
ENDEAVOUR FOUNDATION

CONSTITUTION

Date of Inception: 30 November 2001



TABLE OF CONTENTS

INTRODUCTION	6
1. Replaceable Rules Excluded	6
2. Definitions and Interpretation.....	6
3. Objects	8
4. Powers.....	8
5. Application of Income and Property	8
6. Limited Liability	9
7. Guarantee.....	9
8. Structure	9
MEMBERSHIP	10
9. Organisation of Membership	10
10. Application for Membership	10
11. Form of Application.....	11
12. Admission to Membership.....	11
13. Notification by Members	11
14. Honorary Life Membership	11
15. Affiliates	12
16. Register of Members	13
APPLICATION FEE AND MEMBERSHIP FEE	13
17. Application Fee.....	13
18. Membership Fee	13
19. Unpaid Membership Fees	13
CESSATION OF MEMBERSHIP	14
20. Resignation.....	14
21. Cessation of Membership.....	14
22. Expulsion of Members and Affiliates.....	14
23. Effect of Cessation of Membership.....	15
24. Not Used.....	15
NATIONAL COUNCIL	15
24A National Council	15
24B Tenure of the National Council Members	16
24C Appointment of National Council Members	16
24D Rotation of appointment of National Council Members.....	17
24E National Council Office Bearers.....	17
APPOINTMENT OF NATIONAL COUNCIL MEMBERS BETWEEN ANNUAL GENERAL MEETINGS	18
24F Casual vacancies, additional National Council Members and insufficient National Council Members.....	18

NATIONAL COUNCIL MEETINGS	18
24G Meetings of National Council	18
24H Use of technology at meeting of National Council	19
24I Chairing National Council meetings	19
24J Quorum	20
24K Passing of National Council Members' recommendations	20
REMOVAL AND RESIGNATION OF NATIONAL COUNCIL MEMBERS	20
24L Removal and resignation of National Council Members	20
24M Vacation of position as a National Council Member	20
NATIONAL COUNCIL MEMBERS' INTERESTS	21
24N Prohibition on being present or voting	21
24O National Council Member to disclose interests	21
24P Effect of Interest in Contract	21
24Q Other Interests	22
REMUNERATION OF NATIONAL COUNCIL MEMBERS	22
24R National Council Members' remuneration	22
24S National Council Members' expenses	22
24T Financial benefit	22
AREA COMMITTEES	22
25. Area Committees	22
26. Election of Area Committees	23
26A Casual Vacancies, Additional Area Committee Members and Insufficient Area Committee Members	24
26B Removal of Area Committee Members	25
DIRECTORS	25
27. Composition of the Board	25
28. Tenure of the Directors	25
29. Election of Elected Directors	26
30. Office Bearers	27
APPOINTMENT OF DIRECTORS BETWEEN ANNUAL GENERAL MEETINGS	27
31. Casual Vacancies, Additional Directors and Insufficient Directors	27
ALTERNATE DIRECTORS	28
32. Appointment	28
33. Suspension or Revocation of Appointment	28
34. Form of Appointment, Suspension or Revocation	28
35. Termination of Appointment	28
36. Power to Act as Alternate for More than 1 Director	28

POWERS OF DIRECTORS	29
37. Validation of Acts of Directors and Secretaries.....	29
38. General Business Management	29
39. Appointment of Attorney	29
40. Negotiable Instruments.....	29
CHIEF EXECUTIVE OFFICER	30
41. Appointment and Powers	30
DIRECTORS' MEETINGS	30
42. Circulating Resolutions	30
43. Meetings of Board	30
44. Technology Meeting of Directors.....	31
45. Chairing Directors' Meetings.....	31
46. Quorum	32
47. Passing of Directors' Resolutions	32
COMMITTEES OF DIRECTORS	32
48. Committees of Directors.....	32
REMOVAL AND RESIGNATION OF DIRECTORS	32
49. Removal and Resignation of Directors.....	32
50. Vacation of Office of Director	33
DIRECTORS' INTERESTS	33
51. Prohibition on Being Present or Voting	33
52. Director to Disclose Interests.....	33
53. Effect of Interest in Contract	34
54. Other Interests.....	34
REMUNERATION OF DIRECTORS	34
55. No Directors' Remuneration.....	34
56. Directors' Expenses	34
57. Financial Benefit.....	35
SECRETARY	35
58. Terms of Office of Secretary	35
INDEMNITY AND INSURANCE	35
59. Indemnity	35
60. Insurance	36
61. Director Voting on Contract of Insurance	36
62. Liability.....	36
63. Not Used.....	36

INSPECTION OF RECORDS.....	36
64. Rights of Inspection	36
65. Confidential Information	37
MEETINGS OF MEMBERS.....	37
66. General Meetings.....	37
67. Business of an Annual General Meeting	37
68. Notice of General Meetings	38
69. When Notice is Given	38
70. Contents of Notice.....	38
71. Notice of Adjourned Meeting.....	39
72. Accidental Omission to Give Notice	39
73. Postponement of General Meeting	39
74. Technology	39
75. Quorum	39
76. Chair at General Meetings	40
77. Business at Adjourned Meetings	40
PROXIES AND BODY CORPORATE REPRESENTATIVES	40
78. Who Can Appoint a Proxy	40
79. Rights of Proxies	40
80. When Proxy Form Must Be Sent to All Members.....	41
81. Appointing a Proxy.....	41
82. Form of Proxy Sent Out by Foundation.....	42
83. Receipt of Proxy Documents.....	42
84. Validity of Proxy Vote.....	43
85. Body Corporate Representative.....	43
86. Attorney of Member.....	44
VOTING AT MEETINGS OF MEMBERS	44
87. How Vote May Be Exercised.....	44
88. Voting Disqualification.....	44
89. Objections to Right to Vote	44
90. How Voting is Carried Out	44
91. Matters on Which a Poll May Be Demanded	45
92. When a Poll is Effectively Demanded	45
93. When and How Polls Must Be Taken	45
94. Chair's Casting Vote	45
MINUTES	46
95. Minutes to be Kept	46
ACCOUNTS, AUDIT AND RECORDS.....	46

96.	Accounts	46
97.	Audit	46
EXECUTION OF DOCUMENTS.....		47
98.	Common Seal.....	47
99.	Use of Common Seal.....	47
100.	Execution - General.....	47
INADVERTENT OMISSIONS.....		47
101.	Formalities Omitted.....	47
WINDING UP.....		48
102.	Alterations.....	48
103.	Winding Up	48

Company Limited by Guarantee

**CONSTITUTION
OF
ENDEAVOUR FOUNDATION**

INTRODUCTION

1. Replaceable Rules Excluded

1.1 The replaceable rules contained in the Law do not apply to the Foundation.

2. Definitions and Interpretation

2.1 Definitions

In this Constitution:

“**Affiliate**” has the meaning given by Rule 9.4(2).

“**Annual Budget**” means the proposed budget for the Foundation for the next financial year.

“**Annual General Meeting**” has the meaning in accordance with Rule 66.2.

“**Application Fee**” has the meaning given by Rule 17.

“**Area Committee**” means the Committee elected in accordance with Rule 26.

“**Area Committee Chairperson**” has the meaning in accordance with Rule 26.6.

“**Area Committee Members**” has the meaning given by Rule 25 and are the persons appointed and elected to sit on the Area Committee in accordance with Rule 26.

“**Areas**” has the meaning given by Rule 8.

“**Board**” means the Board of Directors of the Foundation.

“**Business Day**” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Foundation has its registered office.

“**By-Laws**” means the By-Laws of the Foundation approved in accordance with Rule 38.6.

“**Chairperson**” means the Office Bearer referred to in Rule 30.

“**Chief Executive Officer**” means the person appointed in accordance with Rule 41.

“**Deputy Chairperson**” has the meaning in accordance with Rule 30.

“**Directors**” means the Directors for the time being of the Foundation or the Directors assembled as a Board.

“**Elected Directors**” means Directors elected and appointed to the Board from the Area Committees collectively, in accordance with Rule 29.

“**Existing Members**” has the meaning set out in Rule 9.3.

“**Foundation**” means Endeavour Foundation ACN 009 670 704.

“**Honorary Life Member**” has the meaning given by Rule 14.

“**Independent Director**” a person who is determined by the Directors to have relevant specialist skills and knowledge and not being a person who is an Area Committee Member.

“**Initial Area Committee Members**” has the meaning set out in Rule 26.3.

“**Law**” means the *Corporations Act 2001* (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

“**Life Member**” has the meaning given by Rule 10.

“**Member**” means a Member for the time being of the Foundation in accordance with Rule 9.4(1).

“**Membership**” has the meaning given by Rule 9.4.

“**Membership Fee**” has the meaning given by Rule 18.

“**National Council**” means the council established under Rule 24A.

“**National Council Chairperson**” means the person appointed under Rule 24E.

“**National Council Deputy Chairperson**” means the person appointed under Rule 24E.

“**National Council Members**” has the meaning in accordance with Rule 24A.

“**National Council Office Bearers**” has the meaning in accordance with Rule 24E.

“**Office Bearer**” has the meaning in accordance with Rule 30.

“**Officer**” has the meaning given by section 9 of the Law and includes Area Committee Members and National Council Members.

“**Patrons**” and/or “**Vice-Patrons**” means the persons appointed in accordance with Rule 8.2.

“**Proxy**” has the meaning given by Rule 78.1 and is a person appointed in accordance with Rule 81.

“**Register**” means the register of Members of the Foundation.

“**Secretary**” means the Company Secretary for the purposes of compliance with the Law, referred to in Rule 58 and any other person appointed to perform the duties of a Secretary of the Foundation.

“**Stakeholders**” means stakeholders of the Foundation including but not limited to Directors, Members, Area Committee Members, Area Managers, staff, parents, clients, Government and the community.

2.2 Interpretation

(1) Reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular; and
- (c) a person includes a body corporate.

-
- (2) Except so far as the contrary intention appears in this Constitution:
 - (a) an expression has in this Constitution the same meaning as in the Law; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Law, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law.
 - (3) "Including" and similar expressions are not words of limitation.
 - (4) Headings are for convenience only and do not form part of this Constitution or affect its interpretation.

3. Objects

3.1 The objects for which the Foundation is established are:

- (1) to further the interests of people with intellectual disability;
- (2) to harness the resources of the community to make a positive difference in the lives of people with intellectual disability;
- (3) to promote the dignity and general citizenship of people with disability;
- (4) to enable people with intellectual disability to achieve their full potential;
- (5) to assist people with intellectual disability and their families voice their interest and concerns; and
- (6) through effective community partnership to be the first choice for people with intellectual disability.

3.2 The Foundation must pursue charitable purposes only and must apply its income in promoting those purposes.

4. Powers

[compare section 124]

4.1 The Foundation has all the powers of an individual and a body corporate but does not have the power to issue shares.

5. Application of Income and Property

[compare sections 125 and 150]

5.1 The income and property of the Foundation, from wherever it is derived, must be applied solely towards the promotion of the objects of the Foundation set out in Rule 3.

5.2 No portion of the income or property of the Foundation may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Members of the Foundation.

