



SPHINX FOUNDATION INC.

# **SPHINX FOUNDATION (INC)**

ABN: 57 912 481 918

Constitution

(revised 20 September 2017)

Registered No: A1006334B

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## PART 1 – PRELIMINARY

### 1. TERMS USED

In these rules, unless the contrary intention appears:

**ACNC** means the Australian Charities and Not-for-Profits Commission.

**Act** means the *Associations Incorporation Act 2015* (WA).

**Annual General Meeting** means a meeting convened under rule 22.

**Board** means the board managing the Foundation, referred to in rule 12.

**Board Member** means a person referred to in rule 13.

**By-laws** means by-laws of the Foundation made under rule 45.

**Chairperson** means, in relation to the proceedings of a Board meeting or a General Meeting, the person presiding at the Board meeting or General Meeting in accordance with rules 20 and 25.

**Contributing Member** has the meaning given in the Constitution of the Society.

**Council of the Society** means the Council of Management of the Perth Modernian Society (Inc).

**Financial Year** of the Foundation has the meaning given by rule 9.

**Finance Committee** means a Standing Committee established for the purposes of managing the Foundation's expenditure.

**Foundation** means the incorporated association to which these rules apply.

**General Meeting** means a meeting convened under rule 22 or 23.

**Honorary Member** has the meaning given in rule 10(2).

**Life Member** has the meaning given in rule 10(3).

**Member** means a person who is a member of the Foundation (including Honorary Members and Life Members).

**Patron** has the meaning given in rule 43.

**Principal** means the Principal of the School from time to time.

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

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

**School** means Perth Modern School.

**Secretary** means the Secretary referred to in rule 15.

**Society** means the Perth Modernian Society (Inc).

**Special General Meeting** means a meeting convened under rule 23.

**Special Resolution** has the meaning given under section 51 of the Act.

**Sphinx Scholarship Fund** or **Fund** has the meaning given under rule 7.

**Standing Committee** means a permanent committee established under rule 19.

**Surplus Property** has the meaning given in rule **Error! Reference source not found.**.

**Treasurer** means the Treasurer referred to in rule 16.

## **PART 2 – THE FOUNDATION**

### **2. NAME OF FOUNDATION**

The name of the Foundation is the “Sphinx Foundation Inc.”.

### **3. OFFICE OF FOUNDATION**

The office of the Foundation is to be situated at Perth Modern School, 90 Roberts Road Subiaco in the State of Western Australia, or at such other place as the Council of the Society may determine.

### **4. LEGAL STATUS AND RELATED ENTITIES**

- (1) The Foundation is a not-for-profit incorporated association under the Act.
- (2) The Society is the parent entity of the Foundation.

### **5. INCOME AND PROPERTY**

- (1) The property and income of the Foundation must be applied solely towards the promotion of the objects or purposes of the Foundation and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any Member, except in good faith in the promotion of those objects or purposes.
- (2) A payment may be made to a Member out of the funds of the Foundation only if it is authorised under sub-rule (3) below.
- (3) A payment to a Member out of the funds of the Foundation is authorised if it is:
  - (a) the payment in good faith to the Member as reasonable remuneration for any services provided to the Foundation, or for goods supplied to the Foundation, in the ordinary course of business;
  - (b) the payment of interest on money borrowed by the Foundation from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia;
  - (c) the payment of reasonable rent to the Member for premises leased by the Member to the Foundation; or
  - (d) the reimbursement of reasonable expenses properly incurred by the Member on behalf of the Foundation.
- (4) Without limiting anything else in this rule 5, a Board Member is entitled to be paid out of the funds of the Foundation, in accordance with any policy as may be approved by the Foundation in General Meeting, for any out-of-pocket expenses for travel and accommodation properly incurred:
  - (a) in attending a Board meeting or committee meeting;
  - (b) in attending a General Meeting; or
  - (c) otherwise in connection with the Foundation’s business.

## 6. OBJECTS AND FUNCTIONS

- (1) The primary object of the Foundation is the advancement of education for the benefit of the community as a whole.
- (2) In undertaking its primary object, the Foundation must have regard to the educational principles and practices of Perth Modern School from its inception to the present and which may guide the School in the future.
- (3) Without limiting sub-rule (1), each of the following objects and purposes shall be regarded as furthering the primary object of the Foundation:
  - (a) to document and make available the educational principles and practices of the School as a resource for the community at large and in particular for educators, students, parents and those whose decisions may affect or be affected by the quality of education and learning experiences of students wherever educated;
  - (b) to advance the education, learning and knowledge of students attending the School;
  - (c) to undertake research and to collect, analyse and classify data and information in relation to the School, including, without limitation, educational methods, selection criteria and processes, subjects offered, results achieved, biographical and statistical information regarding staff and students, oral and written histories;
  - (d) to publish and disseminate by any means the results of the research or the data and information so collected;
  - (e) to provide, preserve, maintain and develop the standards and facilities of the School, whether directly or indirectly;
  - (f) to provide scholarships and bursaries to students to assist or enable the students to be educated at the School; and
  - (g) to make grants for education or research scholarships, endowments or fellowships for research scholars, educators or administrators and to encourage visits from specialists or notable persons to the School, or any other activities considered by the Board as being of direct or indirect benefit to the students, the School, the community or the advancement of education generally.

