



Constitution

Apex Foundation

ACN 001 347 897

A Public Company Limited by Guarantee

Dated: 2 October 2019

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1 Definitions and interpretation

1.1 Definitions

In this Constitution unless a contrary intention appears:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Active Apexian means an active member of the Association.

Alternate Director means a person appointed as an alternate director under clause 21.1.

Annual General Meeting has the same meaning as the term 'AGM' in the Corporations Act.

ASIC means the Australian Securities and Investments Commission.

Association means the Association of Apex Clubs of Australia, being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 138 333 927 and ABN 69 138 333 927.

Charitable means charitable within the laws of the Commonwealth of Australia.

Company Secretary means an individual appointed as a company secretary of the Foundation in accordance with clause 16.2.

Constitution means this constitution as amended from time to time.

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

Director means an individual holding office as director of the Foundation.

Directors means some or all of the Directors acting as a board.

Financial Member means a Member who has paid all membership fees to the Foundation.

Foundation means Apex Foundation, being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 001 347 897.

General Meeting means a meeting of the Members of the Foundation and includes an Annual General Meeting.

Insolvency Event occurs where:

- (a) an order is made or a resolution is passed by creditors for the winding up, dissolution or external administration of the Member;
- (b) the Member enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or
- (c) a controller, receiver, receiver and manager, official manager or other external administrator is appointed to the Member.

Member means a person entered on the Register of the Foundation as a member.

Object means the object of the Foundation as set out in clause 2.

Past Apexian means a past member of the Association.

Register means the register of members under the Corporations Act and, if appropriate, includes a branch register.

Registered Office means the registered office for the time being of the Foundation.

Representative means an individual appointed to represent a corporate Member at a General Meeting of the Foundation in accordance with the Corporations Act.

Rule means a rule made by the Directors in accordance with clause 15.

Schedule means a Schedule to this Constitution.

Special Resolution takes the meaning given by Section 9 of the Corporations Act.¹

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (g) a reference to a person being present in person includes an individual participating in a meeting as described in clause 1.2(f);
- (h) a reference to a person being present includes an individual participating in a meeting in person or through a proxy, attorney or Representative;
- (i) a reference to a person includes a natural person, corporation or other body corporate;
- (j) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (k) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

1.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

¹ At the time of adoption of this Constitution, section 9 provides that a Special Resolution is a resolution:
(a) of which notice has been given to the Members in accordance with clause 8.3; and
(b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

1.4 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;
- (b) “section” means a section of the Corporations Act; and
- (c) while the Foundation is a registered charity under the ACNC Act:
 - (i) subject to clause 1.4(c)(ii), the provisions of the Corporations Act in Part 2G.2 and Part 2G.3 apply as if section 111L(1) of the Corporations Act was not enacted; and
 - (ii) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the Foundation.

1.5 Headings

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.6 Replaceable rules do not apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Foundation.

2 Object of the Foundation

- (a) The Object of the Foundation is to pursue and promote exclusively Charitable purposes as the Directors see fit, including but not limited to:
 - (i) the relief of poverty or distress;
 - (ii) advancing social or public welfare;
 - (iii) advancing health;
 - (iv) advancing culture; and
 - (v) promoting or protecting human rights.
- (b) The Foundation may:
 - (i) act as trustee and perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of the Object in clause 2(a); and
 - (ii) do such other things as are incidental or conducive to the attainment of the Objects in clause 2(a).

3 Powers

The Foundation has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

4 Application of income for Object only

4.1 Application of income and property

The income and the property of the Foundation, however derived:

- (a) must be applied solely towards the promotion of the Object; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus, benefit or otherwise.

4.2 Payment in good faith

Clause 4.1 does not prevent payment, directly or indirectly, in good faith to a Member:

- (a) of reasonable remuneration for services to the Foundation;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause 4.2(c) by the Foundation in a General Meeting;
- (d) of reasonable rent for premises let by a Member; or
- (e) in furtherance of the Object.