5.3 Rule 5.2 does not prevent:

- (1) the payment in good faith of remuneration to any Officer, servant or Member of the Foundation in return for any services actually rendered to the Foundation or for goods supplied in the ordinary and usual way of business;

-
- (2) the reimbursement of reasonable expenses incurred by any Member on behalf, and at the request of, the Foundation.

6. Limited Liability

- 6.1 The liability of the Members is limited.

7. Guarantee

[compare section 117]

- 7.1 Every Member of the Foundation undertakes to contribute an amount not exceeding \$2 to the property of the Foundation in the event of its being wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:

- (1) of the debts and liabilities of the Foundation (contracted before the Member ceases to be a Member); and
- (2) of the costs, charges and expenses of winding up.

8. Structure

- 8.1 The Foundation shall be organised as follows:

- (1) the Membership shall be divided into Areas (see Rule 9);
- (2) each Area shall be represented by an Area Committee (see Rule 25);
- (3) the Area Committees shall, amongst other things, elect certain of their number to the Board (see Rule 29);
- (4) each Area Committee is entitled to appoint no more than 2 Area Committee Members to be National Council Members (see Rule 24C);
- (5) the Board is ultimately responsible for the governance and operation of the Foundation;
- (6) the National Council has the powers and objects set out in Rule 24A; and
- (7) Areas have the names that the Board may give from time to time under Rule 8.3.

- 8.2 The Members in General Meeting may, upon the recommendation of the Board appoint one or more Patrons and/or Vice-Patrons who need not be Members.

- 8.3 The Board may, after consulting with the National Council, determine that:

- (1) the boundaries of an Area be amended;
- (2) an Area ceases;
- (3) a new Area is added;
- (4) two or more Areas are combined; or
- (5) the name of an Area is changed;

provided that the number of Areas is not less than 5.

MEMBERSHIP

9. Organisation of Membership

9.1 All applicants for Membership admitted as Members shall be allocated and entered, in the Register of the Foundation, to the Area they nominate on their application for membership.

9.2 The number of Members of the Foundation is unlimited.

9.3 The Members of the Foundation are:

- (1) the persons who are admitted to any of the categories of Membership of the Foundation under Rule 9.4(1) on the date on which the Constitution is adopted ("**Existing Members**"); and
- (2) any other persons the Directors admit to any of the categories of Membership in accordance with this Constitution.

For the avoidance of doubt, a person who is an Existing Member shall belong to the same category of Membership (see Rule 9.4) as they were prior to the date of adoption of this Constitution.

9.4 Categories of Membership

The categories of Membership are:

(1) **Members**

Members are the persons who;

- (a) once admitted in accordance with Rules 10.1 and 10.2, pay the annual Membership Fee as and when it falls due; or
- (b) once admitted in accordance with Rules 10.1 and 10.3, pay a once only Life Membership Fee which is twenty-times the annual Membership Fee; or
- (c) are granted Honorary Life Membership in accordance with Rule 14.

(2) **Affiliates**

Affiliates are the persons who;

- (a) are admitted as Affiliate Adults in accordance with Rule 15.1; or
- (b) are admitted as Affiliate Youths in accordance with Rule 15.2;
- (3) such other categories of Membership, as may be created from time to time by the Directors of the Foundation.

10. Application for Membership

10.1 Any individual who:

- (1) is not less than 18 years of age at the date of application; and
- (2) is supportive of the objects of the Foundation;

may apply for Membership of the Foundation under Rules 9.4(1)(a) and 9.4(1)(b).

10.2 A Member once admitted and so long as they pay the annual Membership Fee as and when it falls due shall be entitled to the use of Member services at the cost specified from time to time by the Directors, shall be entitled to attend any General Meeting of the Foundation and shall be entitled to vote at any General Meeting of the Foundation.

10.3 A Life Member once admitted has all the rights and privileges of a Member and is otherwise subject to this Constitution.

11. Form of Application

11.1 An application for Membership must:

- (1) be in writing in a form approved by the Directors;
- (2) be signed by the applicant;
- (3) be accompanied by any other documents or evidence as to qualification for the type of Membership applied for which the Directors require;
- (4) be accompanied by the Application Fee (if any) determined under Rule 17 and the Membership Fee determined under Rule 18; and
- (5) state the Area in which the Member nominates to be registered.

12. Admission to Membership

12.1 The Directors may in their absolute discretion accept or reject any application for Membership.

12.2 The Directors need give no reason for the rejection of an application.

12.3 If an application for Membership is rejected the Secretary must notify the applicant in writing and the Application Fee, if any, and the Membership Fee must be refunded to the applicant.

12.4 If an applicant is accepted for Membership, the name and details of the Member must be entered in the Register of Members and the Secretary must notify the applicant in writing of such acceptance.

13. Notification by Members

13.1 Each Member must promptly notify the Secretary in writing of any change in:

- (1) their qualification to be a Member of the Foundation; or
- (2) the Area in which the Member nominates to be registered.

14. Honorary Life Membership

14.1 If, in the opinion of the Directors, a person has made over a period of years an exceptional contribution to the Foundation, the Directors may grant that person the highest acknowledgement of contribution to the Foundation in the form of an Honorary Life Membership of the Foundation.

14.2 A person granted Membership under Rule 14.1 becomes an Honorary Life Member of the Foundation on the later to occur of:

- (1) the person consenting in writing to be an Honorary Life Member; and

-
- (2) the nomination being approved by an ordinary resolution of the Board.
- 14.3 An Honorary Life Member has all the rights and privileges of Membership under Rule 10.2 and is otherwise subject to this Constitution.

15. Affiliates

15.1 Affiliate Adult

- (1) Any individual who;
- (a) is employed at or accesses a service of the Foundation, or their nominated carer or parent;
 - (b) is not less than 18 years of age; and
 - (c) is supportive of the objects of the Foundation;
- shall be admitted as an Affiliate Adult of the Foundation.
- (2) No Application Fee or Membership Fee shall apply to an Affiliate Adult.
- (3) An Affiliate Adult shall be entitled to the use of Member services at the cost specified from time to time by Directors, but shall not be entitled to receive formal notification of any General Meeting of the Foundation, nor be entitled to vote at any General Meeting of the Foundation, nor be eligible for election or appointment to any of the Foundation's Area Committees.
- (4) An Affiliate Adult shall be entitled to apply for Membership of the Foundation in accordance with Rules 10 and 11 of the Constitution.
- (5) Any individual who is admitted as an Affiliate Adult shall be entitled to this category of Membership for a minimum of 12 months provided that the Affiliate Adult, or the person for whom they are the nominated carer or parent, remains employed at or continues to access a service of the Foundation.

15.2 Affiliate Youth

- (1) Any individual who;
- (a) is of school age and is less than 18 years of age; and
 - (b) is supportive of the objects of the Foundation;
- may apply to be admitted as an Affiliate Youth of the Foundation.
- (2) Any application for Affiliate Youth for any individual who is under the age of 14 years at the date of application, shall require the permission of the applicant's parent or guardian.
- (3) No application Fee or Membership Fee shall apply to an Affiliate Youth.
- (4) An Affiliate Youth shall be entitled to the use of Member services at the cost specified from time to time by Directors, but shall not be entitled to receive formal notification of any General Meeting of the Foundation, nor be entitled to vote at any General Meeting of the Foundation, nor be eligible for election or appointment to any of the Foundation's Area Committees.
- (5) An Affiliate Youth shall be entitled to this category of Membership until that person attains the age of 18 years, at which time that person shall be entitled to apply for Membership of the Foundation in accordance with Rules 10 and 11 of the Constitution.

16. Register of Members

[compare sections 168 and 169]

- 16.1 The Secretary must ensure that a Register of Members is kept by the Foundation in accordance with the Law.
- 16.2 The following must be entered in the Register of Members in respect of each Member:
- (1) the full name of the Member;
 - (2) the residential address, facsimile number and electronic mail address, if any, of the Member;
 - (3) the category of Membership;
 - (4) the date of admission to and cessation of Membership;
 - (5) the date of last payment of the Member's Membership Fee;
 - (6) the Area in which the Member nominates to be registered; and
 - (7) such other information as the Directors require.
- 16.3 Each Member must notify the Secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within 1 month after the change.

APPLICATION FEE AND MEMBERSHIP FEE

17. Application Fee

- 17.1 The Application Fee payable by each applicant for Membership is the sum the Directors determine for each category of Membership provided that no Application Fee is payable by any Honorary Life Member or Affiliate.

18. Membership Fee

- 18.1 The annual Membership Fee payable by a Member of the Foundation in accordance with Rule 10.2 is the sum determined by the Directors in consultation with the National Council.
- 18.2 The Membership Fee for a Life Member is twenty-times the annual Membership Fee under Rule 18.1 and is payable once only upon being admitted to Life Membership.
- 18.3 The Membership Fee payable by an Honorary Life Member or Affiliate is nil.
- 18.4 All annual Membership Fees are due and payable in advance on 1 July in each year.
- 18.5 If a person is admitted as a Member of the Foundation during the months of January to June inclusive the Directors may reduce the Membership Fees payable by the applicant in respect of the remainder of the period until the next 1 July in any manner they see fit.

19. Unpaid Membership Fees

- 19.1 If the Membership Fees of a Member remains unpaid for 2 months after it becomes payable, the Member ceases to be entitled to any of the rights or privileges of Membership but these may be reinstated, at the absolute discretion of the Board, upon payment of all arrears.

CESSATION OF MEMBERSHIP

20. Resignation

- 20.1 A Member may resign from Membership of the Foundation by giving written notice to the Secretary.
- 20.2 The resignation of a Member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

21. Cessation of Membership

- 21.1 A Member ceases to be a Member:
- (1) on the death of the Member; or
 - (2) if the Member is expelled under Rule 22.
- 21.2 An Affiliate Adult shall cease:
- (1) if the employment of, or access of a service, by an individual under Rule 15.1(1)(a) ceases;
 - (2) on the death of an Affiliate Adult who is the nominated carer or parent, or upon the Secretary being advised in writing of a change to the nominated carer or parent; or
 - (3) if the Affiliate Adult applies for and is admitted as a Member of the Foundation in accordance with Rules 10 and 11, or is granted Honorary Life Membership of the Foundation; or
 - (4) if the Affiliate Adult is expelled under Rule 22.1.
- 21.3 An Affiliate Youth shall cease:
- (1) if the Affiliate Youth attains the age of 18 years; or
 - (2) on the death of the Affiliate Youth; or
 - (3) if the Affiliate Youth is expelled under Rule 22.1.

22. Expulsion of Members and Affiliates

- 22.1 If any Member or Affiliate:
- (1) wilfully refuses or neglects to comply with the provisions of this Constitution; or
 - (2) is guilty of any conduct which, in the absolute opinion of the Directors, is unbecoming of a Member or Affiliate or prejudicial to the interest of the Foundation;
- the Directors may resolve to expel the Member or Affiliate from the Foundation and to remove the Member's name from the Register of Members.
- 22.2 At least 1 week before the meeting of the Directors at which a resolution of the nature referred to in Rule 22.1 is passed the Directors must give to the Member notice of:
- (1) the meeting;
 - (2) what is alleged against the Member; and
 - (3) the intended resolution.