## 7. SPHINX SCHOLARSHIP FUND

If the Foundation maintains a fund for the provision of scholarships and bursaries to assist or enable students to be educated at the School (**Sphinx Scholarship Fund** or the **Fund**), then the following provisions shall apply to the Fund:

- (a) The Foundation must invite contributions from the public to the Fund and do whatever is desirable in the opinion of the Board to obtain such contributions.
- (b) The Fund forms part of the property of the Foundation but, for the purposes of identification, the Board shall maintain separate management accounts in respect of the Fund, its income and payments or applications of its income or capital.
- (c) The Board must maintain for the purposes of the Fund, a gift fund:
  - (i) to which gifts of money or property for that purpose are to be made by any Member of the public;
  - (ii) to which any moneys received by the Fund because of those gifts are to be credited; and

- (iii) that does not receive any other money or property.
- (d) The Board must use the following only for the purposes of the Fund:
  - (i) gifts made to the gift fund; or
  - (ii) any moneys received because of those gifts.
- (e) A scholarship may only be awarded to an Australian citizen or a permanent resident of Australia.
- (f) An 'Entry Level' scholarship may only be granted to a student who has been selected to be eligible for enrolment in the School by way of merit-based competition open to students throughout Western Australia.
- (g) The Foundation must determine the criteria for the award of a scholarship which may include academic achievements, other merit based non-academic achievements and considerations to achieve equity recognising any disadvantage, disability or hardship arising from a student's circumstances.
- (h) The scholarship shall be awarded to enable and assist the recipient to attend the School to further the student's education and is payable only during the period of enrolment.
- (i) The Foundation shall maintain an ongoing register of the names of recipients of scholarships and bursaries.
- (j) In conjunction with the School, the Board shall use reasonable endeavours to understand how scholarship moneys distributed to awardees have been applied, but without being required to investigate how any particular scholarship moneys have been applied.
- (k) The Board shall use reasonable endeavours to ensure appropriate acknowledgement/recognition of donors and bequests to the Fund.

## **8. MUSEUM FUND**

The Foundation shall endeavour to support the Perth Modernian Society Museum Association Incorporated in its cause to further and support the School's History Centre to the extent considered appropriate and to the extent the Foundation has the resources and competency to do so.

## **9. FINANCIAL YEAR**

The Financial Year and business year of the Foundation shall commence on the first day of July in each year and end on the 30<sup>th</sup> day of June in the next calendar year.

## PART 3 – MEMBERS

### 10. MEMBERSHIP

- (1) The Members of the Foundation shall include the Members of the Board, the members of the Council of the Society (in each case, from time to time) and such other persons as the Board may admit as Members of the Foundation from time to time pursuant to the By-laws. Each Member is entitled to attend, and be notified of, General Meetings and each Member shall have one vote at a General Meeting.
- (2) The Board may, by a majority of not less than two-thirds of its Members present and voting, elect any person who is not otherwise eligible to be a Member of the Foundation as an Honorary Member of the Foundation with an entitlement to vote, to recognise their contribution to the activities of the Foundation.
- (3) The Board may, by a majority of not less than two-thirds of its Members present and voting, elect any person, whether a Member or Life Member or eligible to be a Member of the Foundation or not, as a Life Member of the Foundation with an entitlement to vote by reason of his or her distinguished service to the School, the Society, the Foundation or the public or any section of it.
- (4) Any Member may resign from the Foundation by giving written notice to that effect to the Secretary or another current Board Member. Such resignation takes effect when:
  - (a) the Secretary receives the notice; or
  - (b) if a later time is stated in the notice, then at that later time.
- (5) The Board may decide to terminate the membership of a Member if:
  - (a) the Member contravenes any of these rules; or
  - (b) the Member acts detrimentally to the interests of the Foundation.
- (6) If the Board decides to terminate the membership of a Member, by a majority of not less than two-thirds of its members present and voting, it shall terminate the membership of a Member in accordance with the procedures set out in any By-law.
- (7) No membership fees, subscriptions or other amounts are payable by the Members, unless otherwise specified in the By-laws.

### 11. REGISTER OF MEMBERS OF FOUNDATION

- (1) The Secretary is responsible for the requirements imposed on the Foundation under section 53 of the Act to maintain the Register of Members and to record in that register any change in the membership of the Foundation.
- (2) In addition to the matters referred to in section 53(2) of the Act, the Register of Members must include the class of membership to which each Member belongs and the date on which each Member becomes a Member.
- (3) The Register of Members shall be kept and maintained at the Secretary's place of residence or at another place determined by the Board.