5 Winding up

5.1 Guarantee by Members

- (a) Each Member undertakes to contribute to the Foundation's property if the Foundation is wound up while they are a Member, or within 1 year after they cease to be a Member.
- (b) This contribution is for:
 - (i) payment of the Foundation's debts and liabilities contracted before they ceased to be a Member;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$50.

5.2 Application of property

- (a) If any property remains on the winding up or dissolution of the Foundation and after satisfaction of, or provision for, all its debts and liabilities, then that property may not be paid to or distributed among the Members but must be transferred to one or more funds or institutions:
 - (i) that have charitable purposes similar to, or inclusive of, the Object; and
 - (ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to an extent at least as great as imposed on the Foundation under this Constitution.

- (b) The funds or institutions will be determined by the Members at or before the time of dissolution.

6 Membership

6.1 Number of Members

- (a) The minimum number of Members of the Foundation will be 8.
- (b) The 'Ordinary Members', 'Honorary Life Members', 'Apex Club' members and 'Corporate Entity' members (as defined in the Foundation's Articles of Association on the date prior to the adoption of this Constitution) at the date of adoption of this Constitution and any person the Directors admit to membership under clause 6.2 are the Members of the Foundation.

6.2 Admission as a Member

The Directors may admit any person as a Member if the person is eligible under clause 6.3 and makes an application in accordance with clause 6.4.

6.3 Membership criteria

To be eligible to be a Member, a person must:

- (a) be nominated by 2 existing Members who must know the applicant personally;
- (b) consent in writing to become a Member; and
- (c) agree to be bound by this Constitution.

6.4 Membership process

- (a) The application for membership must be made:
 - (i) in writing, signed by the applicant;
 - (ii) in such form as the Directors may from time to time prescribe; and
 - (iii) accompanied by the membership fee, if any, determined by the Directors.
- (b) Each application for membership must be considered by the Directors within a reasonable time after the application is made.
- (c) When an applicant has been accepted or rejected for membership the Company Secretary must notify the applicant of the decision of the Directors within a reasonable period.

6.5 Directors' discretion to admit or refuse admission as a Member

The Directors have the discretion to refuse any person admission as a Member without giving any reason for refusing.

6.6 Registration as Member

If the Directors accept an application for membership, as soon as practicable, the Directors must cause the name of the person to be entered in the Register.

6.7 Membership fees

- (a) The Members must pay such membership fees as prescribed from time to time by the Directors. The Directors may, by resolution or in Rules, vary or waive the fees payable by Members and determine the period of membership.
- (b) On payment of the membership fee, the Member will become a Financial Member for the period specified in the 'membership fee notice'.
- (c) A Member is only entitled to do all acts that a Member is entitled to do under this Constitution or at law with respect to the Foundation, while the Member is a Financial Member.
- (d) If the Directors have waived the fees for a member for a particular period, that Member will be considered to be a Financial Member under this Constitution.

6.8 Register

- (a) The Foundation must establish and maintain a Register. The Register must be kept by the Company Secretary and must contain:
 - (i) for each current Member:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member for the service of notice; and
 - (D) date the Member was entered on to the Register.
 - (ii) for each person who stopped being a Member in the last 7 years:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member for the service of notices; and
 - (D) date the membership started and ended.
- (b) The Foundation must provide access to the Register in accordance with the Corporations Act.

7 Ceasing to be a Member

7.1 Cessation of membership

A Member ceases to be a Member on:

- (a) in the case of an individual, death or, in the case of a body corporate, its ceasing to exist;
- (b) resignation by written notice to the Foundation having immediate effect or with effect from a specified date occurring not more than 7 days after the service of the notice;

- (c) failing to pay any fee that may be prescribed by the Directors from time to time within 3 months after the fee was due and payable;
- (d) in the case of an individual, becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health;
- (e) in the case of a body corporate, immediately before the Member becoming subject to an Insolvency Event;
- (f) in the case of an individual, becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally;
- (g) the passing of a resolution by the Directors or Members in General Meeting in accordance with clause 7.2;
- (h) that Member ceasing to be a Director.