-
- 22.3 At the meeting and before the passing of the resolution, the Member must have an opportunity of giving orally or in writing any explanation or defence the Member sees fit.
- 22.4 A Member may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with by the Foundation in General Meeting and in that event, a General Meeting of the Foundation must be called for that purpose.
- 22.5 If at the General Meeting of the Foundation a resolution to the same effect as the resolution which was to be considered by the Directors is passed by a majority of 2/3 of those present and voting (and the vote must be taken by secret ballot), the Member concerned must be expelled and the Member's name must be removed from the Register of Members.

23. Effect of Cessation of Membership

- 23.1 If any Member ceases to be a Member, for any reason, under this Constitution, the Member remains liable to pay to the Foundation for any money which, at the time of the Member ceasing to be a Member, the Member owes to the Foundation on any account and for any sum for which the Member is subsequently liable under Rule 7 of this Constitution.

24. Not Used

NATIONAL COUNCIL

24A National Council

- 24A.1 With effect 3 months from the close of the meeting of Members approving this Rule 24A.1, the National Council is established and convened in accordance with this Rule 24A.
- 24A.2 The objects for which the National Council is established are:
- (1) improving the overall governance arrangements of the Foundation;
 - (2) providing a mechanism for incorporating additional stakeholders and organisations into the Foundation through, mergers, acquisitions and organic growth; and
 - (3) providing an avenue for Stakeholders to have input into strategy, Annual Budget, policy and constitutional change.
- 24A.3 The National Council is responsible for:
- (1) providing a forum for ongoing review and involvement of the Stakeholders in the development of guidelines, processes, procedures and policies of the Foundation;
 - (2) discussing and make recommendations to the Board on issues relating to the matters referred to in Rule 24A.2;
 - (3) providing a national forum for discussion of issues relating to services and support for individuals provided by the Foundation;
 - (4) assisting the Board in monitoring the services and supports provided by the Foundation;
 - (5) educating, informing and providing feedback to the Stakeholders;
 - (6) advancing the Foundation's public image; and

-
- (7) considering such other issues as the Members in General Meeting may from time to time require to be considered by the National Council.
- 24A.4 The National Council comprises of Members appointed in accordance with Rule 24C ("**National Council Members**").
- 24A.5 No person may be a National Council Member unless that person is an Area Committee Member.
- 24A.6 A Director is not entitled be a National Council Member.
- 24A.7 No sooner than 2 years after the date the changes to this Constitution are adopted by the Members in General Meeting to include the Rules relating to the National Council, either the Board or the National Council may convene a meeting of Members to consider, by special resolution, whether to remove or amend the Rules in this Constitution relating to the National Council.
- 24A.8 If neither the Board nor the National Council convene a meeting under Rule 24A.7, the Rules in this Constitution relating to the National Council continue to apply.
- 24A.9 The minimum number of National Council Members is the number of Area Committees plus one.
- 24A.10 With effect 3 months from the close of the meeting of Members approving this Rule 24A the Endeavour Council established and convened in accordance with former Rule 24 is dissolved and replaced with the National Council.

24B Tenure of the National Council Members

- 24B.1 Unless otherwise provided in this Constitution, subject to Rules 24C and 24L, each of the National Council Members hold office for a term of 2 years from the date of their appointment under Rule 24C.
- 24B.2 Subject to Rules 24C and 24M, the number of terms that a National Council Member may serve is not limited.
- 24B.3 The National Council Members are appointed in accordance with Rule 24C.

24C Appointment of National Council Members

- 24C.1 If a National Council Member would otherwise, by virtue of Rule 24B, serve on the National Council for a period that exceeds their term on the relevant Area Committee, then that National Council Member must retire from the National Council at the expiry of their term on the relevant Area Committee. A replacement National Council Member may be appointed by the relevant Area Committee, in accordance with Rule 24F, for the balance of the term for which the retiring National Council Member would, but for this Rule 24C.1, have held office.
- 24C.2 The appointment of the National Council Members takes place at the times and in the manner and adopting the procedures directed by the Board from time to time provided that, in each case, the appointment takes place in the following manner:
- (1) each Area Committee Chairperson is automatically entitled to be appointed to the National Council;
 - (2) if an Area Committee Chairperson does not accept the appointment to the National Council, their position on the National Council is filled in accordance with paragraph (3);
 - (3) each Area Committee is entitled to appoint no more than 2 Area Committee Members from its own number to be National Council Members; and
 - (4) All appointments of National Council Members must be in writing and:

-
- (a) signed by the appointee consenting to their appointment; and
 - (b) delivered to and lodged with the Secretary not less than 21 days prior to the date fixed for the holding of the Annual General Meeting at which the appointment of the National Council Members is to be made effective.

24C.3 The Board must ensure that the results of the appointment of National Council Members are announced at the relevant Annual General Meeting.

24C.4 If an Area Committee election is held under Rule 26:

- (1) the Area Committee Chairperson is automatically entitled to be appointed to the National Council;
- (2) if the Area Committee Chairperson does not accept the appointment to the National Council, their position on the National Council is filled in accordance with paragraph (3);
- (3) the Area Committee is entitled to appoint no more than 2 Area Committee Members from its own number to be National Council Members; and
- (4) such appointment is subject to the Rule 24C.2.

24D Rotation of appointment of National Council Members

The rotation of appointment of the National Council Members take place in the following manner:

- (1) half of the Initial National Council Members (rounded to the nearest whole number), hold their position for the period of approximately 1 year from the adoption of this amended Constitution and then retire from the National Council;
- (2) half of the Initial National Council Members (rounded to the nearest whole number), hold their position for approximately 2 years from the adoption of this Constitution and then retire from the National Council;
- (3) each Area Committee determines which of their appointed National Council Members retire, and in which order, under sub-Rules (1) and (2) of this Rule 24D;
- (4) thereafter, unless provided otherwise in this Constitution, all National Council Members hold their position for the period of approximately 2 years following his or her appointment to the National Council;
- (5) appointments are in accordance with Rule 24C.2 to fill all vacancies on the National Council; and
- (6) all retiring National Council Members are eligible for re-appointment.

24E National Council Office Bearers

24E.1 The National Council Office Bearers are:

- (1) National Council Chairperson; and
- (2) National Council Deputy Chairperson.

24E.2 National Council Office Bearers are elected by the National Council Members from among their number at the first meeting of the National Council held after each Annual General Meeting of the Foundation.

24E.3 The National Council Members present must elect one of their number to act as Chair of the meeting for the purpose of the election.

24E.4 The election of National Council Office Bearers takes place in the following manner:

- (1) Each National Council Member standing for election as a National Council Office Bearer must be proposed orally or in writing by another National Council Member.
- (2) If a National Council Member stands for election for more than 1 position as a National Council Office Bearer, separate nominations must be received in respect of each position.
- (3) If there is only 1 candidate for election to any National Council Office Bearer position that person is declared elected to that position.
- (4) If there is more than 1 candidate for election to any National Council Office Bearer position, a vote by show of hands must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- (5) In the case of an equality of votes in respect of any position, a further vote by show of hands must be held immediately, but if there is still an equality of votes the successful candidate must be determined by lot.

APPOINTMENT OF NATIONAL COUNCIL MEMBERS BETWEEN ANNUAL GENERAL MEETINGS

24F Casual vacancies, additional National Council Members and insufficient National Council Members

24F.1 The relevant Area Committee may by resolution, appoint a person qualified to be a National Council Member to fill a casual vacancy so that the total number of National Council Members does not at any time exceed the number fixed in accordance with this Constitution.

24F.2 Any appointment to fill a vacancy on the National Council must be lodged with the Secretary in accordance with Rule 24C.2(4).

NATIONAL COUNCIL MEETINGS

24G Meetings of National Council

24G.1 The National Council must meet at least 2 times in each year, for the discharge of their role and duties and may otherwise adjourn and otherwise regulate their meetings as they see fit.

24G.2 The minutes of any meeting of the National Council must state the method of meeting and the persons present.

24G.3 A National Council Member may at any time, and the Secretary must, on the requisition of not less than 1/3 of the total number of National Council Members, call a meeting of the National Council.

24G.4 Reasonable notice of every National Council meeting and the nature of business to be addressed must be given to each National Council Member except that it is not necessary to give notice of a meeting of the National Council to any National Council Member who:

- (1) has been given special leave of absence; or

-
- (2) is absent from Australia and has not left a facsimile number or electronic mail address at which he or she may be given notice.

24G.5 Any notice of a meeting of the National Council must be given in writing, whether by facsimile, electronic mail or other accepted means of visual communication.

24H Use of technology at meeting of National Council

24H.1 A National Council meeting may be held using any telephone, teleconference or any other technology consented to by all of the National Council Members. The consent may be a standing one. A National Council Member may only withdraw the consent within a reasonable period before the meeting.

24H.2 If a National Council meeting is held using any technology and all of the National Council Members take part in the meeting, they are deemed to have consented to the use of the technology for that meeting.

24H.3 The following provisions apply to a technology meeting:

- (1) each of the National Council Members taking part in the meeting must be able to hear and be heard by each of the other National Council Members taking part in the meeting; and
- (2) at the commencement of the meeting, each National Council Member must announce his or her presence to all the other National Council Members taking part in the meeting.

24H.4 If the Secretary is not present at a technology meeting, one of the National Council Members present must take minutes of the meeting.

24H.5 A National Council Member may not leave a technology meeting by disconnecting his or her link to the meeting unless that National Council Member has previously notified the National Council Chairperson of the meeting.

24H.6 A National Council Member is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that National Council Member has obtained the express consent of the National Council Chairperson to leave the meeting.

24I Chairing National Council meetings

24I.1 The National Council Chairperson is the Chair of all meetings of the National Council.

24I.2 At a meeting of the National Council if:

- (1) no National Council Chairperson has been appointed as provided by Rule 24E; or
- (2) the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Deputy Chairperson is the Chair of the meeting, but if:

- (3) no National Council Deputy Chairperson has been appointed as provided by Rule 24E; or
- (4) the Deputy Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the National Council Members present must appoint a National Council Member who is present to Chair the meeting.

24J Quorum

24J.1 The quorum for a National Council meeting is half the number of then current National Council Members rounded up to the nearest whole number of National Council Members entitled to vote. The quorum must be present at all times during the meeting.

24K Passing of National Council Members' recommendations

24K.1 A resolution of the National Council must be passed by a majority of the votes cast by National Council Members entitled to vote on the recommendation.

24K.2 The National Council Chairperson has a casting vote if necessary in addition to any vote he or she has as a National Council Member. The Chair has a discretion both as to whether to use the casting vote and as to the way in which it is used.

REMOVAL AND RESIGNATION OF NATIONAL COUNCIL MEMBERS

24L Removal and resignation of National Council Members

24L.1 The Members may, by resolution at General Meeting, remove a National Council Member from that position on the National Council.

24L.2 A National Council Member may resign as a National Council Member by giving a written notice of resignation to the Foundation at its registered office.

24L.3 A National Council Member may be removed from the National Council at the times and in the manner and adopting the procedures directed by the Board from time to time provided that, in each case, the removal takes place in the following manner:

- (1) each Area Committee may by resolution, where not less than half the number of the Area Committee Members plus one are in attendance, remove a National Council Member appointed by that Area Committee; and
- (2) a National Council Member who is removed by resolution under Rule 24L.3(1) must be given written notice of the proposed resolution not less than 7 days prior to the relevant Area Committee meeting.