## PART 4 – THE BOARD

### 12. BOARD OF THE FOUNDATION

The control, management and conduct of the affairs of the Foundation shall be vested in the Board.

### 13. BOARD MEMBERS

- (1) The Board shall be comprised of not less than four and not more than seven Board Members as shall be appointed and removed by the Council of the Society from time to time.
- (2) Each Member of the Board must be a responsible person. A responsible person is one who in the opinion of the Council of the Society has good standing in the community or their profession / vocation, together with a genuine interest in promoting the objectives of the Foundation.
- (3) The Board Members shall continue in office until removed by the Council of the Society or they casually vacate their office within the meaning of sub-rule 13(4).
- (4) For the purposes of sub-rule 13(3), a person ceases to be a Member of the Board if the person:
  - (a) dies or otherwise ceases to be a member;
  - (b) resigns from the committee or is otherwise removed from office
  - (c) becomes ineligible to accept an appointment or to act as a Board Member;
  - (d) becomes permanently unable to act as a Board Member because of a mental or physical disability; or
  - (e) fails to attend three consecutive Board meetings, of which the person has been given notice, without having notified the Board that the person will be unable to attend.
- (5) When a casual vacancy within the meaning of rule 13(4) occurs in the membership of the Board:
  - (a) the Board may appoint a Member to fill that vacancy; and
  - (b) a Member appointed under this sub-rule shall:
    - (i) hold office until the commencement of the next Annual General Meeting; and
    - (ii) be eligible for appointment to membership of the Board by the Council of the Society at the next following Annual General Meeting.
- (6) The Board shall, at its first meeting after the Annual general Meeting of the Foundation, appoint from among its members:
  - (a) a Chairperson;
  - (b) a Secretary; and
  - (c) a Treasurer.
- (4) The Board shall have the power to appoint an Executive Director of the Foundation, in conjunction with the Council and the Principal of the School.

## 14. POWERS OF THE BOARD

- (1) The Board may, on behalf of the Foundation, and in order to achieve the objects of Foundation:
  - (a) open, close and operate any bank account;
  - (b) determine annual membership fees and benefits for Contributing Members;
  - (c) invest moneys of the Foundation, or under the control or trusteeship of the Foundation;
  - (d) act as trustee of any trust or other fund;
  - (e) raise money in any manner it sees fit, including the undertaking of or participating in commercial ventures;
  - (f) act as nominee, trustee, agent, attorney, delegate, substitute or financial controller, either solely or jointly with any other party, and undertake any other office of trust and to perform and discharge the duties and functions incidental thereto and generally to transact all kinds of business either gratuitously or otherwise;
  - (g) give mortgage charges or other securities over any part of the real or personal property of the Foundation;
  - (h) insure any property of the Foundation against any risk the Board considers necessary and pay all premiums in respect of any insurance policies taken out by the Board in relation to that property;
  - (i) purchase, sell, lease, grant a lease, acquire, hold or in any way deal with, either solely or jointly with any other party, any real or personal property of any kind, including any business undertaking or scheme or equity or other securities or financial instruments;
  - (j) lend and advance money, or give credit to, any person, company or the School, to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person or company of the School to secure or undertake in any way the replacement of moneys lent or advanced to or liabilities incurred by any person or company or the School and to otherwise assist and person or company of the School;
  - (k) borrow or raise or secure the payment of money in such manner as the Board may think fit and to secure the same or the repayment or performance of any debt liability, contract, guarantee or other engagement incurred or to be entered into by the Foundation in any way and in particular by the issue of debentures, perpetual or otherwise, charged upon all or any of the Foundation's property, and to purchase redeem or pay off any such security save for any member of the Foundation;
  - (l) exercise all or any powers and to do all such acts and thing as may appear to the Board conducive to the attainment of the objects of the Foundation;
  - (m) employ on a full-time or part-time basis such persons, companies, partnerships or institutions as the Board may consider appropriate;
  - (n) enter into contracts for personal service or any consultancy agreements or seek any professional or expert advice from any person as is considered necessary by the Board from time to time.

- (2) The Board shall, on behalf of the Foundation, and in order to achieve the objects of the Foundation:
  - (a) comply with relevant rules of the Foundation, including if required, the annual election of a member of the Council of the Society to represent the Foundation; and
  - (b) collaborate on all material matters with the Council of the Society, and report regularly to the Council on activities and finances, as well as in the Foundation's Annual Report, annual magazine, e-Newsletters or as otherwise considered appropriate by the Board.
- (3) Any material personal interest that may arise in the exercise of these powers by any Board Member shall be disclosed to the Board by the relevant Board Member in accordance with Part 4 Division 2 of the Act.

