

Constitution of

AMAQ Foundation

**Approved by Ordinary Members at the
Extraordinary General Meeting**

On 26 May 2021

MILLS OAKLEY LAWYERS

Level 23, 66 Eagle Street
BRISBANE QLD 4000
Telephone: +61 7 3228 0400
Facsimile: +61 7 3012 8777
www.millsoakley.com.au
Ref: 9194399

Table of Contents

1	Interpretation and definitions	3
1.1	Definitions.....	3
1.2	Interpretation	4
2	Replaceable rules.....	5
3	Company limited by guarantee	5
4	Objects.....	5
5	No Distribution to Members.....	6
6	Use of property on winding up and on revocation of endorsement.....	6
6.1	Surplus	6
6.2	Transfer of surplus.....	6
6.3	Choice of Transferee Entity	7
7	Membership.....	7
7.1	Classes of Membership	7
7.2	Honorary Members	7
7.3	Ordinary Member.....	7
7.4	Medical Donor Member.....	7
7.5	Corporate Donor Member.....	8
8	Membership Fees.....	8
9	Approval or rejection of Applications.....	8
10	Termination of Membership.....	8
11	Register of Members.....	9
12	General Meeting	9
12.1	Calling of General Meetings.....	9
12.2	Notice of General Meeting	9
12.3	Period of Notice	9
12.4	Quorum	10
12.5	Failure to Achieve Quorum	10
12.6	Chair of General Meeting.....	10
12.7	Admission to meetings.....	10
12.8	Adjournment of General Meeting	10
12.9	Number of Votes.....	10
12.10	Objections to a Vote	11
12.11	Method of Voting.....	11
12.12	Calling a Poll.....	11
12.13	Appointment of Proxies.....	11
12.14	Representative of Ordinary Member	12
12.15	Written Resolutions by Ordinary Members.....	13
13	Directors	13
14	Qualification for Directors	13
15	Election of Directors	13
15.1	Candidate	13
15.2	Retirement by rotation	14
15.3	Casual Vacancy.....	14
15.4	Vacation of Office	14
15.5	Fewer than minimum number of Directors	14
15.6	Directors may not appoint alternate Directors	15

16	Remuneration of Directors and Chair	15
	16.1 Remuneration of Directors	15
	16.2 Expenses of Directors.....	15
	16.3 Remuneration of Chair.....	15
17	Powers of the Directors	15
	17.1 Business of the Foundation	15
	17.2 Powers of Directors	15
	17.3 Delegation	15
18	Proceedings of Directors	16
	18.1 Mode of meeting	16
	18.2 Quorum	16
	18.3 Chair calling a meeting	16
	18.4 Secretary calling a meeting.....	16
	18.5 Notice of meeting.....	16
	18.6 Recipients of notice	16
	18.7 Appointment of Chair	16
	18.8 Votes of Directors	16
	18.9 No casting vote of Chair.....	17
	18.10 Circular resolution of Directors.....	17
	18.11 Signing of circular resolution.....	17
	18.12 Deemed minute	17
	18.13 Validity of acts of Directors	17
19	Director's contracts with Foundation	18
	19.1 Director's contracts and conflicts of interest.....	18
	19.2 Requirement to leave the meeting	18
	19.3 Notice of interest.....	18
	19.4 Office in another company	18
	19.5 Director of wholly owned subsidiary.....	19
20	Committees of the Board	19
	20.1 Appointment of Committee	19
	20.2 Powers of Committee	19
	20.3 Meetings of Committee	19
21	Secretary	19
22	Confidentiality	20
23	Minutes	20
24	Bylaws	20
25	Accounts	20
	25.1 Foundation to keep accounts.....	20
	25.2 Access to accounts.....	20
26	Auditors	20
27	Alteration of Constitution	20
28	Indemnity	21
	28.1 Indemnity for officers	21
	28.2 Insurance premiums	21

**Corporations Act 2001
A Company Limited by Guarantee**

CONSTITUTION

of

AMAQ FOUNDATION

ABN 31 093 701 083

(Foundation)

1 Interpretation and definitions

1.1 Definitions

In this Constitution (unless the context otherwise indicates):

“**ACNC Act**” means the Australian Charities and Not-for-Profits Commission Act 2012 (Cth);

“**Act**” means the Corporations Act 2001 (Cth).