24M Vacation of position as a National Council Member

24M.1 The position of a National Council Member becomes vacant if the National Council Member:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) 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;
- (3) ceases to be qualified as a National Council Member under Rules 24A.5 or 24A.6; or
- (4) is removed or resigns by resolution in accordance with Rule 24L.

NATIONAL COUNCIL MEMBERS' INTERESTS

24N Prohibition on being present or voting

24N.1 Except where permitted by the Law, a National Council Member who has a material personal interest in a matter that is being considered at a meeting of the National Council:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

24N.2 If a National Council Member who has a material personal interest in a matter that is being considered at a meeting of the National Council is not prohibited by the Law from being present at the meeting and voting, the National Council Member may be present, be counted in the quorum and may be heard but may not vote on the matter.

24O National Council Member to disclose interests

24O.1 A National Council Member who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Foundation must, as soon as practicable after the relevant facts have come to the National Council Member's knowledge, declare the nature of the interest at a meeting of the National Council or by written notice to the Secretary of the Foundation.

24O.2 A National Council Member who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as a National Council Member must declare at a meeting of the National Council or by written notice to the Secretary of the Foundation the fact and the nature, character and extent of the conflict.

24O.3 For the purposes of Rules 24O.1 and 24O.2, a National Council Member's interest or any conflict must be disregarded if it arises from or relates solely to:

- (1) a guarantee to be given by the National Council Member (or by persons including the National Council Member or by a body corporate of which the National Council Member is a member or officer) in respect of a loan to the Foundation; or
- (2) the position of the National Council Member as a Director of a related body corporate.

24P Effect of Interest in Contract

24P.1 If a National Council Member has an interest in a contract or proposed contract with the Foundation (other than as a Member), or a conflicting interest or duty in relation to any other matter being considered by the National Council, and the National Council Member discloses the nature and extent of the interest or duty at a meeting of the National Council or by written notice to the Secretary of the Foundation:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
 - (a) the National Council Member may retain benefits under the contract even though the National Council Member has an interest in the contract;
 - (b) the Foundation cannot void the contract merely because of the existence of the interest; and

-
- (c) the National Council Member is not disqualified from the office of National Council Member.

24P.2 For the purposes of Rule 24P.1, “**contract**” includes an arrangement, dealing or other transaction.

24Q Other Interests

24Q.1 Without limiting Rule 24N or Rule 24O, a National Council Member may to the extent permitted by the Law have an interest in any operation, undertaking or business undertaken or assisted by the Foundation or in which the Foundation is or may be interested.

REMUNERATION OF NATIONAL COUNCIL MEMBERS

24R National Council Members’ remuneration

24R.1 Subject to Rule 24R.2, a National Council Member may receive any remuneration determined by the Board from time to time for his or her services in his or her capacity as a National Council Member of the Foundation.

24R.2 The remuneration referred to in Rule 24R.1 is only effective if and when a resolution for such remuneration is passed by the Members by a majority of 2/3 of the votes cast by Members entitled to vote on the resolution.

24S National Council Members’ expenses

24S.1 The Foundation may pay the National Council Members’ reasonable travelling and other expenses that they properly incur:

- (1) in attending National Council meetings;
- (2) in attending any General Meetings of the Foundation; and
- (3) in connection with the Foundation’s business.

24S.2 The Board must approve the process for the payment of all expenses that the Foundation makes to its National Council Members under Rule 24S.1.

24T Financial benefit

24T.1 To the extent, if any, required by the Law, a National Council Member must ensure that the requirements of the Law are complied with in relation to any financial benefit given by the Foundation to the National Council Member or to any other related party of the National Council Member.

AREA COMMITTEES

25. Area Committees

25.1 An Area Committee shall be formed and maintained for each Area.

25.2 Each Area Committee shall consist of not more than 12 persons (“**Area Committee Members**”), or such other number determined from time to time by ordinary resolution of the Members at a General Meeting.

-
- 25.3 The role and functions of the Area Committee shall be to:
- (1) meet on an as needs basis, but at least 4 times in each year, to discharge its functions;
 - (2) communicate effectively with the Board through the National Council and, subject to the directions of the Board from time to time, with all Stakeholders of the Foundation;
 - (3) provide to the Board and the National Council comment and recommendations as to the development of all areas of policy for the Foundation;
 - (4) consult regularly with all Stakeholders as relevant on issues affecting people with intellectual disability and their families;
 - (5) monitor the provision of services and support by the Foundation within the Area;
 - (6) educate, inform and provide feedback to the Stakeholders within the Area;
 - (7) form active networks of advocacy and linkage within the Area;
 - (8) advance the Foundation's image;
 - (9) assist the Board and the National Council in identifying, allocating and enlisting financial resources for the provision of services and support within the Area;
 - (10) provide to the Board and the National Council information on the needs for services and support in the Area; and
 - (11) such other things as the Board may from time to time determine.

26. Election of Area Committees

- 26.1 To be eligible for election and appointment to an Area Committee, a person:
- (1) must be a Member of the Foundation in the relevant Area; and
 - (2) must not be currently, or at any time in the 24 months prior to the date of appointment, engaged by way of contract or consultancy on a fulltime basis or employed on a fulltime or part time basis by the Foundation.
- 26.2 Except as provided otherwise in this Constitution, all Area Committee Members shall hold their position for terms of 3 years on a rotational basis in accordance with Rule 26.4.
- 26.3 With effect from the date of the meeting of Members approving the adoption of this Rule 26.3, an Area Committee established under Rules 8.3(1), 8.3(3) and 8.3(4) shall consist of the persons ("**Initial Area Committee Members**"):
- (1) appointed for that purpose by the Board; or
 - (2) elected under Rule 26.5.
- 26.4 The rotation of elections of the Area Committee Members for each Area shall take place in the following manner:
- (1) one-third of the Initial Area Committee Members (rounded to the nearest whole number), shall hold their position for the period of approximately 1 year until the first Area Committee election to be held following their initial appointment and shall then retire from the Area Committee;
 - (2) one-third of the Initial Area Committee Members (rounded to the nearest whole number), shall hold their position for the period of approximately 2 years until the second Area Committee

election to be held following their initial appointment and shall then retire from the Area Committee;

- (3) the balance of the Initial Area Committee Members shall hold their position for the period of approximately 3 years until the third Area Committee election to be held following their initial appointment and shall then retire from the Area Committee;
- (4) the Board shall determine which of the Area Committee Members shall retire, and in which order, under sub-Rules (1), (2) and (3) of this Rule 26.4, or shall determine a method by which the relevant Area Committee shall make such determination;
- (5) thereafter, unless provided otherwise in this Constitution, all Area Committee Members shall hold their position for the period of approximately 3 years following his or her election to the Area Committee;
- (6) elections shall be held in accordance with Rule 26.5 to fill all vacancies on the Area Committees; and
- (7) all retiring Area Committee Members are eligible for re-election.

26.5 The election of Area Committees shall take place at the times and in the manner and subject to all other requirements directed by the Board from time to time, provided that all Members in an Area shall:

- (1) be given reasonable notice of all calls for nomination for the Area Committee in that Area;
- (2) be entitled to stand for election to the Area Committee in that Area; and
- (3) be given reasonable notice of all meetings (if any) for the conduct of any such election.

26.6 Each Area Committee shall elect a Chairperson (“**Area Committee Chairperson**”) from amongst their number as soon as reasonably practicable after each election of the Area Committee. Such Chairperson shall chair, and be responsible to convene, all meetings of the Area Committee until the next election for that Area Committee.

26.7 Each Area Committee may determine the quorum for its Area Committee meetings. The quorum must be present at all times during the meeting.

26A Casual Vacancies, Additional Area Committee Members and Insufficient Area Committee Members

26A.1 The Area Committee may at any time appoint a person eligible to be appointed to an Area Committee to fill a casual vacancy so that the total number of Area Committee Members does not at any time exceed the number fixed by the Members in General Meeting for that Area under Rule 25.2.

26A.2 Any Area Committee Member appointed under Rule 26A.1 holds office until the next Area Committee election. That Member is then eligible to be elected to fill the vacancy in accordance with Rule 26.4(6). However, the Member who fills that vacancy at that Area Committee election only holds office until the Area Committee election at which the place of the Area Committee Member who created the vacancy would be, if not for the election, up for election.

26A.3 In the event of a vacancy or vacancies in any Area Committee, the remaining Area Committee Members may act, but if the number of remaining Area Committee Members is not sufficient to constitute a quorum at a meeting of that Area Committee, they may act only for the purpose of increasing the number of Area Committee Members to a number sufficient to constitute a quorum.

26B Removal of Area Committee Members

- 26B.1 In addition to provisions set down in this Constitution and in the By-Laws, a position on an Area Committee becomes vacant if the:
- (1) Area Committee Member who holds the position is absent from 3 consecutive meetings of the Area Committee without special leave of absence from the Area Committee; and
 - (2) Area Committee resolves that the Area Committee Member's position is vacant.
- 26B.2 If the position on the Area Committee that becomes vacant under Rule 26B.1 is not the Area Committee Chairperson:
- (1) the relevant Area Committee Chairperson will write to the Area Committee Member to notify the Area Committee Member of the decision; and
 - (2) a copy of the minutes of the meeting at which the resolution was passed and a copy of the letter to the outgoing member are to be forwarded to the Secretary.
- 26B.3 If the position on the Area Committee that becomes vacant under Rule 26B.1 is the Area Committee Chairperson, on receipt of the minutes of the meeting at which the resolution was passed, the Chairman of the Board will write to the relevant Area Committee Chairperson to notify that Area Committee Chairperson of the decision made by the Area Committee.

DIRECTORS

27. Composition of the Board

[compare section 201A]

- 27.1 The number of the Directors must be not less than 3 nor more than 9.
- 27.2 The Foundation in General Meeting may by resolution increase or reduce the number of Directors but the number may not be reduced below 3.
- 27.3 The Board shall comprise:
- (1) not more than 5 Elected Directors elected and appointed in accordance with Rule 29; and
 - (2) not more than 4 Independent Directors appointed in accordance with Rule 28.5.
- 27.4 No person may be a Director:
- (1) unless that person is a Member of the Foundation; and
 - (2) if that person is a National Council Member.

28. Tenure of the Directors

- 28.1 Unless otherwise provided in this Constitution, subject to Rule 29, each of the Elected Directors shall hold office for a term of 3 years.
- 28.2 Not Used.
- 28.3 Not Used.
- 28.4 The Elected Directors shall be elected in accordance with Rule 29 and appointed at the relevant Annual General Meeting of the Foundation, occurring after the relevant election.

-
- 28.5 The 4 Independent Directors shall be selected and appointed by the Board in its absolute discretion from time to time and shall hold office for a term of 3 years or until they resign or are removed from office by the Board or otherwise in accordance with this Constitution, whichever is earlier.
- 28.6 The selection and appointment of each Independent Director shall be approved by the Foundation in General Meeting at the Annual General Meeting of the Foundation following the appointment of the relevant Independent Director. If such approval is not given the relevant Independent Director shall forthwith cease to be a Director and the Board shall select and appoint a substitute Independent Director as soon as reasonably practicable thereafter in accordance with Rule 28.5 to fill that position.
- 28.7 Notwithstanding any other provision, an Independent Director selected and appointed in accordance with Rule 28.5 shall from the date they are appointed by the Board until the date they cease to hold office, be a Director of the Foundation and able to exercise all powers able to be exercised by a Director.
- 28.8 Subject to Rules 28.5 to 28.7, following the completion of a 3 year term, the Board may, at its absolute discretion, re-appoint an Independent Director.