7.2 Termination of membership

- (a) Subject to this Constitution, the Directors or Members in General Meeting may at any time terminate the membership of a Member if the Member:
 - (i) refuses or neglects to comply with this Constitution or any applicable Rules made by the Directors;
 - (ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Foundation;
 - (iii) fails to pay any debt due to the Foundation within a period of 3 months after the date for payment (such debt not including a fee referred to in clause 7.1(c));
- (b) For a decision of the Directors or the Members in General Meeting under clause 7.2(a)(i) or 7.2(a)(ii) to be effective, the general nature of the allegations made against the Member must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.
- (c) If a dispute arises regarding the termination of a Member's membership under this clause 7.2, the dispute resolution procedure contained in clause 26 must be followed and, for the purposes of clause 26.1, written notification under clause 7.2(b) will be the notice of the dispute (as defined in clause 26.1).

7.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1.

8 General Meetings

8.1 Annual General Meetings

Annual General Meetings of the Foundation are to be held in accordance with the Corporations Act.

8.2 Convening a General Meeting

The Directors may convene and arrange to hold a General Meeting when they think fit and must do so if required to do so under the Corporations Act.

8.3 Notice of a General Meeting

- (a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 31.
- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

8.4 Calculation of period of notice

In computing the period of notice under clause 8.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.5 Cancellation or postponement of General Meeting

- (a) Where a General Meeting is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause 8.5 does not apply to a meeting convened in accordance with the Corporations Act by Members, by the Directors on the request of Members or to a meeting convened by a Court.

8.6 Notice of cancellation or postponement of a meeting

Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

8.7 Contents of notice of postponement of meeting

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as, or different from, the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

8.8 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the General Meeting required to be given under clause 8.3.

8.9 Business at postponed meeting

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

8.10 Proxy at postponed meeting

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at one or more General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by operation of this clause 8.10, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Foundation at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

8.11 Non-receipt of notice

The non-receipt of notice of a General Meeting or the convening, cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or the convening, cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the convening, cancellation or postponement of a meeting.

9 Proceedings at General Meetings

9.1 Number of a quorum

- (a) A majority or 10 Members, whichever is the lesser number, present are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy appointed under clause 9.15 is to be counted, except that:
 - (i) where a Member has appointed more than one proxy, only one is to be counted; and
 - (ii) where a Member is attending holding more than one proxy, that Member is to be counted only once.

9.2 Requirement for a quorum

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairperson of the meeting (on the chairperson's own motion or at the request of a Member or proxy who is present) declares otherwise.

9.3 If quorum not present

If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened at the request of Members, is dissolved; and

- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

9.4 Adjourned meeting

At a meeting adjourned under clause 9.3(b), 3 Members present at the meeting are a quorum. If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

9.5 Appointment and powers of chairperson of General Meeting

If the Directors have elected one of their number as chairperson of their meetings under clause 20.1, that person is also entitled to preside as chairperson at a General Meeting.

9.6 Absence of chairperson at General Meeting

If a General Meeting is held and:

- (a) a chairperson has not been elected by the Directors; or
- (b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following persons may preside as chairperson of the meeting (in order of precedence):

- (c) the deputy chairperson, if a Director has been so elected by the Directors under clause 20.1; or
- (d) a Director or Member elected by the Members present in person to preside as chairperson of the meeting.

9.7 Conduct of General Meetings

- (a) The chairperson of a General Meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chairperson under this clause 9.7 is final.

9.8 Adjournment of General Meeting

- (a) The chairperson of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later

time at the same meeting or to an adjourned meeting at any time and any place, but:

- (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present; and
 - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

9.9 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 1 month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

9.10 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

9.11 Equality of votes – no casting vote for chairperson

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative, and consequently the resolution fails.