“**AGM**” means an Annual General Meeting of the Foundation;

“**AMA Queensland**” means Australian Medical Association Queensland Limited ACN 009 660 280 ;

“**Board**” means the board of Directors of the Foundation from time to time;

“**Business Day**” means a day that is not a Saturday, Sunday or public holiday or bank holiday in Brisbane, Queensland;

“**Chair**” means the chair appointed by the Board from time to time;

“**Constitution**” means the constitution of the Foundation as amended from time to time;

“**Director**” means a director, for the time being, of the Foundation;

“**General Meeting**” means a meeting of the Ordinary Members duly called and constituted under this Constitution and any adjournment of such a meeting;

“**ITAA**” means the Income Tax Assessment Act 1997 (Cth);

“**Medical Practitioner**” means a person registered or licensed as a medical practitioner under a law of a State or Territory in Australia that provides for the registration or licensing of medical practitioners but does not include a person so registered or licensed:

- (a) whose registration, or license to practise, as a medical practitioner in any State or Territory has been suspended, or cancelled, following an inquiry relating to his or her conduct; and
- (b) who has not, after that suspension or cancellation, again been authorised to register or practise as a medical practitioner in that State or Territory.

"Member" means a person that is a member of the Foundation;

"Membership" means membership of the Foundation;

"Office" means the registered office for the time being of the Foundation;

"Secretary" means the secretary for the time being of the Foundation; and

"Technology" includes any technology which gives the participants, as a whole, a reasonable opportunity to participate.

1.2 Interpretation

In this Constitution (unless the context otherwise requires):

- (a) headings are for convenience only and do not affect interpretation;
- (b) a singular word includes the plural and vice versa;
- (c) a word which suggests one gender includes any other gender;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a document or agreement (including a reference to this agreement) is to that document or agreement as amended, supplemented, varied or replaced;
- (f) an expression which is given a general meaning by any provision of the Act has the same meaning in this Constitution;
- (g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (h) if any day on or by which a person must do something under this agreement is not a Business Day, then the person must do it on or by the next Business Day;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (j) a reference to 'month' means calendar month;
- (k) a reference to '\$' or 'dollar' is to Australian currency;
- (l) a reference to time is to local time in the Brisbane, Queensland;
- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (o) a reference to applicable law is to any relevant law (including any subordinate or delegated legislation or statutory instrument of any kind) of a jurisdiction in or out of Australia, and also to any relevant judgment, order, policy, guideline, official directive, code of conduct, authorisation or request (even if it does not have the force of law) of any government agency or regulatory body within Australia; and

- (p) the language in all parts of this agreement shall be in all cases construed in accordance with its fair and common meaning and not strictly for or against any of the parties.

2 Replaceable rules

The operation of each of the sections of the Act which is defined in s135 of the Act as a replaceable rule is displaced by this Constitution and does not apply to the Foundation.

3 Company limited by guarantee

- (a) The Foundation is a company limited by guarantee.
- (b) The liability of the Members is limited.
- (c) Each Member undertakes to contribute an amount not exceeding 50 cents to the property of the Foundation if the Foundation is wound up at a time when that person is a Member for:
- (i) payment of the debts and liabilities of the Foundation contracted before that person ceased to be a Member or within 12 months after the person ceases to be a Member;
 - (ii) payment of the costs, charges and expenses of winding up the Foundation; and
 - (iii) adjustment of the rights of the contributories among themselves.
- (d) If the Foundation is at any time registered as a charity, the Foundation must comply with the requirements of the ACNC Act.

4 Objects

The objects for which the Foundation is established are: -

- (a) To relieve sickness by providing support of various kinds to disadvantaged and needy persons for medical services and treatment;
- (b) To provide financial assistance to persons and bodies in disadvantaged, remote and rural regions to enable provision of medical services in those regions;
- (c) To provide funding to disadvantaged students wishing to undertake medical training but unable to do so due to financial hardship;
- (d) To provide financial assistance to projects and activities designed to enhance provision of existing medical services;
- (e) To give financial support to persons and bodies providing emergency medical assistance in the case of declared natural disasters within Australia or overseas.
- (f) To assist in the development and promotion of the Medical Benevolent Fund and a doctors' health advisory service;
- (g) To provide funds for medical research projects approved by the Board;
- (h) To provide a coordinated medical advice service to other not-for-profit organisations or to any government or governmental body or authority;
- (i) To promote and to assist the training of Medical Practitioners in Queensland through the support of education programs, scholarships, fellowship and other initiatives with financial support and expertise; and

- (j) To promote and to assist Medical Practitioners in self-awareness, mental health and wellbeing programs with appropriate targeted interventions as determined by the Board from time to time.