29. Election of Elected Directors

- 29.1 Unless provided otherwise in this Constitution, all Elected Directors shall hold their position until the end of the third Annual General Meeting following his or her election as an Elected Director.
- 29.2 If an Elected Director would otherwise, by virtue of Rule 29.1, serve on the Board for a term which exceeds their term on the relevant Area Committee, then that Elected Director shall be deemed to retire from the Board at the expiry of their term on the relevant Area Committee. A replacement Elected Director shall be elected, in accordance with Rule 29.3, for the balance of the term for which the retiring Elected Director would, but for this clause, have held office.
- 29.3 The election of the Elected Directors shall take place at the times and in the manner and adopting the procedures directed by the Board from time to time provided that, in each case, the election shall take place in the following manner:
- (1) a postal ballot shall be held amongst the Area Committees for all elections of Elected Directors;
 - (2) each Area Committee may nominate no more than 1 Area Committee Member from its own number for any election of an Elected Director's position;
 - (3) all nominations for election as an Elected Director must be in writing and signed by 2 Members of the relevant Area Committee and also signed by the nominee consenting to such nomination and shall be delivered to and lodged with the Secretary not less than 21 days prior to the date fixed for the holding of the Annual General Meeting at which the election of the Elected Directors is to be made effective;
 - (4) the Board must ensure that the postal ballot is conducted in such a fashion as to enable all Members of all of the Area Committees sufficient opportunity to consider all nominations and to vote accordingly to enable the appointment of the Elected Director to take effect as from the next Annual General Meeting;
 - (5) the Board must ensure that a sufficient period is allowed to complete the postal ballot at least 7 days prior to the holding of the Annual General Meeting at which the results of the election are to be announced and become effective; and
 - (6) the Board must ensure that the results of the election of Elected Directors are announced at the relevant Annual General Meeting.
- 29.4 For the purposes of Rule 29.3(3) a nomination may be delivered to and lodged with the Secretary by:
- (1) delivery to the Foundation's registered office;

-
- (2) sending it to a facsimile number at the Foundation's registered office; or
 - (3) delivering it to a place, facsimile number or electronic mail address specified for the purpose of such nominations.

29.5 Elections shall be held in accordance with this Rule 29 to fill vacancies of Elected Directors.

30. Office Bearers

30.1 The Office Bearers of the Foundation are:

- (1) the Chairperson;
- (2) the Deputy Chairperson.

30.2 Not Used.

30.3 Office Bearers are elected by the Directors from amongst their number at the first meeting of the Board held after each Annual General Meeting of the Foundation.

30.4 The Directors present must appoint one of their number to act as Chair of the meeting for the purpose of the election.

30.5 The election of Office Bearers shall take place in the following manner:

- (1) Each Director standing for election as an Office Bearer must be proposed orally or in writing by another Director.
- (2) If a Director stands for election for more than 1 position as an Office Bearer separate nominations must be received in respect of each position.
- (3) If there is only 1 candidate for election to any Office Bearer position that person is declared elected to that position.
- (4) If there is more than 1 candidate for election to any Office Bearer position a vote by show of hands must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- (5) In the case of an equality of votes in respect of any position a further vote by show of hands must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.

APPOINTMENT OF DIRECTORS BETWEEN ANNUAL GENERAL MEETINGS

31. Casual Vacancies, Additional Directors and Insufficient Directors

[compare replaceable rules 201G and 201H]

31.1 The Foundation in General Meeting may by resolution and the Directors may at any time appoint a person qualified to be an Elected Director to fill a casual vacancy so that the total number of Elected Directors does not at any time exceed the number fixed in accordance with this Constitution.

31.2 Any Elected Director appointed under Rule 31.1 holds office until the end of the next Annual General Meeting of the Foundation. The casual vacancy is then to be filled by election in accordance with Rule 29.3 and the person elected shall hold office until the end of the next Annual General Meeting of the Foundation at which the place of the Elected Director who created the casual vacancy would be, if not for the election, up for election.

-
- 31.3 In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or convening a General Meeting of the Foundation.

ALTERNATE DIRECTORS
[compare replaceable rule 201K]

32. Appointment

- 32.1 A Director may appoint any person who is qualified to be a Director and who is approved by a majority of the other Directors to act as an Alternate Director in place of the appointing Director for a meeting or for a specified period.
- 32.2 An Alternate Director is entitled to receive notice of meetings of the Directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.
- 32.3 When an Alternate Director exercises the Director's powers, the exercise of the power is just as effective as if the powers were exercised by the Director.

33. Suspension or Revocation of Appointment

- 33.1 A Director may revoke or suspend the appointment of an Alternate Director appointed by him or her.
- 33.2 The Directors may suspend or remove an Alternate Director by resolution after giving the appointor reasonable notice of their intention to do so.

34. Form of Appointment, Suspension or Revocation

- 34.1 Every appointment, revocation or suspension under Rules 32 or 33.1 must be in writing and a copy must be given to the Foundation. The notice may be given by facsimile.

35. Termination of Appointment

- 35.1 The appointment of an Alternate Director automatically determines:
- (1) if the appointor ceases to hold office as Director;
 - (2) on the happening in respect of the Alternate Director of any event which causes a Director to vacate the office of Director; or
 - (3) if the Alternate Director resigns from the appointment by written notice left at the registered office of the Foundation.

36. Power to Act as Alternate for More than 1 Director

- 36.1 A Director or any other person may act as Alternate Director to represent more than 1 Director and therefore may exercise more than one deliberative vote.

POWERS OF DIRECTORS

37. Validation of Acts of Directors and Secretaries

[compare sections 201M and 204E]

- 37.1 The acts of a Director or Secretary of the Foundation are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- 37.2 Where a person whose office as Director of the Foundation is vacated under a provision of the Law purports to do an act as a Director of the Foundation, that act is as valid, in relation to a person dealing with the Foundation in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

38. General Business Management

[compare replaceable rule 198A]

- 38.1 The business of the Foundation is to be managed by or under the direction of the Board.
- 38.2 The Board may exercise all the powers of the Foundation except any powers that the Law or this Constitution requires the Foundation to exercise in General Meeting.
- 38.3 No Rule made or resolution passed by the Foundation in General Meeting can invalidate any prior act of the Directors which would have been valid if that Rule or resolution had not been made or passed.
- 38.4 The Board may pay all reasonable expenses incurred in promoting and forming the Foundation.
- 38.5 Without limiting the generality of this Rule 38, but subject to Law, the Directors may exercise all the powers of the Foundation to borrow money, to charge any property or business of the Foundation and to issue debentures or give any other security for a debt, liability or obligation of the Foundation or of any other person.
- 38.6 The Board may make, amend or repeal By-Laws and regulations not inconsistent with this Constitution for the general conduct and management of the Foundation and the business of the Board.

39. Appointment of Attorney

- 39.1 The Directors may appoint any person or persons to be the Attorney or Attorneys of the Foundation for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Directors), for the period and subject to the conditions they see fit.
- 39.2 A Power of Attorney may contain those provisions for the protection and convenience of persons dealing with the Attorney that the Directors see fit.

40. Negotiable Instruments

[compare replaceable rule 198B]

- 40.1 Any 2 Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 40.2 The Directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

CHIEF EXECUTIVE OFFICER
[compare replaceable rule 201J]

41. Appointment and Powers

- 41.1 The Directors may appoint any person, to the position of Chief Executive Officer (the “**Chief Executive Officer**”) for the period and on the terms (including as to remuneration) the Directors see fit.
- 41.2 The Directors may, upon terms and conditions and with any restrictions they see fit, confer on a Chief Executive Officer any of the powers that the Directors can exercise.
- 41.3 The Directors may revoke or vary:
- (1) an appointment of; or
 - (2) any of the powers conferred on,
a Chief Executive Officer.
- 41.4 If the Chief Executive Officer becomes incapable of acting in that capacity the Directors may appoint any other person, not being a Director, to act temporarily as Chief Executive Officer.

DIRECTORS’ MEETINGS
[compare sections 248A to 248G]

42. Circulating Resolutions
[compare replaceable rule 248A]

- 42.1 The Directors may pass a resolution without a Directors’ meeting being held if all the Directors entitled to vote on the resolution, except a Director absent from Australia who has not left a facsimile number or electronic mail address at which he or she may be given notice, sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- 42.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 42.3 The resolution is passed when the last Director signs.
- 42.4 A facsimile or electronic mail addressed to or received by the Foundation and purporting to be signed or sent by a Director for the purpose of this Rule 42 must be treated as a document in writing signed by that Director.

43. Meetings of Board

- 43.1 The Board must meet on an as needs basis, but at least 6 times in each year, for the discharge of their role and duties and may otherwise adjourn and otherwise regulate their meetings as they see fit.
- 43.2 The minutes of any meeting of the Board must state the method of meeting and the persons present.
- 43.3 A Director may at any time, and a Secretary must on the requisition of a Director, call a meeting of the Board.
- 43.4 Reasonable notice of every Board meeting and the nature of business to be addressed must be given to each Director and Alternate Director except that it is not necessary to give notice of a meeting of Directors to any Director who:

-
- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a facsimile number or electronic mail address at which he or she may be given notice.
- 43.5 Any notice of a meeting of the Board must be given in writing, whether by facsimile, electronic mail or other accepted means of visual communication.

44. Technology Meeting of Directors

[compare section 248D]

- 44.1 A Directors' meeting may be held using any telephone, teleconference or any other technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw the consent within a reasonable period before the meeting.
- 44.2 If a Directors' meeting is held using any technology and all the Directors take part in the meeting, they shall be deemed to have consented to the use of the technology for that meeting.
- 44.3 The following provisions apply to a technology meeting:
- (1) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
- (2) at the commencement of the meeting each Director must announce his or her presence to all the other Directors taking part in the meeting.
- 44.4 If the Secretary is not present at a technology meeting one of the Directors present must take minutes of the meeting.
- 44.5 A Director may not leave a technology meeting by disconnecting his or her link to the meeting unless that Director has previously notified the Chair of the meeting.
- 44.6 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the Chair to leave the meeting.

45. Chairing Directors' Meetings

[compare replaceable rule 248E]

- 45.1 The Chairperson is the Chair of all meetings of the Board.
- 45.2 At a meeting of the Board if:
- (1) no Chairperson has been elected as provided by Rule 30.5; or
- (2) the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the Deputy Chairperson is the Chair of the meeting, but if:
- (3) no Deputy Chairperson has been elected as provided by Rule 30.5; or
- (4) the Deputy Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the Directors present must elect a Director present to chair the meeting.

46. Quorum

[compare replaceable rule 248F]

- 46.1 The quorum for a Directors' meeting is half the number of then current Board rounded up to the nearest whole number of Directors entitled to vote or a greater number determined by the Directors. The quorum must be present at all times during the meeting.
- 46.2 An Alternate Director is counted in a quorum at a meeting at which the Director who appointed the Alternate Director is not present (so long as the Alternate Director is, under the Law, entitled to vote).