9.12 Voting on show of hands

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands (or, where the meeting is being conducted by technology, such other similar method as determined by the chairperson) unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact.
- (c) Neither the chairperson nor the minutes need state and, it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

9.13 Poll

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairperson or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

9.14 Votes of Members

- (a) Every Member has one vote.
- (b) Subject to this Constitution:
 - (i) on a show of hands, each Member present in person and each other person present as a proxy of a Member has one vote; and
 - (ii) on a poll, each Member present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

9.15 Right to appoint proxy

- (a) Subject to the Corporations Act, a Member entitled to attend a meeting of the Foundation is entitled to appoint another Member as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (b) The instrument appointing a proxy must be in writing signed by the appointor or their attorney duly authorised in writing or, if the appointor is a corporation, either under seal or signed by an officer or attorney duly authorised.
- (c) The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) A Member is entitled to instruct their proxy to vote in favour of or against any proposed resolutions. The proxy may vote as they think fit unless otherwise instructed.
- (e) The instrument appointing a proxy may be in the form set out in the Schedule to this Constitution.
- (f) The instrument appointing a proxy (along with a certified copy of the power of attorney or other authority, if any, under which it is signed) must be received at the address stated in the notice or the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. Documents received after this time will not be treated as valid.

9.16 Validity of vote in certain circumstances

Unless the Foundation has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member revokes the appointment or authority; or
- (c) the Member is mentally incapacitated.

9.17 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
 - (i) may not be raised except at that meeting or adjourned meeting; and

- (ii) must be referred to the chairperson of that meeting, whose decision is final.

- (b) A vote not disallowed under the objection is valid for all purposes.

10 Directors

10.1 Board composition

The board of Directors shall be comprised of:

- (a) 7 individuals elected at a General Meeting in accordance with clause 10.2 (**Elected Directors**);
- (b) an individual appointed by the governing body of the Association from time to time (**Association Director**); and
- (c) up to 2 individuals appointed by the Directors to bring such expertise, skills and experience as the Directors regard as necessary or useful from time to time (**Appointed Directors**).

10.2 Directors elected at General Meeting

The Foundation may, at a General Meeting at which:

- (a) an Elected Director retires or otherwise vacates office; or
 - (b) an Elected Director vacancy exists by operation of clause 10.1(a) or otherwise,
- by resolution fill the vacated office by electing an individual to that office.

10.3 Qualification of Directors

- (a) To be eligible for the office of Director, a person must:
 - (i) be a Financial Member at the date of appointment;
 - (ii) must have been a Financial Member for a minimum of 2 years prior to the date of appointment; and
 - (iii) consent in writing to act as a Director.
- (b) In addition to the qualifications in clause 10.3(a), to be eligible for the office of Elected Director, a person must be one of the following:
 - (i) an Active Apexian;
 - (ii) a Past Apexian; or
 - (iii) a Member.
- (c) In addition to the qualifications in clause 10.3(a), to be eligible for the office of Association Director, a person must be an Active Apexian.

10.4 Appointment of officers

The Directors are to appoint the other officers with such frequency as the Directors from time to time determine.

10.5 Terms and retirement of Elected Directors and Appointed Directors

- (a) Subject to clause 10.7, Elected Directors and Appointed Directors are elected for terms of 3 years.
- (b) At each Annual General Meeting, any Elected Director who has held office for 3 years or more since last being elected, must retire from office but, subject to clause 10.7, is eligible for reappointment. A retiring Elected Director holds office until the conclusion of the meeting at which that Elected Director retires.
- (c) The Members may by ordinary resolution increase or decrease the period of time for which an Elected Director holds office under clause 10.5(a).
- (d) The Members may by ordinary resolution remove any Elected Director or Appointed Director before the expiration of that Director's period of office, and may by an ordinary resolution appoint another person in the place of an Elected Director.

10.6 Term of Association Directors

- (a) Subject to clauses 10.6(b) and 13(g), an Association Director remains in office as a Director unless and until the Company Secretary is notified in writing by the Association of the revocation of such appointment, at which time or at any later time it is open for the Association to appoint a replacement Association Director by notice in writing to the Company Secretary.
- (b) The Members must ratify and confirm the appointment of an Association Director and an Appointed Director at the next Annual General Meeting following their appointment.
- (c) Where the appointment of an Appointed Director is not ratified in accordance with clause 10.6(b), the Directors may appoint another individual as an Appointed Director.