5 No Distribution to Members

- (a) The Foundation will apply the income and property of the Foundation solely towards promoting the objects of the Foundation.
- (b) No portion of the income or property may be distributed or paid to Members by way of dividend, profit, return of capital or otherwise except for the payment in good faith of:
 - (i) reasonable remuneration in consideration for services rendered or goods supplied to the Foundation in the ordinary course of business;
 - (ii) interest at a reasonable rate on money borrowed by the Foundation; or
 - (iii) reasonable rent for premises rented by the Foundation.
- (c) No remuneration or other benefit may be paid or given by the Foundation to any Director except:
 - (i) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director where the amount does not exceed an amount previously approved by a resolution of the Directors;
 - (ii) for any service rendered to the Foundation in a professional or technical capacity, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Directors;
 - (iii) as an employee of the Foundation, where the terms of employment are on reasonable commercial terms and have been previously approved by a resolution of the Directors; or
 - (iv) as permitted by regulation 16.3 of this Constitution.

6 Use of property on winding up and on revocation of endorsement

6.1 Surplus

If on the:

- (a) winding up or dissolution of the Foundation; or
- (b) the revocation of the Foundation's endorsement under Subdivision 30-BA of the ITAA,

after the satisfaction of all its debts and liabilities, any property remains (**surplus**), the surplus must not be paid or distributed among the Members.

6.2 Transfer of surplus

The surplus must be given or transferred to an institution, body, entity, or organisation (**Transferee Entity**):

- (a) having objects similar to the Objects of the Foundation and which is endorsed as a deductible gift recipient under Subdivision 30-BA of the ITAA; and

- (b) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Foundation under clause 5 and this clause 6

6.3 Choice of Transferee Entity

The Transferee Entity must be chosen by the Directors (as the Directors were constituted at the commencement of the winding up). If the Directors do not choose a Transferee Entity within a reasonable time, any Ordinary Member at the commencement of the winding up or the liquidator may apply to the Supreme Court of Queensland to choose the Transferee Entity.

7 Membership

7.1 Classes of Membership

The membership of the Foundation shall consist of:

- (a) Honorary Members;
- (b) Ordinary Members;
- (c) Medical Donor Members;
- (d) Corporate Donor Members; and
- (e) any other classes of members as may be approved by the Board from time to time.

A Member must not hold themselves out at any time as being a representative of the Foundation without the written consent of the Board.

7.2 Honorary Members

An Honorary Member must be appointed by the Board and:

- (a) have demonstrated honourable and outstanding support and service to the Foundation or to the Objects of the Foundation; and
- (b) be an individual over 18 years of age.

An Honorary Member is not entitled to vote; but is entitled to receive notices, attend General Meetings and speak at General Meetings.

7.3 Ordinary Member

AMA Queensland or its successor organisations is the sole Ordinary Member. The Ordinary Member is:

- (a) entitled to vote; and
- (b) entitled to receive notices, attend General Meetings and speak at General Meetings.

7.4 Medical Donor Member

A Medical Donor Member must:

- (a) apply to become a Member in the form and manner prescribed by the Board from time to time;
- (b) be:
 - (i) an individual who is a Medical Practitioner; or
 - (ii) a company which is controlled (as that term is used in s50AA of the Act) by a natural person who is a Medical Practitioner.

A Medical Donor Member is not entitled to vote; but is entitled to receive notices, attend General Meetings and speak at General Meetings.

7.5 Corporate Donor Member

A Corporate Donor Member must:

- (a) apply to become a Member in the form and manner prescribed by the Board from time to time;
- (b) not be eligible to apply for membership as a Medical Donor Member;
- (c) be a company which is not controlled (as that term is used in s50AA of the Act) by a natural person who is a Medical Practitioner.

A Corporate Donor Member is not entitled to vote; but is entitled to receive notices, attend General Meetings and speak at General Meetings.

8 Membership Fees

The annual membership fee payable for each class of membership is to be determined by the Board. The membership fee for each class of Membership will be payable at the time and in the manner as the Board from time to time determines.

Honorary Members are not required to pay a membership fee to the Foundation.

Any Member who has not paid the membership fee (if any) by the due date may not vote or speak at a General Meeting while that fee remains unpaid.

9 Approval or rejection of Applications

An application for Membership must be considered by the Board at the next meeting of the Board which is held after the application is received by the Foundation.

The Board may in its absolute discretion accept or reject the application. If the Board rejects an application for Membership, the Board is not obliged to give reasons for such rejection.