47. Passing of Directors' Resolutions

[compare replaceable rule 248G]

- 47.1 A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 47.2 The Chair has a casting vote if necessary in addition to any vote he or she has as a Director. The Chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 47.3 A person who is an Alternate Director is entitled (in addition to his or her own vote if he or she is a Director) to 1 vote on behalf of each Director whom he or she represents as an Alternate Director at the meeting and who is not present at the meeting.

COMMITTEES OF DIRECTORS

48. Committees of Directors

[compare replaceable rule 198D]

- 48.1 The Directors may delegate any of their powers to a Committee of Directors. Such Committees will adopt charters relevant to the composition, responsibility and administration of such Committees, however, no person that is a National Council Member may be a member of a Committee of Directors.
- 48.2 A Committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the Committee exercising a power in this way is the same as if the Directors exercised it.
- 48.3 The meetings and proceedings of any Committee consisting of 2 or more Directors are governed by the provisions in this Constitution regulating the meetings and proceedings of the Directors.

REMOVAL AND RESIGNATION OF DIRECTORS

49. Removal and Resignation of Directors

[compare section 203D]

- 49.1 Subject to the Law the Foundation may by resolution remove a Director from office.
- 49.2 A Director may resign as a Director of the Foundation by giving a written notice of resignation to the Foundation at its registered office.

50. Vacation of Office of Director

[compare section 206B]

- 50.1 In addition to any other circumstances in which the office of a Director becomes vacant under the Law, the office of a Director becomes vacant if the Director:
- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
 - (2) 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;
 - (3) is absent from 3 consecutive meetings of Directors without special leave of absence from the Directors and the Directors declare his or her seat to be vacant;
 - (4) ceases to be qualified as Director under Rule 27.4;
 - (5) becomes prohibited from being a Director under or by reason of any order made under the Law; or
 - (6) is removed or resigns by resolution in accordance with Rule 49.

DIRECTORS' INTERESTS

51. Prohibition on Being Present or Voting

[compare section 195]

- 51.1 Except where permitted by the Law a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:
- (1) must not be counted in a quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.
- 51.2 If a Director who has a material personal interest in a matter that is being considered at a meeting of the Directors is not prohibited by the Law from being present at the meeting and voting, the Director may be present, be counted in the quorum and may be heard but may not vote on the matter.

52. Director to Disclose Interests

[compare section 191]

- 52.1 A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Foundation must, as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of the interest at a meeting of the Directors or by written notice to the Secretary of the Foundation.
- 52.2 A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as Director must declare at a meeting of the Directors of the Foundation or by written notice to the Secretary of the Foundation the fact and the nature, character and extent of the conflict.
- 52.3 For the purposes of Rules 52.1 and 52.2, a Director's interest or any conflict must be disregarded if it arises from or relates solely to:
- (1) a guarantee to be given by the Director (or by persons including the Director or by a body corporate of which the Director is a member or officer) in respect of a loan to the Foundation; or

-
- (2) the position of the Director as a Director of a related body corporate.

53. Effect of Interest in Contract

[compare replaceable rule 194]

53.1 If a Director has an interest in a contract or proposed contract with the Foundation (other than as a Member), or a conflicting interest or duty in relation to any other matter being considered by the Directors, and the Director discloses the nature and extent of the interest or duty at a meeting of the Directors or by written notice to the Secretary of the Foundation:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
 - (a) the Director may retain benefits under the contract even though the Director has an interest in the contract;
 - (b) the Foundation cannot avoid the contract merely because of the existence of the interest; and
 - (c) the Director is not disqualified from the office of Director.

53.2 For the purposes of Rule 53.1 “**contract**” includes an arrangement, dealing or other transaction.

54. Other Interests

54.1 Without limiting Rule 52 or Rule 53 a Director may to the extent permitted by the Law:

- (1) hold any other office or place of profit under the Foundation (other than the office of auditor) in conjunction with the office of Director; and
- (2) be interested in any operation, undertaking or business undertaken or assisted by the Foundation or in which the Foundation is or may be interested.

REMUNERATION OF DIRECTORS

55. No Directors’ Remuneration

[compare section 150]

55.1 Subject to Rule 55.2 a Director may receive any remuneration determined by the Board from time to time for his or her services in his or her capacity as a Director of the Foundation.

55.2 Subject to Rule 55.3, the remuneration referred to in Rule 55.1 is only effective if and when a resolution for such remuneration is passed by the Members by a majority of 2/3 of the votes cast by Members entitled to vote on the resolution.

55.3 For the avoidance of doubt, and notwithstanding any other provision, the Board may in its sole and absolute discretion determine the remuneration payable to the Chief Executive Officer.

56. Directors’ Expenses

56.1 Despite Rule 55 the Foundation may pay the Directors’ travelling and other reasonable expenses that they properly incur:

- (1) in attending Directors’ meetings or any meetings of Committees of Directors;

(2) in attending any General Meetings of the Foundation; and

(3) in connection with the Foundation's business.

56.2 Subject to a resolution of the Members provided for in Rule 55.2 the Directors must approve all payments the Foundation makes to its Directors.

57. Financial Benefit

[compare Chapter 2E - sections 207 and following]

57.1 To the extent, if any, required by the Law, a Director must ensure that the requirements of the Law are complied with in relation to any financial benefit given by the Foundation to the Director or to any other related party of the Director.

SECRETARY

58. Terms of Office of Secretary

[compare replaceable rule 204F]

58.1 The Board must appoint a Secretary of the Foundation to hold office on the terms and conditions (including as to remuneration) that the Directors determine.

INDEMNITY AND INSURANCE

59. Indemnity

[compare section 199A]

59.1 To the extent permitted by the Law, the Foundation indemnifies:

- (1) every person who is or has been an Officer of the Foundation; and
- (2) where the Board of Directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Foundation;

against any liability incurred by that person in his or her capacity as an Officer of the Foundation or of the related body corporate (as the case may be).

59.2 In accordance with section 199A of the Law, the Foundation must not indemnify a person against:

- (1) any of the following liabilities incurred as an Officer of the Foundation:
 - (a) a liability owed to the Foundation or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law; or
 - (c) a liability that is owed to someone other than the Foundation or a related body corporate and did not arise out of conduct in good faith; or
 - (2) legal costs incurred in defending an action for a liability incurred as an Officer of the Foundation if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under Rule 59.2(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
-

-
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Law in which the Court denies the relief.

Rule 59.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investment Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of Rule 59.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

60. Insurance

[compare section 241A]

60.1 The Foundation may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an Officer of the Foundation or a related body corporate of the Foundation against any liability incurred by the person as an Officer of the Foundation or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Foundation; or
- (2) a contravention of section 184 of the Law.

60.2 In the case of a Director, any premium paid under this Rule is not remuneration for the purpose of Rule 55.

61. Director Voting on Contract of Insurance

[compare section 191(2)(vi)]

61.1 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the Director against a liability incurred by the Director as an Officer of the Foundation or of a related body corporate.

62. Liability

62.1 No Officer of the Foundation is liable for the act, neglect or default of any other Officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

63. Not Used

INSPECTION OF RECORDS

64. Rights of Inspection

[compare replaceable rule 247D and sections 173, 247A and 251B]

64.1 The Directors of the Foundation, or the Foundation by a resolution passed at a General Meeting, may authorise a Member to inspect books of the Foundation.

64.2 A Member other than a Director does not have the right to inspect any document of the Foundation, other than the minute books for the meetings of its Members and for resolution of Members passed without meetings, except as provided by Law or authorised by the Directors or by the Foundation in General Meeting.

65. Confidential Information

65.1 Except as provided by the Law, no Member (not being a Director) is entitled to require or receive any information concerning the business, trading or customers of the Foundation or any trade secret, secret process or other confidential information of or used by the Foundation.

MEETINGS OF MEMBERS

66. General Meetings

[compare sections 250N, replaceable rule 249C and section 249D]

66.1 A majority of Directors may call a General Meeting whenever they see fit.

66.2 Except as permitted by Law, a General Meeting, to be called the “**Annual General Meeting**”, must be held within 6 months after the end of the reportable financial year.

66.3 Except as provided in the Law, no Member or Members may call a General Meeting.

66.4 No Member may at any meeting move any resolution except in accordance with the Law.

67. Business of an Annual General Meeting

[compare sections 250R, 250S and 250T]

67.1 The business of an Annual General Meeting may include any of the following, even if not referred to in the Notice of Meeting:

- (1) the consideration of the annual financial report, Directors’ report and auditor’s report;
- (2) the announcement of the results of the election of Elected Directors;
- (3) the appointment of the auditor;
- (4) the fixing of the auditor’s remuneration; and
- (5) the announcement of the results of the appointments made by the Area Committees to the National Council.

All other business transacted at an Annual General Meeting and all other business transacted at any other General Meeting is special business.

67.2 The business of the Annual General Meeting also includes any other business which under this Constitution or the Law ought to be transacted at an Annual General Meeting.

67.3 The Chair of the Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Foundation.

67.4 If the Foundation’s auditor or the auditor’s representative is at the meeting, the Chair of an Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor’s report.

68. Notice of General Meetings

[compare section 249H]

- 68.1 Subject to the provisions of the Law as to short notice, at least 21 days' notice of a General Meeting must be given in writing to those persons who are entitled to receive notices from the Foundation.
- 68.2 Written notice of a meeting of the Foundation's Members must be given individually to:
- (1) each Member entitled to vote at the meeting;
 - (2) each Director; and
 - (3) the Foundation's auditor.
- 68.3 No other person is entitled to receive notice of General Meetings.
- 68.4 The Foundation may give the Notice of Meeting to a Member:
- (1) personally;
 - (2) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member; or
 - (3) by sending it to the facsimile number or electronic address (if any) nominated by the Member.

69. When Notice is Given

[compare replaceable rule 249J(4)]

- 69.1 A Notice of Meeting sent by post is taken to be given on the second Business Day after it is posted.
- 69.2 Except as provided by Rule 69.3, a Notice of Meeting sent by facsimile, or other electronic means, is taken to be given on the Business Day after it is sent.
- 69.3 Service by facsimile or electronic mail is not effective if:
- (1) in the case of service by facsimile, the Foundation's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Foundation's computer reports that delivery has failed; or
 - (3) in either case the addressee notifies the Foundation immediately that the notice was not fully received in a legible form.
- 69.4 A certificate signed by any Manager, Secretary or other Officer of the Foundation that the notice was posted or given in accordance with this Rule 69 is conclusive evidence of the matter.

70. Contents of Notice

[compare replaceable rule 249L]

- 70.1 A notice of a General Meeting must:
- (1) 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);
 - (2) state the general nature of the meeting's business;

-
- (3) 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
 - (4) contain a statement setting out the following information:
 - (a) that the Member has a right to appoint a Proxy; and
 - (b) that the Proxy need not be a Member of the Foundation.