10.7 Reappointment of Directors

- (a) Subject to clause 10.7(b), Elected Directors and Appointed Directors are entitled to seek reappointment as Elected Directors or Appointed Directors (as the case may be) on 3 occasions provided that an Elected Director's (or Appointed Director's) period of continuous service to the Foundation does not exceed a period of 12 years, unless the Directors, by a resolution passed by at least a majority of the Directors entitled to vote on the resolution, elect to waive this requirement for a particular Director.
- (b) Clause 10.7(a) does not apply to Directors who held office as a Director as at the date of adoption of this Constitution.

10.8 Casual vacancy or additional Director

- (a) The Directors may at any time appoint any person meeting the requirements of clause 10.3 to be an Elected Director or Appointed Director (as the case may be), to fill a casual vacancy, provided the total number of Directors does not exceed the maximum number in clauses 10.1(a) and 10.1(c), respectively.
- (b) A Director appointed under clause 10.8(a) holds office until the conclusion of the next Annual General Meeting of the Foundation but is eligible for election as an Elected Director or Appointed Director at that meeting.

11 Remuneration of Directors

The Directors must not be paid any remuneration for their services as Directors.

12 Expenses of Directors

- (a) A Director is entitled to be reimbursed out of the funds of the Foundation for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Foundation.
- (b) Any payment to a Director must be approved by the Directors.

13 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be eligible under clause 10.3;
- (b) resigns from the office by notice in writing to the Foundation;
- (c) is not present at 3 successive meetings of the Directors without leave of absence from the Directors;
- (d) 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;
- (e) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;
- (f) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator;
- (g) in the case of the appointment of an Association Director or Appointed Director, fails to have their appointment ratified by the General Meeting in accordance with clause 10.6(b); or
- (h) dies.

14 Powers and duties of Directors

14.1 Directors to manage the Foundation

The Directors are to manage the business of the Foundation and may exercise all the powers of the Foundation that are not, by the Corporations Act or by this Constitution, required to be exercised by the Foundation in General Meeting.

14.2 Specific powers of Directors

Without limiting the generality of clause 14.1, and subject to any trusts relating to the assets of the Foundation, the Directors may exercise all the powers of the Foundation to:

- (a) borrow or raise money;
- (b) charge any property or business of the Foundation; and
- (c) give any security for a debt, liability or obligation of the Foundation or of any other person.

14.3 Compliance with duties under the Law

Each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the Corporations Act from time to time.

14.4 Delegation

- (a) The Directors may resolve to delegate any of their powers to:
 - (i) a committee in accordance with clause 23;
 - (ii) a Director;
 - (iii) an employee of the Foundation; or
 - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

15 Rules

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Foundation.

16 Executive Officer, Company Secretary and Public Officer

16.1 Executive Officer

- (a) The Directors may appoint an Executive Officer on such terms and conditions (including as to remuneration) as they think fit.
- (b) The Directors may delegate any of their powers to the Executive Officer:
 - (i) on the terms and subject to any restrictions they decide; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the board of Directors,and may revoke the delegation at any time.
- (c) The Executive Officer may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

16.2 Company Secretary

- (a) There must be at least one Company Secretary who is to be appointed by the Directors. A Director may be appointed as Company Secretary.
- (b) The Directors may suspend or remove a Company Secretary from that office.
- (c) A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the

Directors. The exercise of those powers and authorities and the performance of those duties by a Company Secretary are subject at all times to the control of the Directors.

16.3 Public officer

The Directors must appoint a person as Public Officer of the Foundation in accordance with the *Income Tax Act Assessment Act 1936* (Cth).