There is no appeal against any decision of the Board to reject an application.

No applicant may be admitted to Membership or have their name entered in the register of Members unless the applicant agrees in writing to:

- (a) be bound by this Constitution; and
- (b) uphold the values and Objects of the Foundation.

10 Termination of Membership

- (a) A person ceases to be a Member of the Foundation if the person:
 - (i) dies;
 - (ii) resigns that Membership;
 - (iii) is expelled from the Foundation under this Constitution;
 - (iv) is a person whose actions in the reasonable opinion of the Directors brings the Foundation into disrepute;
 - (v) is a corporate entity which has a receiver or a receiver and manager, administrator, liquidator or equivalent person appointed in relation to its assets or part of its assets or a resolution is passed or it takes or has taken against it any action having the effect of its winding up; or

- (vi) is a person who in the reasonable opinion of the Directors has failed to comply with regulation 9.

The Board may expel a person under this regulation acting in its absolute discretion by ordinary resolution of the Directors.

- (b) If the Board decides to consider terminating a Member's membership, the Board must give notice to the Member concerned of its intention to consider termination of the person's membership and must be given a reasonable opportunity of presenting the Member's case to the Board before any decision is made by the Board. The Member may present a written submission of no greater than 1,000 words. If the Board of Directors resolves in its absolute discretion to terminate the membership of a Member, it must notify the Member of its decision. There will be no appeal from a decision of the Board to terminate a person's membership.
- (c) A right, privilege or obligation which a person has by reason of being a Member of the Foundation:
- (i) is not capable of being transferred or transmitted to another person; and
- (ii) terminates upon cessation of the person's Membership.
- (d) Medical Donor and Corporate Donor Membership
- (i) A Medical Donor's membership lapses if the Medical Donor has not made a donation to the Foundation in the last three years.
- (ii) A Corporate Donor's membership lapses if the Corporate Donor has not made a donation to the Foundation in the last three years.

11 Register of Members

The Board must ensure that a membership register is kept in which the names and residential addresses of all persons admitted to membership of the Foundation and their dates of their admission are entered. Particulars of deaths, resignations, terminations and reinstatement of membership and any further particulars which the Board may require from time to time must also be entered into the register.

The Board must ensure that the membership register is open for inspection by the Ordinary Member after application to the Secretary for such inspection.

12 General Meeting

12.1 Calling of General Meetings

The Board may call a General Meeting.

12.2 Notice of General Meeting

A notice of a General Meeting must:

- (a) set out the place, date and time for the meeting (and if the meeting is to be held in two or more places the technology that will be used to facilitate this);
- (b) state the general nature of the business of the meeting; and
- (c) if a special resolution is proposed at a meeting - set out an intention to propose the special resolution and state the resolution.

12.3 Period of Notice

The period of notice required in relation to any resolution or special resolution proposed to be passed at any General Meeting is to be not less than the period

required or permitted by the Act. When a meeting is adjourned for one month or more, a new notice of resumed meeting must be given.

The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

12.4 Quorum

The quorum for a Members Meeting is one (1) Ordinary Member and that quorum must be present at the time when the meeting proceeds to business.

12.5 Failure to Achieve Quorum

If a quorum is not present at a General Meeting within 30 minutes after the time for the start of the meeting the meeting must be adjourned to a date, time and place that the Directors decide. If the Directors do not decide the date, time and place for the adjourned meeting, the meeting is adjourned to the same day, time and place in the next week.

If a quorum is not present at the resumed meeting within 30 minutes of the time for the meeting the meeting is dissolved.

12.6 Chair of General Meeting

- (a) The Chair is to chair each General Meeting.
- (b) Directors present at a General Meeting must elect an individual present at that meeting to chair the meeting (or part of it) if the Chair is not available to chair it or declines to act for that meeting (or part of the meeting).
- (c) The Members at a General Meeting must elect an individual present at the meeting to chair the meeting (or part of the meeting) if the Chair or a chair elected by the Directors under sub-regulation (b) is not available or declines to act for the meeting (or part of the meeting).

Conduct of a General Meeting

12.7 Admission to meetings

The chair of a General Meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (b) who is not:
 - (i) a Member or a proxy, or representative of a Member appointed under clause 12.14;
 - (ii) a Director; or
 - (iii) an auditor of the Foundation.

12.8 Adjournment of General Meeting

The Chair may, with the consent of a majority of Ordinary Members attending a meeting and must if directed by a resolution of the Ordinary Members, adjourn a General Meeting.