## **15. DUTIES OF THE SECRETARY**

The Secretary shall:

- (a) co-ordinate the correspondence of the Foundation;
- (b) maintain full and correct minutes of the proceedings of the Board and of the Foundation;
- (c) comply on behalf of the Foundation with:
  - (i) section 53 of the Act in respect of the Register of Members of the Foundation;
  - (ii) section 35 of the Act in respect of the rules of the Foundation; and
  - (iii) section 58 of the Act in respect of the record of the officeholders, and any trustees of the Foundation; and
- (d) have custody of all books, documents, records and registers of the Foundation, including those referred to in sub-rule 15(c), other than those required by rule 16 to be kept and maintained by, or in the custody of, the Treasurer, and perform such other duties as are imposed by these rules on the Secretary.

## **16. DUTIES OF THE TREASURER**

The Treasurer shall:

- (a) be responsible for the receipt of all moneys paid to or received by, or on behalf of, the Foundation, and shall issue receipts for those moneys in the name of the Foundation;
- (b) pay all moneys referred to in sub-rule 16(a), into such account or accounts of the Foundation as the Board may from time to time direct;
- (c) only make payments from the funds of the Foundation with the authority of a general meeting or of the Board and in so doing ensure that all cheques are signed and all electronic or other payments are made in accordance with any requirements set by the Board;
- (d) only make new investments or amend existing investments in accordance with the current Sphinx Scholarship Fund Investment Policy - Permitted Asset Classes and Range;
- (e) comply on behalf of the Foundation with Part 5 Division 3 of the Act in respect of the accounting records of the Foundation;

- (f) be responsible for compliance on behalf of the Foundation with requirements in relation to issuance of Tax Receipts to donors, completion of business activity statements, tax returns and other required lodgements or returns;
- (g) whenever directed to do so by the Chairperson, submit to the Board a report, balance sheet or financial statement in accordance with that direction;
- (h) prepare and submit the Annual Information Statement to the ACNC as required for each reporting period;
- (i) ensure that the audit of the Sphinx Scholarship Fund finances is conducted every reporting period, including provision of a representation letter, responses to questionnaires (for example relating to going concern, financial controls and fraud), and that the auditor provides a letter of assurance (independent auditor certification) with respect to adherence to the then current Sphinx Scholarship Fund Investment Policy - Permitted Asset Classes and Range; and
- (j) have custody of all securities, books and documents of a financial nature and accounting records of the Foundation, including those referred to in sub-rules 16(d) and (e) and perform such other duties as are imposed by these rules on the Treasurer.

## **17. BOARD MEETINGS**

- (1) The Board shall regulate their meetings and proceedings as they see fit.
- (2) A quorum for a meeting of the Board shall be three persons entitled to vote.
- (3) Questions arising at any meeting shall be decided by a majority of votes.
- (4) The Chairperson of the meeting shall have a casting vote.
- (5) The President of the Society or their nominee has the right to attend Board meetings in a non-voting capacity, and to receive Notices of meetings and Minutes of meetings.
- (6) The Board shall ensure that the minutes of all meetings of the Board are:
  - (a) kept and recorded;
  - (b) confirmed by the Board at its next meeting;
  - (c) signed as correct by the Chairperson; and
  - (d) sent to each member of the Board (which may be transmitted in electronic form).

## **18. NOTICE OF BOARD MEETINGS**

- (1) All persons entitled to attend Board meetings shall receive notice of Board meetings at least 48 hours before the time of the meeting.
- (2) The notice must state the date, time and place of the meeting and must describe the general nature of the business to be conducted at the meeting.
- (3) Unless sub-rule 18(4) applies, the only business that may be conducted at the meeting is the business described in the notice.
- (4) Urgent business that has not been described in the notice may be conducted at the meeting if the Board Members at the meeting unanimously agree to treat that business as urgent.

## **19. COMMITTEES OF THE FOUNDATION**

- (1) The Board may appoint one or more sub-committees.
- (2) A person may be appointed to a sub-committee whether or not the person is a Member of the Foundation or the Society.
- (3) A person may be appointed on such terms and conditions, and with such powers and responsibility, as the Board may determine from time to time.
- (4) Each Standing Committee shall, subject to any directions of the Board, propose its membership and chairperson and other office holders to the Board for approval no later than the Board's first meeting after the annual general meeting of the Foundation.
- (5) The Board may constitute, reconstitute and dissolve ad hoc committees of the Foundation having such terms of reference and membership as the Board may determine.
- (6) Each committee of the Foundation shall:
  - (a) Be responsible to and report to the Board;
  - (b) Prepare an annual report for inclusion in the annual report of the Board; and
  - (c) Ensure that accurate minutes of its meetings are prepared and provided to the Board.

