee Member present at the commencement of the conference will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the conference.
- 78.5 Any minutes of a conference of the type referred to in this clause 78 purporting to be signed by the chairperson of that conference or by the chairperson of the next succeeding meeting of the Committee will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the conference.
- 78.6 When by the operation of this clause 78 a resolution is deemed to have been passed at a meeting of the Committee, that meeting shall be deemed to have been held at such place as is determined by the chairperson of the relevant conference, provided that at least one of the Committee Members who took part in the conference was at such place for the duration of the conference.

79 VOTES AT MEETINGS OF COMMITTEE

Motions and resolutions arising at any meeting of the Committee will be decided by a majority of votes and each Committee Member shall have one vote.

80 CASTING VOTE FOR CHAIRPERSON OF COMMITTEE

Subject to the Law, in case of an equality of votes the chairperson of a meeting of the Committee shall have a second or casting vote.

81 CHAIRPERSON AND DEPUTY CHAIRPERSON OF COMMITTEE

- 81.1 The President shall be chairperson of the Committee for so long as he or she holds office as President.
- 81.2 In the absence of the President the Vice President shall be the chairperson of the subject Committee meeting.
- 81.3 If neither the President nor the Vice President are present at a Committee meeting the Committee present shall choose one of its number to be a chairperson of the meeting or part of that meeting (as the case may be).

82 DEFECTS IN APPOINTMENT OR QUALIFICATIONS OF COMMITTEE MEMBER

All acts done at any meeting of the Committee or by any person acting as a Committee Member will be as valid as if every such person or Committee had been duly appointed and every Committee Member was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Committee Member or of the Committee or of the person acting as aforesaid, or that any Committee Member was disqualified or not entitled to vote.

83 WRITTEN RESOLUTIONS OF COMMITTEE

83.1 The Committee may pass a resolution without a meeting if a document containing a statement that they are in favour of a resolution in terms contained in the document is signed. The document must be signed by the number of Committee Members that is necessary to constitute a quorum for a meeting of the Committee.

83.2 A resolution passed in accordance with this clause is deemed passed when the document is last signed by a Committee Member whose signature constitutes a quorum in accordance with clause 75.1.

83.3 For the purposes of this clause:

- (a) separate copies of the document may be signed if the wording of the resolution and statement is the same in each copy;
- (b) a reference to all the Committee Members does not include a reference to a Committee Member who, at a meeting of Committee, would not be entitled to vote on the resolution; and
- (c) any document so signed by a Committee Member may be received by the Foundation at the Office (or other place agreed by the Committee) by post, by facsimile or other electronic means (including as a scanned copy attached to an email) or by being delivered personally by that Committee Member.

84 MINUTES OF ALL PROCEEDINGS TO BE KEPT

The Committee shall cause minutes of:

- (a) all proceedings and resolutions of meetings of Members.
 - (b) all proceedings and resolutions of meetings of the Committee, including meetings of committees of Committee; and
 - (c) all resolutions passed by the Committee without a meeting,
- to be duly entered in books kept for that purpose and in accordance with the Law.

85 MINUTES TO BE SIGNED BY CHAIRPERSON

85.1 The Committee shall cause the minutes required to be kept under this Constitution or by the Law in respect of a meeting to be signed by the chairperson of the next succeeding meeting at which the minutes are accepted by the meeting.

85.2 Where the minutes are signed in accordance with this clause, those minutes shall be presumed to be an accurate record of the relevant proceedings and resolutions unless the contrary is proved.

86 INSPECTION OF MINUTES OF GENERAL MEETINGS

Books containing the minutes of proceedings of meetings of Members will be open for inspection by any Member without charge.

87 SECRETARY

The Committee shall from time to time appoint a Secretary to the Foundation and the person so appointed shall hold office until either his/her resignation or the Committee terminates such appointment. The Committee shall have the right to appoint either a Member or a non-Member to be Secretary. Where a Member is so appointed and is not already a Committee Member then he/she shall be deemed to be ex-officio Committee Member and in that event further and notwithstanding clause 66.2 the number of Committee Members shall be 11.