71. Notice of Adjourned Meeting

[replaceable rule 249M]

- 71.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

72. Accidental Omission to Give Notice

[compare section 1322(3)]

- 72.1 The accidental omission to give notice of any General Meeting to or the non-receipt of the notice by any person entitled to receive notice of a General Meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

73. Postponement of General Meeting

- 73.1 The Directors may postpone the holding of any General Meeting whenever they see fit (other than a meeting requisitioned by Members as provided by the Law) for not more than 42 days after the date for which it was originally called.
- 73.2 Whenever any meeting is postponed (as distinct from being adjourned under Rule 75.3 or Rule 76.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

74. Technology

[section 249S]

- 74.1 The Foundation may hold a meeting of its Members at multiple venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

75. Quorum

[compare replaceable rule 249T]

- 75.1 The quorum for a meeting of the Foundation's Members is 20 Members entitled to vote being personally present and present at all times during the meeting.
- 75.2 In determining whether a quorum is present, individuals attending as Proxies or body corporate representatives are counted. If an individual is attending both as a Member and as a Proxy or body corporate representative, the individual is counted only once.
- 75.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the Notice of Meeting:
- (1) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or

(2) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify 1 or more of those things, the meeting is adjourned to:

(a) if the date is not specified - the same day in the next week;

(b) if the time is not specified - the same time; and

(c) if the place is not specified - the same place.

75.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

76. Chair at General Meetings

[compare replaceable rule 249U]

76.1 The Chairperson, if present, presides as Chair at every General Meeting.

76.2 Where a General Meeting is held and:

(1) there is no Chairperson; or

(2) the Chairperson is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Deputy Chairperson if present presides as Chair of the meeting or, if the Deputy Chairperson is not present or is unwilling to act, the Directors present may appoint 1 of their number to be Chair of the meeting and in default of their doing so the Members present may appoint any 1 of their number to be Chair of the meeting.

76.3 The Chair must adjourn a meeting of the Foundation's Members if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

77. Business at Adjourned Meetings

[replaceable rule 249W(2)]

77.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

PROXIES AND BODY CORPORATE REPRESENTATIVES

78. Who Can Appoint a Proxy

[compare mandatory rule 249X]

78.1 A Member who is entitled to attend and cast a vote at a meeting of the Foundation's Members may appoint a person as the Member's Proxy to attend and vote for the Member at the meeting. The Proxy need not be a Member.

79. Rights of Proxies

[compare section 249Y]

79.1 A Proxy appointed to attend and vote for a Member has the same rights as the Member:

(1) to speak at the meeting;

(2) to vote (but only to the extent allowed by the appointment); and

-
- (3) to join in a demand for a poll.
- 79.2 If a Proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the Proxy states otherwise.
- 79.3 A Proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.
- 79.4 A Proxy may be revoked at any time by notice in writing to the Foundation.

80. When Proxy Form Must Be Sent to All Members

[section 249Z]

- 80.1 If the Foundation sends a Member a Proxy appointment form for a meeting or a list of persons willing to act as Proxies at a meeting:
- (1) if the Member requested the form or list - the Foundation must send the form or list to all Members who ask for it and who are entitled to appoint a Proxy to attend and vote at the meeting; or
 - (2) otherwise - the Foundation must send the form or list to all its Members entitled to appoint a Proxy to attend and vote at the meeting.

81. Appointing a Proxy

[compare section 250A]

- 81.1 An appointment of a Proxy is valid if it is signed by the Member making the appointment and contains the following information:
- (1) the Member's name and address;
 - (2) the Foundation's name;
 - (3) the Proxy's name or the name of the office held by the Proxy; and
 - (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

- 81.2 An undated appointment is taken to have been dated on the day it is given to the Foundation.

- 81.3 An appointment may specify the way the Proxy is to vote on a particular resolution. If it does:

- (1) the Proxy need not vote on a show of hands, but if the Proxy does so, the Proxy must vote that way;
- (2) if the Proxy has 2 or more appointments that specify different ways to vote on the resolution - the Proxy must not vote on a show of hands;
- (3) if the Proxy is the Chair - the Proxy must vote on a poll, and must vote that way;
- (4) if the Proxy is not the Chair - the Proxy need not vote on a poll, but if the Proxy does so, the Proxy must vote that way.

If a Proxy is also a Member, this Rule 81.3 does not affect the way that the person can cast any votes the person holds as a Member.

- 81.4 An appointment does not have to be witnessed.

81.5 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

82. Form of Proxy Sent Out by Foundation

- 82.1 A form of Proxy sent out by the Foundation may be in a form determined by the Directors but must:
- (1) enable the Member to specify the manner in which the Proxy must vote in respect of a particular transaction; and
 - (2) leave a blank for the Member to fill in the name of the person primarily appointed as Proxy.
- 82.2 The form may provide that if the Member leaves it blank as to the person primarily appointed as Proxy or if the person or persons named as Proxy fails or fail to attend, the Chair of the meeting is appointed Proxy.
- 82.3 Despite Rule 82.1 an instrument appointing a Proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

ENDEAVOUR FOUNDATION

ACN 009 670 704

I/We, _____ of _____, being a Member/Members of the abovenamed Foundation, appoint _____ of _____ or, in his or her absence, _____ of _____ as my/our Proxy to vote for me/us on my/our behalf at the *Annual General/*General Meeting of the Foundation to be held on _____ and at any adjournment of that meeting.

† This form is to be used *in favour of/*against the resolution.

Signed on _____ .

* Strike out whichever is not desired.

† To be inserted if desired.

83. Receipt of Proxy Documents

[compare section 250B]

- 83.1 For an appointment of a Proxy for a meeting of the Foundation's Members to be effective, the following documents must be received by the Foundation at least 48 hours before the meeting:
- (1) the Proxy's appointment; and
 - (2) if the appointment is signed by the appointor's Attorney - the authority under which the appointment was signed or a certified copy of the authority.
- 83.2 If a meeting of the Foundation's Members has been adjourned, an appointment and any authority received by the Foundation at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 83.3 The Foundation receives an appointment or authority when it is received at any of the following:
- (1) the Foundation's registered office;
 - (2) a facsimile number at the Foundation's registered office; or

-
- (3) a place, facsimile number or electronic mail address specified for the purpose in the Notice of Meeting.

83.4 An appointment of a Proxy is ineffective if:

- (1) the Foundation receives either or both the appointment or authority at a fax number or electronic address; and
 - (2) a requirement (if any) in the Notice of Meeting that:
 - (a) the transmission be verified in a way specified in the notice; or
 - (b) the Proxy produce the appointment and authority (if any) at the meeting;
- is not complied with.

84. Validity of Proxy Vote

[section 250C(1) and compare replaceable rule 250C(2)]

84.1 A Proxy who is not entitled to vote on a resolution as a Member may vote as a Proxy for another Member who can vote if the appointment specifies the way the Proxy is to vote on the resolution and the Proxy votes that way.

84.2 Unless the Foundation has received written notice of the matter before the start or resumption of the meeting at which a Proxy votes, a vote cast by the Proxy will be valid even if, before the Proxy votes:

- (1) the appointing Member dies;
- (2) the Member is mentally incapacitated;
- (3) the Member revokes the Proxy's appointment; or
- (4) the Member revokes the authority under which the Proxy was appointed by a 3rd party.

85. Body Corporate Representative

[section 250D]

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

- (1) at meetings of the Foundation's Members;
- (2) at meetings of creditors or debenture holders; or
- (3) relating to resolutions to be passed without meetings.

The appointment may be a standing one.

85.2 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.

85.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

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

86. Attorney of Member

86.1 An Attorney for a Member may do whatever the Member could do personally as a Member, but if the Attorney is to vote at a meeting of Members or a class of Members the instrument conferring the Power of Attorney or a certified copy of the authority must be produced to the Foundation at least 24 hours before the meeting, in the same way as the appointment of a Proxy.

VOTING AT MEETINGS OF MEMBERS

87. How Vote May Be Exercised

87.1 Subject to Rules 88 and 89 at any General Meeting of Members, each Ordinary Member, each Life Member and each Honorary Life Member present has 1 vote on a show of hands and on a poll.

87.2 The vote may be exercised in person or by Proxy, body corporate representative or Attorney.

87.3 Notwithstanding any other provision, the Board may allow postal votes on any matter for which Members are entitled to vote and, if so, shall direct the manner in which the postal vote is to be conducted so as to ensure all Members have an equal right to vote on the matter being determined.

88. Voting Disqualification

88.1 A Member is not entitled to vote at a General Meeting if:

- (1) the Membership Fee of the Member; or
- (2) in the case of a person who is a Nominated Representative, the Membership Fee of the Corporate Member for which he or she is the Nominated Representative;

is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

89. Objections to Right to Vote

[compare replaceable rule 250G]

89.1 A challenge to a right to vote at a meeting of Members:

- (1) may only be made at the meeting; and
- (2) must be determined by the Chair, whose decision is final.

89.2 A vote not disallowed following the challenge is valid for all purposes.

90. How Voting is Carried Out

[compare replaceable rule 250J, section 251A]

90.1 A resolution put to the vote at a meeting of the Foundation's Members must be decided on a show of hands unless a poll is demanded.

90.2 On a show of hands, a declaration by the Chair is conclusive evidence of the result. Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

91. Matters on Which a Poll May Be Demanded

[compare section 250K]

91.1 A poll may be demanded on any resolution.

91.2 A demand for a poll may be withdrawn.

92. When a Poll is Effectively Demanded

[compare section 250L]

92.1 At a meeting of the Foundation's Members, a poll may be demanded by:

(1) at least 3 Members entitled to vote on the resolution; or

(2) the Chair.

92.2 The poll may be demanded:

(1) before a vote is taken;

(2) before the voting results on a show of hands are declared; or

(3) immediately after the voting results on a show of hands are declared.

93. When and How Polls Must Be Taken

[compare replaceable rule 250M]

93.1 A poll demanded on a matter other than the election of a Chair or the question of an adjournment must be taken when and in the manner the Chair directs.

93.2 A poll on the election of a Chair or on the question of an adjournment must be taken immediately.

93.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

93.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

94. Chair's Casting Vote

[compare replaceable rule 250E(3)]

94.1 In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a Member or Proxy.

94.2 The Chair has a discretion both as to use of the casting vote and as to the way in which it is used.

MINUTES

95. Minutes to be Kept

[compare section 251A]

- 95.1 The Directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Foundation's Members;
 - (2) proceedings and resolutions of Directors' meetings (including meetings of a Committee of Directors);
 - (3) resolutions passed by Members without a meeting; and
 - (4) resolutions passed by Directors without a meeting.
- 95.2 The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the Chair of the meeting; or
 - (2) the Chair of the next meeting.
- 95.3 The Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- 95.4 Without limiting Rule 95.1 the Directors must record in the minute books:
- (1) all appointments of Officers and executive employees;
 - (2) the names of the Directors and Alternate Directors present at all meetings of Directors and the Foundation; and
 - (3) the method by which a meeting of Directors was held.

ACCOUNTS, AUDIT AND RECORDS

96. Accounts

[compare sections 285-297, 314-317]

- 96.1 The Directors must cause proper accounting and other records to be kept in accordance with the Law.
- 96.2 The Directors must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by Law to be attached to them) as required by the Law.

97. Audit

[compare sections 301, 327-331]

- 97.1 A registered company auditor must be appointed.
- 97.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Law.

EXECUTION OF DOCUMENTS

98. Common Seal

98.1 The Foundation may, but need not, have a Common Seal.

99. Use of Common Seal

[compare sections 127(2) and 129(6)]

99.1 If the Foundation has a Common Seal the Directors must provide for its safe custody.

99.2 The Common Seal may not be fixed to any document except by the authority of a resolution of the Directors or of a Committee of the Directors duly authorised by the Directors.