## **20. MEETINGS OF THE COMMITTEES OF THE FOUNDATION**

- (1) Subject to any directions of the Board, each committee of the Foundation shall regulate its meetings and proceedings as it sees fit.
- (2) All members of each committee must receive 48 hours' notice before the time of the meeting.
- (3) A quorum at all committee meetings shall be three members.
- (4) Questions arising at a meeting of the committee shall be decided by a majority of votes.
- (5) The Chairperson at the meeting shall have a casting vote.
- (6) A member who participates in a committee meeting as allowed under sub-rule 20(1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

## **21. USE OF TECHNOLOGY TO BE PRESENT AT BOARD MEETINGS**

- (1) The presence of a Board Member at a Board meeting need not be by attendance in person but may be by that Board Member being simultaneously in contact with each other Member at the Board Meeting by telephone, videoconference or other means of instantaneous communication approved for use by the Chairperson in their absolute discretion.
- (2) A member who participates in a Board meeting as allowed under sub-rule 21(1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

## **PART 5 – GENERAL MEETINGS OF THE FOUNDATION**

### **22. ANNUAL GENERAL MEETING**

- (1) The Board must determine the date, time and place of the annual General Meeting.
- (2) The annual General Meeting must be held during the first six months of each Financial Year of the Foundation.
- (3) The ordinary business of the annual General Meeting is:
  - (a) the consideration and adoption of the Annual Report of the Board, the Balance Sheet and the Statement of Income and Expenditure for the previous year; and
  - (b) any other matters that are brought before the meeting by the Board or any Member.
- (4) The Chairperson may at their absolute discretion permit any individuals who are not Members to attend an Annual General Meeting for the purposes of observing the meeting or presenting information at that meeting.

### **23. SPECIAL GENERAL MEETINGS**

- (1) The Board may convene a Special General Meeting.
- (2) The Board must convene a Special General Meeting requested to do so by a formal Resolution of the Council, or if at least 10% of the Members, being not less than 3 persons excluding proxies, require a Special General Meeting to be convened.
- (3) The Members requiring a Special General Meeting to be convened must:
  - (a) make the requirement by written notice given to the Secretary;
  - (b) state in the notice the business to be considered at the meeting; and
  - (c) each sign the notice.
- (4) Notice of the Special General Meeting must be sent within 28 days after notice is given under sub-rule 23(3)(a).
- (5) If the Board does not give the notice convening a Special General Meeting within that 28 day period, the Members making the requirement (or any of them) may convene the Special General Meeting.
- (6) A Special General Meeting convened by Members under sub-rule 23(5):
  - (a) must be held within 3 months after the date the original requirement was made; and
  - (b) may only consider the business stated in the notice by which the requirement was made.
- (7) The Foundation must reimburse any reasonable expenses incurred by the Members convening a Special General Meeting under sub-rule 23(5).
- (8) The Chairperson may at their absolute discretion permit any individuals who are not Members to attend an Annual General Meeting for the purposes of observing the meeting or presenting information at that meeting.

## **24. NOTICE OF GENERAL MEETING**

- (1) Every Member shall be given at least 14 days' notice of any General Meeting.
- (2) Notice may be given by letter, email, a newsletter of the Foundation, or by advertisement in "The West Australian" newspaper.
- (3) Where the business of the meeting requires a Special Resolution under the Act, notice must be given to members not less than 21 days before a General Meeting.

## **25. PRESIDING MEMBER AND QUORUM AT GENERAL MEETINGS**

- (1) The Chairperson of all General Meetings shall be the Chairperson of the Board or his/her nominee, except in that person's absence at the appointed place, date and within 15 minutes of the appointed time, those Members present shall elect a Chairperson from amongst themselves.
- (2) The quorum at all General Meetings shall be three Members of the Board.
- (3) No business is to be conducted at a General Meeting unless a quorum is present.
- (4) If a quorum is not present within 30 minutes after the notified commencement time of a General Meeting:
  - (a) in the case of a Special General Meeting – the meeting lapses; or
  - (b) in the case of the Annual General Meeting – the meeting is adjourned to:
    - (i) the same time and day in the following week; and
    - (ii) the same place, unless the Chairperson specifies another place at the time of the adjournment or written notice of another place is given to the members before the day to which the meeting is adjourned.

## **26. ADJOURNMENT OF GENERAL MEETING**

- (1) The Chairperson of a General Meeting at which a quorum is present may, with the consent of a majority of the Members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting sub-rule 26(1), a meeting may be adjourned:
  - (a) If there is insufficient time to deal with the business at hand; or
  - (b) To give the members more time to consider an item of business.
- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for more than 14 days or more, in which case notice of the meeting must be given in accordance with rule 24.