12.9 Number of Votes

An Ordinary Member has:

- (a) on a show of hands, one vote;

- (b) on a poll, one vote plus an additional vote for each person for whom they have been appointed a proxy (if any).

The chair of the meeting does not have a casting vote and in the event of an equality of votes, the resolution is taken to be rejected.

12.10 Objections to a Vote

Any challenge to a right to vote at a General Meeting may only be made at the meeting and must be decided by the chair whose decision is final.

12.11 Method of Voting

A resolution which is put to the vote at a General Meeting must be decided on a show of hands by the Ordinary Members unless a poll is demanded.

On a show of hands, a declaration by the chair is conclusive evidence of the result.

12.12 Calling a Poll

A poll may be demanded on any resolution except a resolution for election of the chair of the meeting and a resolution for adjournment of a meeting. A demand for a poll may be withdrawn.

A poll may be demanded by:

- (a) the chair of the meeting; or
- (b) at least one (1) Ordinary Member present in person; or

A poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared by the chair.

A poll must be taken when, and in the manner, directed by the chair of that General Meeting.

12.13 Appointment of Proxies

- (a) An Ordinary Member who is entitled to attend and cast a vote at a General Meeting may appoint another Member as proxy to attend and vote at the meeting.
- (b) A proxy may vote on a show of hands.
- (c) The authority of a proxy to speak and vote for an Ordinary Member at a General Meeting is suspended while the Ordinary Member who appointed the proxy is present at the meeting.
- (d) An appointment of a proxy is valid if it is signed by the Ordinary Member and contains the following information:
 - (i) the Ordinary Member's name and address;
 - (ii) the name of the proxy or a description of the office held by the proxy (for example, the chair of the meeting); and
 - (iii) the General Meeting or General Meetings at which the appointment may be used.
- (e) A proxy must be a Member or a Director of the Foundation.
- (f) An appointment of a proxy may be a standing appointment.
- (g) An undated appointment is to be treated as having been dated on the day that it is given to the Foundation.

- (h) An appointment may specify the way in which a proxy is to vote on a particular resolution. If it does:
- (i) the proxy need not vote on a show of hands, but if the proxy does so he or she must vote in the way set out in the proxy; and
 - (ii) the proxy must vote on a poll and must vote in the way set out in the proxy.
- A direction in the proxy does not affect the way in which the proxy casts the vote which he or she holds as an Ordinary Member (if any).
- (i) The appointment of a proxy does not have to be witnessed. A later appointment revokes an earlier appointment unless both appointments could validly be exercised at a meeting.
- (j) For the appointment of a proxy to be effective the document appointing the proxy, and if the appointment is signed by an attorney for the appointor the authority under which the appointment was signed or a certified copy of that authority, must be received at one of the following:
- (i) the Foundation's registered office; or
 - (ii) a place, or electronic address specified for the purpose in the notice calling the meeting
- at least 48 hours before the time for the start of the meeting.
- (k) If a General Meeting is adjourned, an appointment of a proxy received by the Foundation at least 48 hours before the resumption of the meeting is effective at the resumed part of the meeting.
- (l) Unless the Foundation receives written notice of any of the following before the start of a meeting or the resumption of a meeting at which a proxy votes, the vote cast by the proxy will be valid even if before the proxy votes the Ordinary Member appointing the proxy:
- (i) dies;
 - (ii) becomes mentally incapacitated;
 - (iii) in the case of a body corporate, it becomes insolvent or is wound up in accordance with the Act (or equivalent State based legislation); or
 - (iv) revokes the proxy's appointment.

12.14 Representative of Ordinary Member

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

- (a) at General Meetings; or
- (b) relating to resolutions to be passed without meetings.

The appointment may be a standing appointment.

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

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

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

12.15 Written Resolutions by Ordinary Members

A resolution may be passed by the Ordinary Members without a meeting being held if all the Ordinary Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution which is set out in the document.

Separate copies of a document may be used for signing by Ordinary Members if the wording of the resolution and statement is identical on each copy.

The resolution is passed on the date that the last Ordinary Member signs the document and returns the signed document to the Foundation.

A written resolution need not be circulated to any Members other than the Ordinary Members.

13 Directors

The Board will comprise at least three (3) and no more than five (5) directors.

The term of a Director (other than a Director appointed to fill a casual vacancy) commences from the close of the meeting at which that person is elected as a Director and ceases at the end of the second AGM after that election, being a term of approximately two (2) years.