88 EXECUTION OF DOCUMENTS

88.1 The Foundation shall have a common seal which shall only be affixed by the authority of the Committee and with the signatures of either a Committee Member and the Secretary or any two Committee Members.

88.2 The Foundation also may execute any document without the seal if the document is signed by:

- (a) 2 Committee Members;
- (b) a Committee Member and the Secretary; or
- (c) a Committee Member and another person appointed by the Committee for this purpose.

88.3 The Foundation may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this clause.

89 ACCOUNTS AND REPORTS

At the annual general meeting in every year the Committee shall lay before the Members:

- (a) the financial report for the last financial year of the Foundation, together with such other accounts, reports and statements as are required by Law; and
- (b) a report on the activities of the Foundation for that year.

90 AUDITORS: APPOINTMENT AND REMOVAL

The auditors of the Foundation shall:

- (a) be appointed and may be removed as provided in the Law; and

- (b) perform the duties and have the rights and powers as may be provided in the Law.

91 NOTICES AND USE OF TECHNOLOGY

91.1 A notice may be served by the Foundation on a Member or other person receiving notice under this Constitution by any of the following methods:

- (a) by serving it personally on a Member;
- (b) by leaving it at the address of the Member in the Register;
- (c) by sending it by post in a prepaid letter, envelope or wrapper addressed to the Member at the address of the Member in the Register;
- (d) by sending by email to an email address notified by that Member as that Member's email address; or
- (e) by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on the Member.

91.2 Subject to any requirements of the Law, the Foundation may give any notice to any Member by posting the notice on a web page as may have previously been notified by the Foundation to Members from time to time.

92 TIME OF SERVICE BY POST

Any notice sent by post, airmail or air courier shall be deemed to have been served on the day following that on which the letter, envelope or wrapper containing the notice is posted or delivered to the air courier and in proving service it will be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier. A certificate in writing signed by any manager, Secretary or other Officer of the Foundation that the letter, envelope or wrapper containing the notice was so addressed and posted is conclusive evidence thereof.

93 TIME OF SERVICE BY FACSIMILE TRANSMISSION

Any notice sent by facsimile transmission will be deemed to have been served on receipt by the Foundation of a transmission report confirming successful transmission.

94 SIGNATURES ON NOTICE

The signature to any notice to be given by the Foundation may be written or printed or a facsimile thereof may be affixed by mechanical or other means.

95 CALCULATION OF NOTICE PERIOD

Where a period of notice is required to be given, the day on which the notice is dispatched and the day of doing the act or other thing will not be included in the number of days or other period.

96 USE OF TECHNOLOGY

Despite anything in this Constitution but subject to any requirements of the Law, the Foundation and the Committee may use any available technology considered appropriate by the Committee (including email, websites and other internet or online means) for purposes including:

- (a) Giving notices to Members;
- (b) Receiving notices from Members;
- (c) Disseminating information including accounts and reports;
- (d) Holding meetings; and
- (e) Conducting surveys and elections.

97 OFFICERS: INDEMNITIES AND INSURANCE

97.1 In this clause the term “**Proceedings**” means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as such an Officer or in the course of acting in connection with the affairs of the Foundation or a subsidiary of the Foundation or otherwise arising out of the Officer’s holding such office including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Foundation or a subsidiary of the Foundation.

97.2 To the extent permitted by law:

- (a) the Foundation indemnifies every person who is or has been an Officer of the Foundation or of a wholly-owned subsidiary of the Foundation against any liability for costs and expenses incurred by that person in defending any Proceedings in which judgment is given in that person’s favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the Law; and
- (b) the Foundation indemnifies every person who is or has been an Officer of the Foundation or of a wholly-owned subsidiary of the Foundation against any liability incurred by the person, as an Officer of the Foundation or of a wholly-owned subsidiary of the Foundation, to another person (other than the Foundation or a related body corporate of the Foundation) unless the liability arises out of conduct involving a lack of good faith.