17 Appointment of attorney

- (a) By power of attorney, the Directors may appoint any person to be an attorney of the Foundation, which such powers, authorities and discretions of the Directors as the Directors think fit and for such purposes, period and conditions as determined by the Directors.
- (b) A power of attorney granted under clause 17(a) may contain any provisions for the protection and convenience of the attorney and persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

18 Conflicts of interest

18.1 Disclosure of conflict of interest

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

18.2 Disclosure recorded in minutes

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

18.3 Material personal interest

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 18.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

18.4 Present and voting

A Director with a material personal interest in a matter may still be present and vote if:

- (a) their interest arises because they are a Member of the Foundation and the other Members have the same interest;
- (b) their interest arises in relation to remuneration as a Director of the Foundation;

- (c) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Foundation (see clause 32.2);
- (d) their interest relates to a payment by the Foundation under clause 32.1, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (e) ASIC makes an order allowing the Director to vote on the matter; or
- (f) the Directors who do not have material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Foundation; and
 - (ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

19 Proceedings of Directors

19.1 Directors' meetings

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Company Secretary must on the written request of a Director, convene a meeting of the Directors.

19.2 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

19.3 Alternate Director and voting

- (a) A person who is present at a meeting of Directors as an Alternate Director:
 - (i) is entitled to participate and vote in the appointor's place if the appointor would have been entitled to vote and does not participate in that meeting; and
 - (ii) has one vote for each person for whom they have been appointed as Alternate Director.
- (b) If that person is also a Director, then that person also has one vote as a Director in that capacity.

20 Chairperson and deputy chairperson of Directors

20.1 Election of chairperson and deputy chairperson

- (a) The Directors may elect from their number a chairperson and a deputy chairperson of their meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.
- (b) The period of continuous service of a chairperson elected under clause 20.1(a) shall not exceed 6 years.

20.2 Absence of chairperson at Directors' meeting

If a Directors' meeting is held and:

- (a) a chairperson has not been elected under clause 20.1; or
- (b) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 20.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

20.3 No casting vote for chairperson at Directors' meetings

In the event of an equality of votes cast for and against a resolution, the chairperson of the Directors' meeting does not have a second or casting vote, and consequently the resolution will not be passed.

21 Alternate Director

21.1 Appointment

- (a) Subject to the Corporations Act, a Director may appoint a person, with the approval of the Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit. The approval of the Alternate Director's appointment may be withdrawn by the Directors at any time.
- (b) Subject to the Corporations Act, an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment, and delivered to the Foundation.

21.2 Notice

An Alternate Director is entitled to notice of all meetings of the Directors.

21.3 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

21.4 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Foundation and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

21.5 Alternate Director and remuneration

An Alternate Director must not be paid any remuneration for their services as an Alternate Director.

21.6 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period, if any, of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

21.7 Termination in writing

The termination of an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who made the appointment and delivered to the Foundation.

21.8 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

22 Quorum for Directors' meeting

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is a majority of Directors holding office or 3, whichever is the greater.
- (b) The Directors may act despite a vacancy in their number. If their number is reduced below the minimum required under the Corporations Act, the Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

23 Committees

23.1 Delegation to committees

- (a) The Directors may delegate any of their powers, to a committee consisting of at least one Director and any other persons as they think fit.
- (b) A committee to which any powers have been delegated under clause 23.1(a) must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

23.2 Meetings of committees

A committee may meet and adjourn as it thinks proper.

23.3 Chairperson of a committee

The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chairperson of the meeting.

23.4 Determination of questions

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting.

- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

24 Circular resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if at least a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) 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.
- (c) The resolution is passed when the last Director comprising at least a majority of the Directors signs.

25 Validity of acts of Directors

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director, are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote.

26 Dispute resolution

26.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Foundation, whether arising out of the application of these rules or otherwise (**Dispute**), then either party must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) the Member and the Foundation must in the period of 14 days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute;
- (b) if the Foundation and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Foundation;
- (c) if the disputants are unable to agree on a mediator within 7 days of the expiration of the Initial Period, the Member or the Foundation may request the chairperson of Resolution Institute² to nominate a mediator to whom the Dispute will be referred;
- (d) the costs of the mediation must be shared equally between the Member and the Foundation; and

² Resolution Institute is a not-for-profit organisation facilitating dispute resolution – further information can be found at www.resolution.institute.