14 Qualification for Directors

A person is eligible to become a Director if he or she:

- (a) consents in writing to become a Director;
- (b) is not prohibited or disqualified or otherwise prevented from being a director of a company under the Act or a responsible person of a registered charity under the ACNC Act; and
- (c) has knowledge or expertise in one or more of the following:
 - (i) the Australian health sector;
 - (ii) legal and corporate governance;
 - (iii) research and development/technology transfer;
 - (iv) finance;
 - (v) business development/public relations/marketing;
 - (vi) government relations; and
 - (vii) public/private investment and sectoral experience.

15 Election of Directors

15.1 Candidate

A candidate, who is not a retiring Director, may only stand for election if:

- (a) the candidate is nominated by the Board or the nomination committee appointed by the Board. The nomination must be in writing and signed by the candidate ; and

- (b) the nomination is delivered to the Secretary at least 28 days before the AGM at which the election is to take place.

If the Board (or the nominations committee) has not appointed a candidate, an eligible candidate may be nominated by any Ordinary Member.

15.2 Retirement by rotation

- (a) At every AGM, one-half of the Directors (rounded up to the next integer) must retire from office. The Directors who have served longest since they were last elected must retire first. If there are equally serving Directors, those equally serving Directors may, among themselves, agree who is to retire by rotation. If those Directors are unable to decide, the Directors to retire by rotation will be chosen by drawing lots.
- (b) A Director who is required to retire under this clause 15.2 retains office until dissolution or adjournment of the meeting at which the retiring Director retires.
- (c) Subject to clause 15.2(d), a retiring Director is eligible for re-election.
- (d) A Director is not eligible for re-election if that Director has served 3 successive terms as a Director.
- (e) A person will be re-eligible for appointment as a Director if a period of one (1) years has elapsed since that person became ineligible for appointment under clause 15.2(d).

15.3 Casual Vacancy

If at any time there are fewer than 5 Directors, the Board may appoint Director/s to fill the vacant position/s . A casual appointee, following his or her appointment by the Directors, holds office only until the conclusion of the next AGM and is then eligible for re-election. A casual appointee is not taken into account in determining the number of Directors, if any, who are to retire by rotation at such meeting.

For clarity, a person appointed to fill a casual vacancy is not taken to have completed a term as a Director for the purposes of retirement and eligibility for re-appointment under regulation 15.2.

15.4 Vacation of Office

- (a) A person may resign as a Director of the Foundation by giving written notice of resignation to the Secretary.
- (b) In addition to the other circumstances set out in this Constitution or in the Act, the office of a Director will become vacant if the Director:
- (i) becomes an insolvent under administration;
 - (ii) becomes mentally incapable or the Director's estate is liable to be dealt with in any way under the law relating to mental health; or
 - (iii) is absent from more than 3 consecutive meetings of Directors without the prior leave of the Chair.

15.5 Fewer than minimum number of Directors

The continuing Directors may act despite any vacancy in the Board. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a General Meeting; or

(c) in emergencies.

15.6 Directors may not appoint alternate Directors

No Director may at any time appoint any other person as an alternate Director.

16 Remuneration of Directors and Chair

16.1 Remuneration of Directors

Subject to clause 16.3, no Director is entitled to any remuneration for services to the Foundation as a Director.

16.2 Expenses of Directors

Subject to this Constitution, each Director is entitled to be paid expenses incurred by the Director in the course of the Director's duties as a Director, which have been approved by the Board.

16.3 Remuneration of Chair

- (a) The Directors may resolve to remunerate the Chair for services provided to the Foundation in their capacity as Chair.
- (b) The terms of appointment, including remuneration of the Chair, will be as determined by a special resolution of the Directors. If remuneration is paid to the Chair, such remuneration must not exceed \$50,000 per annum.

17 Powers of the Directors

17.1 Business of the Foundation

The business of the Foundation is to be managed by or under the direction of the Directors.

17.2 Powers of Directors

The Directors may exercise all the powers of the Foundation and do all acts and things which the Foundation is authorised or permitted to exercise and do and which are not by this Constitution or by the Act directed or required to be exercised or done by the Foundation in General Meeting.

Without limiting the above the Directors have power:

- (a) to interpret the meaning of this Constitution and any matter relating to the Foundation on which these rules are silent;
- (b) open any bank accounts which they think may be necessary for the operation of the Foundation; and
- (c) exercise all the powers of the Foundation to borrow or raise money, to charge any property or business of the Foundation or give any other security for a debt, liability or obligation of the Foundation.