## **27. VOTING AT GENERAL MEETING**

- (1) On any question arising at a General Meeting:

- (a) subject to sub-rule 27(6), each Member has one vote unless the Member may also vote on behalf of a body corporate under sub-rule 27(2);
  - (b) Members may vote personally or by proxy.
- (2) A Member that is a body corporate may, in writing, appoint an individual, whether or not the individual is a Member, to vote on behalf of the body corporate on any question at a particular General Meeting, as specified in the document by which the appointment is made.
  - (3) A copy of the document by which the appointment is made must be given to the Secretary before any General Meeting to which the appointment applies.
  - (4) The appointment has effect until:
    - (a) the end of any General Meeting to which the appointment applies; or
    - (b) the appointment is revoked by the body corporate and written notice of the revocation is given to the Secretary.
  - (5) Except in the case of a Special Resolution, a motion is carried if a majority of the Members present at a General Meeting vote in favour of the motion.
  - (6) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
  - (7) If the question is whether or not to confirm the minutes of a previous general meeting, only Members who were present at that meeting may vote.
  - (8) For a person to be eligible to vote at a General Meeting as a Member, or on behalf of a Member that is a body corporate under sub-rule 27(2), the Member:
    - (a) must have been a Member at the time notice of the meeting was given under rule 24; and
    - (b) must have paid any fee or other money payable to the Foundation by the Member.

## **28. WHEN SPECIAL RESOLUTIONS ARE REQUIRED**

- (1) A Special Resolution is required if it is proposed at a General Meeting:
  - (a) to affiliate the Foundation with another body;
  - (b) if required under the Act; or
  - (c) to request the Commissioner to apply to the State Administrative Tribunal under section 109 of the Act for the appointment of a statutory manager.
- (2) Sub-rule 28(1) does not limit the matters in relation to which a Special Resolution may be proposed.

## **29. DETERMINING WHETHER RESOLUTION CARRIED**

- (1) In this rule –
 

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



- (2) Subject to sub-rule 29(4), the Chairperson of a General Meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been:
  - (a) carried;
  - (b) carried unanimously;
  - (c) carried by a particular majority; or
  - (d) lost.
- (3) If the resolution is a Special Resolution, the declaration under sub-rule 29(2) must identify the resolution as a Special Resolution.
- (4) If a poll is demanded on any question by the Chairperson of the meeting or by at least 3 other Members present in person or by proxy:
  - (a) The poll must be taken at the meeting in the manner determined by the Chairperson;
  - (b) The Chairperson must declare the determination of the resolution on the basis of the poll.
- (5) If a poll is demanded on the election of the Chairperson or on a question of an adjournment, the poll must be taken immediately.
- (6) If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the Chairperson.
- (7) A declaration under sub-rule 29(2) or (4) must be entered in to the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

### **30. PROXIES**

- (1) Subject to sub-rule 30(2), a Member may appoint an individual who is a Member as his or her proxy to vote and speak on his or her behalf at a General Meeting.
- (2) A Member may be appointed the proxy for not more than 5 Members.
- (3) The appointment of a proxy must be in writing, signed and dated by the Member making the appointment.
- (4) The Member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.
- (5) If no instructions are given to the proxy, the proxy may vote on behalf of the Member in any matter as the proxy sees fit.
- (6) If the Board has approved a form for the appointment of a proxy, the Member may use that form or any other form:
  - (a) that clearly identifies the person appointed as the Member's proxy; and

- (b) that has been signed and dated by the Member.
- (7) Notice of a General Meeting given to a Member under rule 24 must:
  - (a) state that the Member may appoint an individual who is a Member as a proxy for the General Meeting; and
  - (b) include a copy of any form that the Board has approved for the appointment of a proxy.
- (8) A form appointing a proxy must be given to the Secretary before the commencement of the General Meeting for which the proxy is appointed.
- (9) A form appointing a proxy sent by post or electronically is of no effect unless it is received by the Foundation not later than 24 hours before the commencement of the General Meeting.

### **31. USE OF TECHNOLOGY TO BE PRESENT AT GENERAL MEETINGS**

- (1) The presence of a Member at a General Meeting need not be by attendance in person but may be by that Member being simultaneously in contact with each other Member at the General Meeting by telephone, videoconference or other means of instantaneous communication approved for use by the Chairperson in their absolute discretion.
- (2) A member who participates in a Board meeting as allowed under sub-rule 31(1) is taken to be present at the meeting and, if the member votes at the meeting, the member is taken to have voted in person.

### **32. MINUTES AND RECORDS**

- (1) The Board shall ensure that the minutes of all meetings of the Foundation are:
  - (a) kept and recorded;
  - (b) confirmed by the Foundation at its next General Meeting; and
  - (c) signed as correct by the Chairperson.
- (2) Minutes at a General Meeting must record:
  - (a) the business considered at the meeting, any resolution on which a vote is taken and the result of the vote;
  - (b) the names of the Members attending the meeting;
  - (c) any proxy forms given to the Chairperson or Secretary;
  - (d) the financial statements and financial records presented at the meeting; and
  - (e) any report of the review or auditor's report of financial statements or financial report presented at the meeting.
- (3) The minutes of a General Meeting must be entered in the Foundation's minute book within 30 days after the meeting is held.
- (4) When the minutes of a General Meeting have been signed as correct they are, in the absence of evidence to the contrary, taken to be proof that:

- (a) the meeting to which the minutes relate was duly convened and held; and
- (b) the matters recorded as having taken place at the meeting took place as recorded; and
- (c) any election or appointment purportedly made at the meeting was validly made.