- (e) where:
- (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 26.1(b);
 - (ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or
 - (iii) the mediation fails to resolve the Dispute;
- then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

26.2 Urgent interlocutory relief

The procedure in clause 26.1 will not apply in respect of proceedings for urgent or interlocutory relief.

27 Execution of documents

Documents executed for and on behalf of the Foundation must be executed by:

- (a) 2 Directors;
- (b) a Director and the Company Secretary; or
- (c) such other persons as the Directors by resolution appoint from time to time.

28 Accounts

- (a) The Directors must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Foundation or otherwise considered by the Directors to be appropriate, cause the accounts of the Foundation to be audited or reviewed accordingly.
- (b) The Directors must distribute to the Members copies of the annual financial reports of the Foundation accompanied by a copy of the report of the auditor or reviewer (as required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.

29 Seals

29.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Foundation.

29.2 Use of common seal

If the Foundation has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Company Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

30 Inspection of records

30.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Foundation or any of them will be open to inspection by the Members (other than Directors).

30.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Foundation except as provided by law or authorised by the Directors or by the Foundation in General Meeting.

31 Service of documents

31.1 Document includes notice

In this clause 31, a reference to a document includes a notice.

31.2 Methods of service

- (a) The Foundation may give a document to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
 - (iii) by sending it to an electronic address nominated by the Member.
- (b) A document sent by post:
 - (i) if sent to an address in Australia, may be sent by ordinary post and is taken to have been received 2 business days after the date of its posting; and
 - (ii) if sent to an address outside Australia, must be sent by airmail and is taken to have been received on the 7th business day after the date of its posting.
- (c) If a document is sent by electronic transmission, delivery of the document is taken:
 - (i) to be effected by properly addressing and transmitting the electronic transmission; and
 - (ii) to have been delivered on the day following its transmission.

31.3 Evidence of service

A certificate in writing signed by a Director or a Company Secretary stating that a document was sent to a Member by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

32 Indemnity and insurance

32.1 Indemnity

- (a) The Foundation must indemnify any current or former Director, Company Secretary, Public Officer or executive officer of the Foundation out of the property of the Foundation against:
- (i) every liability incurred by the person in that capacity; and
 - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;
- except to the extent that:
- (iii) the Foundation is forbidden by law (including the Corporations Act) to indemnify the person against the liability or legal costs;
 - (iv) an indemnity by the Foundation of the person against the liability or legal costs would, if given, be made void by any law; or
 - (v) the person is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).
- (b) The indemnity is a continuing obligation and is enforceable by a person even though they are no longer a Director, Company Secretary, Public Officer or executive officer of the Foundation, or of a wholly owned subsidiary.

32.2 Insurance

The Foundation may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Company Secretary, Public Officer or executive officer of the Foundation against liability arising out of conduct by the person in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

- (a) the Foundation is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or
- (b) the contract would, if the Foundation paid the premium, be made void by any law (including the Corporations Act).

32.3 Contract

The Foundation may enter into an agreement with a person referred to in clauses 32.1 and 32.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 32 may include provisions relating to rights of access to the books of the Foundation conferred by the Corporations Act or otherwise by law.

33 Amendment to Constitution

- (a) Subject to clause 33(c), this Constitution may only be amended by Special Resolution of the Members of the Foundation.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Foundation to no longer be a charity.

- (c) Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.

34 Financial Year

The financial year of the Company begins on the first day of July and ends on the last day of June each year.

Schedule

Appointment of Proxy - (see clause 9.15(e))

**Apex Foundation
ACN 001 347 897**

I/We, (name)
of (address)
being a member/members of the abovenamed Foundation hereby appoint
..... (name)
of (address)
or in their absence (name)
of (address)
as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the
Foundation to be held on the day of 20 and at any
adjournment of that meeting.
[TO BE INSERTED IF DESIRED] This form is to be used in favour of / against the resolution
(Strike out whichever is not desired)
[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]
Signed:
Name:
Dated:

This notice must be returned to Apex Foundation ACN 001 347 897 at:
[ADDRESS/EMAIL ADDRESS/FAX No]
by [TIME] on [DATE]
**[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME
FOR THE MEETING]**