17.3 Delegation

The Directors may delegate any of their powers to:

- (a) a committee of Directors;
- (b) a Director;
- (c) a managing director, chief executive officer ("CEO"); or
- (d) any other person.

The delegate must exercise the powers delegated in accordance with any directions from the Directors.

A CEO must not be a Director or Member.

18 Proceedings of Directors

18.1 Mode of meeting

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The Directors may conduct their meetings in person, by telephone, audio visual link or by using any other Technology consented to by all Directors. A consent may be a standing one. A meeting conducted by Technology is considered to be held at the place agreed on by the Directors attending the meeting or, failing agreement, at the registered office of the Foundation.

18.2 Quorum

A quorum of the Board comprises three (3) Directors.

18.3 Chair calling a meeting

The Chair may at any time call a meeting of the Directors to be held at such time and place as the Chair chooses.

18.4 Secretary calling a meeting

The Secretary, upon the request of any other Director, must call a meeting of the Directors to be held at such time and place as is convenient to the Directors.

18.5 Notice of meeting

Notice of each meeting of the Directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all Eligible Directors.

18.6 Recipients of notice

For the purposes of the preceding regulation:

- (a) **Eligible Directors** are all Directors for the time being and excluding any given leave of absence; and
- (b) the accidental omission to give notice of any meeting of the Directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

18.7 Appointment of Chair

The Chair is appointed by the Board at the first meeting following the AGM.

If:

- (a) no Chair is elected; or
- (b) at any meeting of the Directors the Chair is not present within 15 minutes of the time appointed for holding the meeting or is unwilling to act,

the Directors present must choose one of their number to be chair of such meeting.

18.8 Votes of Directors

Questions arising at any meeting of the Directors must be decided by a majority of votes cast. Each Director has one (1) vote.

18.9 No casting vote of Chair

The Chair of any meeting of the Directors does not have a casting vote in addition to the deliberative vote, if any, of the Chair. In the event of an equality of votes, the resolution is taken to be rejected.

18.10 Circular resolution of Directors

If all the Eligible Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Directors held on the day on which the document was signed. If the Directors sign the documents on different days, then a resolution is treated as having been passed on the day on which the document was last signed by a Director thereby constituting a majority in number of the Eligible Directors. A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier date.

18.11 Signing of circular resolution

For the purposes of the preceding regulation:

- (a) the **Eligible Directors** are all Directors for the time being but excluding those who, at a meeting of Directors, would not be entitled to vote on the resolution;
- (b) each Director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (d) an electronic transmission purporting to be signed by a Director is treated as being in writing signed by such person; and
- (e) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together treated as constituting 1 document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

18.12 Deemed minute

The document or documents referred to in the two preceding regulations are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

18.13 Validity of acts of Directors

All acts done in respect of any meeting of:

- (a) the Directors; or
- (b) a committee of Directors; or
- (c) other persons or by any person acting as a Director; or
- (d) any person purporting to act as an attorney under power of the Foundation,

are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

19 Director's contracts with Foundation

19.1 Director's contracts and conflicts of interest

In relation to Director's contracts and conflicts of interest, but subject at all times to clause 5:

- (a) despite any rule of law or equity to the contrary, no Director is disqualified by that office from contracting with the Foundation;
- (b) no Director may be an employee of the Foundation;
- (c) any contract entered into by or on behalf of the Foundation in which any Director is in any way interested, is not avoided;
- (d) any Director so contracting or being so interested is not liable to account to the Foundation for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established provided that the Director has complied with subclause 20.1(e);
- (e) the nature of the Director's interests must be disclosed by that Director at the meeting of the Directors at which the contract is decided on if that interest then exists and has not previously been disclosed. In any other case at the first meeting of the Directors after the acquisition of those interests; and
- (f) a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is interested if prohibited by the Act from doing so. However, such Director may, despite that interest, participate in the execution of any instrument by or on behalf of the Foundation, whether through signing or sealing it or otherwise.

19.2 Requirement to leave the meeting

Despite anything in the preceding regulation, a Director's entitlement to vote, or be present, at a meeting of the Directors of any Director who has a material personal interest in a matter that is being considered at the meeting is restricted in accordance with section 195 of the Act (and every other mandatory law) as it may apply from time to time to the Foundation.

19.3 Notice of interest

A general notice given to the Directors by any Director in accordance with section 192 of the Act and to the effect that he or she:

- (a) is an officer or a member of, or interested in, any specified firm or body corporate; and
- (b) is to be regarded as interested in all transactions with such firm or body,

is sufficient disclosure as required by the Act as regards such Director and those transactions. After such general notice it is not necessary for such Director to give any special notice relating to any transaction with such firm or body.