97.3 To the extent permitted by law, the Foundation may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Office of the Foundation or of a subsidiary of the Foundation against liability:

- (a) incurred by the person in his or her capacity as an Officer of the Foundation or a subsidiary of the Foundation or in the course of acting in connection with the affairs of the Foundation or a subsidiary of the Foundation or otherwise arising out of the Officer’s holding such office, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Foundation or a subsidiary of the Foundation or a contravention of sections 182 and 183 of the Law; or
- (b) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

APPENDIX

SECTIONS OF CORPORATIONS ACT 2001 (CTH)

SECTION 136 CONSTITUTION OF A COMPANY

136(1) [Adoption] A company adopts a constitution:

- (a) on registration – if each person specified in the application for the company’s registration as a person who consents to become a member agrees in writing to the terms of a constitution before the application is lodged; or
- (b) after registration – if the company passes a special resolution adopting a constitution or a court order is made under section 233 that requires the company to adopt the constitution.

136(2) [Modification or repeal] The company may modify or repeal its constitution, or a provision of its constitution, by special resolution.

136(3) [Further requirement] The company’s constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with.

136(4) [Modification or repeal or further, requirement] Unless the constitution provides otherwise, the company may modify or repeal a further requirement described in subsection (3) only if the further requirement is itself complied with.

136(5) [Public company] A public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its constitution within 14 days after it is passed. The company must also lodge with ASIC within that period:

- (a) if the company adopts a constitution – a copy of that constitution; or
- (b) if the company modifies its constitution – a copy of that modification.

This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.

136(6) [Strict liability offence] An offence based on subsection (5) is an offence of strict liability.

SECTION 249 D CALLING OF GENERAL MEETING BY DIRECTORS WHEN REQUESTED BY MEMBERS

249D(1) [Directors must call meetings] The directors of a company must call and arrange to hold a general meeting on the request of:

- (a) members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 members who are entitled to vote at the general meeting.

249D(1A) [Regulations may prescribe different number] The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:

- (a) a particular company; or
- (b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

249D(2) [Request] The request must:

- (a) be in writing; and
- (b) state any resolution to be proposed at the meeting; and
- (c) be signed by the members making the request; and
- (d) be given to the company.

249D(3) [More than one copy] Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

249D(4) [Percentage of votes] The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.

249D(5) [Time for meeting] The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

SECTION 249E FAILURE OF DIRECTORS TO CALL GENERAL MEETING

249E(1) [Members may call meeting] Members with more than 50% of the votes of all of the members who make a request under section 249D may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.

249E(2) [Procedure for calling meeting] The meeting must be called in the same way – so far as is possible – in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.

249E(3) [Register of members] To call the meeting the members requesting the meeting may ask the company under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the company must give the members the copy of the register without charge.

249E(4) [Reasonable expenses] The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.

249E(4A) [Strict liability offence] An offence based on subsection (3) or (4) is an offence of strict liability.

249E(5) [Directors' liability for expenses] The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with section 249D. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.

SECTION 249F CALLING OF GENERAL MEETINGS BY MEMBERS

249F(1) [Members may call general meeting] Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.

249F(2) [Procedure for calling meeting] The meeting must be called in the same way – so far as is possible – in which general meetings of the company may be called.

249F(3) [Percentage of votes] The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

SECTION 249L CONTENTS OF NOTICE OF MEETINGS OF MEMBERS

249L(1) A notice of a meeting of a company's members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting--set out an intention to propose the special resolution and state the resolution; and
- (d) if a member is entitled to appoint a proxy--contain a statement setting out the following information:
 - (i) that the member has a right to appoint a proxy;
 - (ii) whether or not the proxy needs to be a member of the company;
 - (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

249L(2) The notice of the AGM of a listed company must also inform members that the resolution referred to in subsection 250R(2) (resolution on remuneration report) will be put at the AGM.

249L(3) The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.