## **PART 6 – FINANCIAL MATTERS**

### **33. SOURCE OF FUNDS**

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

### **34. CONTROL OF FUNDS**

- (1) The Foundation must open an account in the name of the Foundation with a financial institution from which all expenditure of the Foundation is made and into which all funds received by the Foundation are deposited.
- (2) Subject to any restrictions imposed by the Foundation at a General Meeting, the Finance Committee may approve expenditure on behalf of the Foundation, either in respect of particular payments or by way of approving a policy which sets out payment authorities.
- (3) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Foundation must be made in accordance with any approval of, or policy adopted by, the Board of the Finance Committee.
- (4) Payments of the Foundation which are made via electronic funds transfer must be made in accordance with any approval of, or policy adopted by, the Board or the Finance Committee.
- (5) All funds of the Foundation must be deposited into the Foundation's account as soon as practical after their receipt.

### **35. ACCOUNTS AND REPORTS**

- (1) The Board shall:
  - (a) keep proper accounts with respect to all sums of money received and expended by the Foundation, the manner in which the receipt and expenditure takes place, and the assets and liabilities of the Foundation, pursuant to Part 5 Division 3 of the Act;
  - (b) prepare a balance sheet and a statement of income and expenditure as at 31 December each year; and
  - (c) prepare an annual report covering the various activities of the Foundation for the year for presentation at the annual general meeting.
- (2) The accounts of the Foundation shall be prepared by the Treasurer and a copy of the latest annual balance sheet and statement of income and expenditure shall be furnished to the Board not later than 21 days prior to the Annual General Meeting of the Foundation.
- (3) The secretarial and financial records of the Foundation shall be:
  - (a) kept at the office of the Foundation or at such other place or places as the Board may determine; and
  - (b) made available for inspection by any member of the Foundation or any Standing Committee of the Foundation.

### **36. AUDITOR**

Unless otherwise required by the Act, the Foundation may appoint an auditor at the Annual General Meeting.

## **PART 7 – DISPUTE RESOLUTION**

### **37. APPLICATION OF THIS PART**

- (1) The procedure set out in this Part 7 applies to disputes:
  - (a) between Members; or
  - (b) between one or more Members and the Foundation.

### **38. PARTIES TO ATTEMPT TO RESOLVE THE DISPUTE**

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

### **39. GRIEVANCE PROCEDURE**

- (1) If the parties to the dispute are unable to resolve the dispute between themselves within the time required by rule 38, Any party to the dispute may commence the grievance procedure by giving written notice to the Secretary of:
  - (a) the parties to the dispute; and
  - (b) the matters that are the subject of the dispute.
- (2) Within 28 days after the Secretary is given the notice, a Board meeting must be convened to consider and determine the dispute.
- (3) The Secretary must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.
- (4) The notice given to each party to the dispute must state:
  - (a) when and where the Board meeting is to be held; and
  - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.
- (5) If:
  - (a) the dispute is between one or more Members and the Foundation; and
  - (b) any party to the dispute gives written notice to the Secretary stating that the party:
    - (i) does not agree to the dispute being determined by the Board; and
    - (ii) requests the appointment of a mediator under rule 41,

the Board must not determine the dispute.

### **40. DETERMINATION OF DISPUTE BY BOARD**

- (1) At the Board meeting at which a dispute is to be considered and determined, the Board must:

- (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute; and
  - (b) give due consideration to any submissions so made; and
  - (c) determine the dispute.
- (2) The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the Board meeting at which the determination is made.
  - (3) A party to the dispute may, within 14 days after receiving notice of the Board's determination under sub-rule 40(1)(c), give written notice to the Secretary requesting the appointment of a mediator under rule 41.
  - (4) If notice is given under sub-rule 40(3), each party to the dispute is a party to the mediation.

#### **41. APPOINTMENT OF A MEDIATOR**

- (1) If written notice has been given to the Secretary requesting the appointment of a mediator, a mediator must be chosen or appointed under this rule 41.
- (2) The mediator must be appointed by agreement between the parties to the dispute.
- (3) If there is no agreement for the purposes of rule 41(2) then, subject to rule 41(5) the Foundation must appoint a mediator.
- (4) The person appointed as a mediator by the Board must be a person who acts as a mediator for another not-for-profit body, including a community legal centre.
- (5) The person appointed as a mediator by the Board may be a Member of the Foundation but must not:
  - (a) have a personal interest in the dispute; or
  - (b) be biased in favour of or against any party to the mediation.