19.4 Office in another company

A Director may be, or become, a director or other officer of, or otherwise interested in, any body corporate promoted by the Foundation or in which the Foundation may be interested.

No such Director is accountable to the Foundation for any remuneration or other benefits received by him or her as a Director or officer of, or from his or her interest in, such body corporate.

The Directors may exercise the voting power conferred by the shares or owned by the Foundation, or exercisable by them as Directors of such other body corporate in

such manner in all respects as they think fit. This includes the exercise of that voting power in favour of any resolution appointing themselves, or any of them as Directors or other officers of such body corporate. Any Director may vote in favour of the exercise of such voting power in that manner despite the fact that he or she may be, or be about to be, appointed a Director or other officer of such corporation and as such is, or may become, interested in the exercise of such voting power in that manner.

19.5 Director of wholly owned subsidiary

If a Director is or becomes a director of a wholly owned subsidiary of the Foundation, and the constitution of that subsidiary expressly authorises the director to act in the best interests of the Foundation that Director is taken to be acting in the best interests of the wholly owned subsidiary when he acts in good faith in the best interests of the Foundation.

20 Committees of the Board

20.1 Appointment of Committee

The Board may delegate any of its powers to a committee consisting of such members as the Board thinks fit.

Each Committee will include at least one Director.

20.2 Powers of Committee

Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.

20.3 Meetings of Committee

A committee may elect a chair of its meetings.

If no such chair is elected, or if at any meeting the chair is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one (1) of their number to be chair of the meeting.

A committee may meet and adjourn as it thinks proper.

Questions arising at any meeting shall be determined by a majority of votes of the members of the committee present and, in the case of an equality of votes, the chair does not have a casting vote and the resolution is taken to be rejected

21 Secretary

There must be at least one secretary of the Foundation, appointed by the Directors at the remuneration and on conditions determined by the Board.

The Secretary is entitled to attend and be heard on any matter at all Directors' meetings, committee meetings and general meetings but the Secretary is only entitled to attend in camera session of a Director's meeting at the request of the Chair.

The Directors may suspend or remove the Secretary from that office.

The Secretary must maintain the register of Members, maintain the minutes and other records of each Directors' meeting, committee meeting and general meeting of the Foundation.

22 Confidentiality

Except with the Board's written consent, no Member or Director may publish or be involved in communicating or publishing in any publication (including in any electronic form):

- (a) any communication between that Member or any other Member and the Foundation, the Board or a committee of the Foundation where the communication relates to a matter under consideration by or has been submitted for the consideration of the Foundation, the Board or a committee of the Foundation; or
- (b) any rule, minute, decision or proceeding of the Foundation, the Board or a committee of the Foundation.

23 Minutes

If any minutes of a General Meeting or of the Board are signed by any person purporting to be either the chair of such meeting, or the chair of the next succeeding meeting, those minutes must be received in evidence without any further proof that the matters and things recorded by or appearing in such minutes actually took place or happened at a meeting duly called and held.

24 Bylaws

The Board may from time to time make, amend or repeal By-laws which are not inconsistent with this Constitution, for the internal management of the Foundation and any By-law may be set aside by a Special Resolution at a General Meeting.

25 Accounts

25.1 Foundation to keep accounts

The Foundation must keep all accounting and other records of the business of the Foundation as it is required to keep by the Act.

25.2 Access to accounts

The Board must allow each Director and the auditor appointed under clause 26 to inspect the financial records of the Foundation at all reasonable times.

A Member who is not a Director does not have any right to inspect any document of the Foundation except as authorised by the Board or as specified in the Act.

26 Auditors

The auditors of the Foundation will:

- (a) be appointed and may be removed as provided in the Act; and
- (a) perform the duties and have the rights and powers as may be provided in the Act.

27 Alteration of Constitution

This Constitution may only be amended by a special resolution of the Ordinary Members.

28 Indemnity

28.1 Indemnity for officers

To the extent that the Act allows it, each officer of the Foundation and each officer of a related body corporate of the Foundation, must be indemnified by the Foundation against any liability incurred by that person in that capacity.

28.2 Insurance premiums

The Foundation may at any time pay premiums in respect of a contract insuring a person (whether with others or not) who is an officer of the Foundation against a liability incurred by the person as such an officer, or as an officer of a related body corporate. The liability insured against may not include that which the Act prohibits. Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration (if any) approved by Ordinary Members under this Constitution.