99.3 The Foundation executes a document with its Common Seal if the fixing of the seal is witnessed by:

- (1) 2 Directors of the Foundation; or
- (2) a Director and a Secretary of the Foundation.

100. Execution - General

[compare sections 129(5), 129(6) and 127(4)]

100.1 The Foundation may execute a document without using a Common Seal if the document is signed by:

- (1) 2 Directors of the Foundation; or
- (2) a Director and a Secretary of the Foundation.

100.2 The same person may not sign in the dual capacities of Director and Secretary.

100.3 A Director may sign any document as Director, with or without the Common Seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this Constitution as to execution despite his or her interest.

100.4 Rules 99 and 100.1 do not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Foundation.

INADVERTENT OMISSIONS

101. Formalities Omitted

[compare section 1322]

101.1 If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

WINDING UP

102. Alterations

102.1 The Australian Taxation Office and if required by Law, the Australian Securities & Investments Commission, and any other regulated authority must be notified in writing of any alterations to this Constitution.

103. Winding Up

103.1 If the Foundation is wound up or if the endorsement of the Foundation as a Deductible Gift Recipient is revoked, the following assets remaining after payment of the Foundation's liabilities shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made:

- (a) Gifts of money or property for the principal purpose of the Foundation;
- (b) Contributions made in relation to an eligible fundraising event held for the principal purpose of the Foundation; and
- (c) Money received by the Foundation because of such gifts and contributions.

103.2 The Board may determine the identity of the institution or institutions for the purpose of Rule 103.1 at the time of dissolution.

103.3 If the Board fails to determine the identity of the institution or institutions under Rule 103.2, the Supreme Court of Queensland may make that determination.

**By Laws
Of
Endeavour Foundation
By-Law 02/02**

**Election of Area Committees
Election of Elected Directors
Re-appointment of Independent Directors**

1. Definitions and Interpretations

1.1 Definitions

In these By-Laws:

- (1) "AGM" means the relevant Annual General Meeting of the Foundation;
- (2) "Constitution" means the constitution of the Endeavour Foundation adopted by the Members of the Endeavour Foundation at its Annual General Meeting in November 2001;
- (3) All other expressions have the same meaning as ascribed to them in the Constitution.

2. Election of Area Committee Members (Constitution Rule 26)

- 2.1 The 12 Area Committee Members for each Area, which are provided for in the Constitution, are to be elected to, and to serve on, the Area Committee on a rotational basis as required by rule 26.4 of the Constitution.
- 2.2 The ballot for the election of one-third of the Area Committee Members is to occur each year in accordance with this By-Law 2.
- 2.3 No more than [6 months] and no less than [5 months] prior to each AGM the Company Secretary shall cause to be sent to the [Members of each Area] a written notice advising of the forthcoming election of Area Committee Members and calling for nominations of Members in the Area to stand for election in such capacity (see rule 26.1).
- 2.4 Nominations must be returned to the Company Secretary in person or by post, to reach the Company Secretary no later than the date which is 4 months and 7 days prior to the AGM.
- 2.5 All nominations must be made in writing and signed by 2 Members and also by the Member who is nominated for election to the Area Committee and must be accompanied by a profile of the nominee, being no longer than one page, which profile must include the:
 - (1) Name of the nominee;
 - (2) Area Committee for which the nominee is seeking election;
 - (3) Whether the nominee is then presently an Area Committee Member;

- (4) Any previous period or periods for which the nominee has served on the Area Committee or any other Area Committee;
 - (5) A brief outline of the history of the nominee's involvement, if any, with Endeavour;
 - (6) Any other information which the Board requires from time to time and which is notified to the Area Committee Members by the Company Secretary, under the direction of the Board, when giving the notice under By-Law 2.3; and
 - (7) Any other information which the nominee thinks may be of relevance to persons participating in the election of Area Committee Members.
- 2.6 The Company Secretary shall cause to be prepared, and posted to all Members in each Area, numbered ballot papers for the conduct of the ballot for the election of the relevant number of Area Committee Members for each Area. The ballot papers shall be:
- (1) accompanied by the profiles of each nominee provided under By-Law 2.5; and
 - (2) posted to the Area Committee Members no later than 5pm on the day which is 4 months prior to the AGM.
- 2.7 When voting, Members shall not be required to identify themselves on the ballot papers, but shall be entitled to complete and return only the numbered ballot paper which is sent to that Member by the Company Secretary.
- 2.8 All duly completed ballot papers must be returned to the Company Secretary in person or by post to reach the Company Secretary no later than 1pm on the date which is 21 days after to the ballot papers are posted out under By-Law 2.6. This date, on which the ballots are required to be returned, must be specified clearly in a notice accompanying the ballot papers.
- 2.9 The Company Secretary and Internal Auditor shall act as returning officers to count the ballots and determine results of the election of Area Committee Members, on a first past the post basis, by no later than 5pm on the date which is 21 days after the ballot papers are posted out under By-Law 2.6.
- 2.10 The chair of each Area Committee shall be entitled to nominate a scrutineer to be present at the time the returning officers count the ballots and determine the results of the election under By-Law 2.9. For avoidance of doubt, the Endeavour Foundation shall not bear travelling costs for scrutineers.
- 2.11 [In the event of a tied ballot, the outcome of the election, as between the tied nominees shall be determined by the Company Secretary drawing lots.]
- 2.12 The results of the election of Area Committee Members shall be published in appropriate manner, as determined by the Board, within 7 days after completion of the ballot.
- 3. Election of Elected Directors to the Board (Constitution Rule 29)**
- 3.1 The 5 Elected Directors provided for in the Constitution are to be elected on a rotational basis to the Board as required by rule 27.3 of the Constitution. At the AGM which is held one year after the adoption of the Constitution (ie to be held in

November 2002), a ballot shall be held in accordance with this By-Law 3 to elect all 5 Elected Directors.

- 3.2 After the election of the 5 Elected Directors at the AGM in 2002, the Elected Directors shall be rotated on the basis that each Elected Director serves for a period of 3 years, with 2 Elected Directors standing down at each AGM except in each third year, at which time 1 Elected Director stands down (rule 29.1). The ballot for the election of Elected Directors is to occur each year in accordance with this By-Law 3. In this By-Law a reference to Elected Directors standing down shall be read, where the context requires, to refer to a single Elected Director standing down in each 3 year cycle.
- 3.3 No earlier than [3 months] and no later than [2 months] prior to each AGM the Company Secretary shall cause to be sent to the [Area Committee Members/chair of each Area Committee] a written notice advising of the forthcoming election of Elected Directors and of the entitlement of each Area Committee to nominate one of its number to stand for election in such capacity (see rule 29.3(2)).
- 3.4 The Area Committee must hold a meeting, held in accordance with the Constitution, to determine by ordinary resolution of the Area Committee the nominee, if any, to be put forward by the Area Committee in accordance with By-Law 3.5.
- 3.5 If the Area Committee determines that it wishes to nominate one of its number to stand for election as an Elected Director, the Area Committee must notify the Company Secretary in writing of the nomination no later than 5pm on the date which is 21 days prior to the AGM (see rule 29.3(3)).
- 3.6 A nomination by an Area Committee under By-Law 2.4 must be in writing and signed by 2 members of the relevant Area Committee and signed by the nominee (see rule 29.3(3)) and shall be accompanied by a profile of the nominee, being no longer than one page, which profile must include the:
 - (1) Name of the nominee;
 - (2) Area Committee from which the nominee is drawn;
 - (3) The period for which the nominee has served on the Area Committee;
 - (4) When the nominee's position on the Area Committee will expire;
 - (5) Any other information which the Board requires from time to time and which is notified to the Area Committee Members by the Company Secretary, under the direction of the Board, when giving the notice under By-Law 3.3; and
 - (6) Any other information which the Area Committee thinks may be of relevance to persons participating in the election of Elected Directors.
- 3.7 The Company Secretary shall cause to be prepared, and posted to all Area Committee Members, numbered ballot papers for the conduct of the ballot for the election of the Elected Directors. The ballot papers shall be:
 - (1) authenticated by the Chief Executive Officer initialling same;
 - (2) accompanied by the profiles of each nominee provided under By-Law 3.6;
 - (3) posted to the Area Committee Members no later than 5pm on the day which is 16 days prior to the AGM.

- 3.8 When voting, Area Committee Members shall not be required to identify themselves on the ballot papers, but shall be entitled to complete and return only the numbered ballot paper which is sent to that Area Committee Member by the Company Secretary.
- 3.9 Subject to By-Law 3.10, all duly completed ballot papers must be returned to the Company Secretary in person or by post to reach the Company Secretary no later than 1pm on the date which is 7 days prior to the AGM. This date, on which the ballots are required to be returned, must be specified clearly in a notice accompanying the ballot papers.
- 3.10 [Notwithstanding By-Law 3.9, an Area Committee Member may return their ballot paper to the Company Secretary by facsimile transmission provided that the original authenticated ballot paper is produced to the Company Secretary at least 4 days prior to the AGM, failing which the vote shall be deemed invalid.
- 3.11 The Company Secretary and the Internal Auditor shall act as returning officers to count the ballots and determine results of the election of Elected Directors, on a first past the post basis, by no later than 5pm on the date which is 7 days prior to the AGM.
- 3.12 The chair of each Area Committee shall be entitled to nominate a scrutineer to be present at the time the returning officers count the ballots and determine the results of the election under By-Law 3.11. For avoidance of doubt, the Endeavour Foundation shall not bear travelling costs for scrutineers.
- 3.13 [In the event of a tied ballot, the outcome of the election, as between the tied nominees shall be determined by the Company Secretary drawing lots.]
- 3.14 The results of the election of Elected Directors shall be declared at the AGM in accordance with rule 29.3(6) of the Constitution.

4. Re-appointment of Independent Directors to the Board (Constitution Rule 28.8)

- 4.1 An Independent Director is, at the absolute discretion of the Board, eligible for re-appointment following the completion of a 3 year term (Rule 28.8 of the Constitution refers).
- 4.2 The Nominations and Remuneration Committee shall be responsible for considering the re-appointment of Independent Directors and for providing recommendations to the Board for their consideration and approval as deemed appropriate.
- 4.3 In accordance with Rule 28.6 the selection and appointment of each Independent Director shall require the approval of Members at the Annual General Meeting following the appointment of the relevant Independent Director.
- 4.4 By no later than **3 months prior to the expiry of an Independent Director's 3 year term**, the Company Secretary shall advise the Nominations and Remuneration Committee in writing of the said term expiry so that the Committee may consider the re-appointment of the relevant Independent Director.

PROVIDED however, that for **Independent Directors whose 3 year terms expire after 30 September but before the following Annual General Meeting**, the Company Secretary shall advise the Nominations and Remuneration Committee in writing of the said expiry by no later than **30 June**.

- 4.5 By no later than **30 August**, the Board to consider recommendations of the Nominations and Remuneration Committee in respect of the tenure of Independent Directors and make Resolution as deemed appropriate.
- 4.6 The Company Secretary shall ensure that re-appointment of Independent Directors is included in the Notice of Annual General Meeting and accompanying Proxy form, for voting upon by Members at the next Annual General Meeting following the re-appointment.