#### **42. MEDIATION PROCESS**

- (1) The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.
- (2) Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.
- (3) In conducting the mediation, the mediator must:
  - (a) give each party to the mediation every opportunity to be heard; and
  - (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
  - (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.
- (4) The mediator cannot determine the matter that is the subject of the mediation.

- (5) The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.
- (6) The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.



## PART 8 – GENERAL MATTERS

### 43. PATRONS

- (1) The Board may from time to time invite and appoint one or more individuals as a patron or any other honorary title-holder of the Foundation on any such terms as the Board thinks fit.
- (2) A patron (or other honorary title-holder) does not have to be a member of the Foundation.
- (3) A patron (or other honorary title-holder) will have no official responsibility but shall assist the Foundation to the best of their ability.
- (4) The patron (or other honorary title-holder) is entitled to receive notice of and may attend any of the Foundation's General Meetings and may, at the absolute discretion of the Chairperson, be entitled to speak at a General Meeting, but shall not be entitled to vote at any General Meeting unless the person is a member of the Foundation.
- (5) The term of office of a patron is normally to be for a period of no more than three years at which time re-appointment is the prerogative of the Board.
- (6) The Board shall have the power at its absolute discretion to revoke the appointment of a patron (or other honorary title-holder) at any time.

### 44. COMMON SEAL

- (1) The Foundation may have a common seal.
- (2) The common seal of the Foundation shall be kept in safe custody in accordance with the directions of the Board and shall only be affixed to any deed, instrument or other document with the authority of a resolution of the Board.
- (3) Any two Board Members nominated by the Board from time to time and the Secretary shall countersign the affixing of the seal.
- (4) The Secretary shall keep a record of all documents to which the seal has been affixed.

### 45. BY-LAWS

Subject to the approval of the Council of the Society, the Board may pass By-laws for:

- (a) the operation of the Foundation;
- (b) the Board and any Standing Committees or other sub-committees established by the Board); and
- (c) such other matters not inconsistent with the other objects of the Foundation as the Board may consider desirable for the purposes of advancing the objects of the Foundation.

### 46. RECORD OF OFFICE HOLDERS

The record of Board Members and other persons authorised to act on behalf of the Foundation that is required to be maintained under section 58(2) of the Act must be kept in the Secretary's custody or under the Secretary's control.

#### **47. INSPECTION OF RECORDS AND DOCUMENTS**

- (1) Sub-rule 47(2) applies to a Member who wants to inspect:
  - (a) the Register of Members under section 54(1) of the Act;
  - (b) the record of the names and addresses of Board Members, and other persons authorised to act on behalf of the Foundation, under section 58(3) of the Act; or
  - (c) any other record or document of the Foundation.
- (2) The Member must contact the Secretary to make the necessary arrangements for the inspection.
- (3) The inspection must be free of charge.
- (4) If the Member wants to inspect a document that records the minutes of a Board meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board meetings generally, or the minutes of a specific Board meeting, being available for inspection by Members.
- (5) The Member may make a copy of or take an extract from a record or document referred to in sub-rule 47(1)(c) but does not have a right to remove the record or document for that purpose.
- (6) The member must not use or disclose information in a record or document referred to in this rule except for a purpose:
  - (a) that is directly connected with the affairs of the Foundation; or
  - (b) that is related to complying with a requirement of the Act.

#### **48. DISSOLUTION**

- (1) Subject to the approval of the Council of the Society the Foundation may be dissolved with the consent of not less than 75% of Members voting at a meeting to dissolve the Foundation.
- (2) On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

#### **49. REVOKING OF DGR STATUS**

- (1) Upon the dissolution of the Foundation, or the Foundation's endorsement as a Deductible Gift Recipient is revoked (whichever occurs first), no money or property of the Foundation remaining after satisfaction of all its debts and liabilities (**Surplus Property**) shall be paid or distributed among the members.
- (2) To the extent not already vested, such money or property shall be given and transferred by Special Resolution to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:
  - (a) gifts of money or property for the principal purpose of the organisation;
  - (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation;
  - (c) money received by the organisation because of such gifts and contributions.

- (3) If the Surplus Property of the Foundation is unable to be distributed as provided for in sub-rule 49(2), the property shall be distributed to another charitable object or purpose determined by the Attorney-General of Western Australia.

## **50. CONSTITUTION**

- (1) The Rules bind every Member and the Foundation to the same extent as if every Member and the Foundation had signed these rules and agreed to be bound by all their provisions.
- (2) A copy of this the Rules (which may be in electronic form) must be provided to any new Member by the Foundation.
- (3) The Foundation may alter or rescind any of these rules, or make additional rules, in accordance with the procedure set out in Part 3 Division 2 of the Act.

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