

**CONSTITUTION
OF
THE ROYAL AUSTRALIAN REGIMENT FOUNDATION**

ACN 055 902 433

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'Serving The Regiment'

Amending the 22 October 2015 version which was written
to update and replace the original dated 15 June 1992 and amended 2 November 20

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A company limited by guarantee.

This Constitution reflects the law as at 21 November 2019

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GENERAL PROVISIONS

PRELIMINARY

1 NAME OF THE COMPANY

The name of the company is The Royal Australian Regiment Foundation Ltd, (the Company) herein called 'the Foundation'.

2 TYPE OF COMPANY

The Foundation is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3 LIMITED LIABILITY OF MEMBERS

The liability of members is limited to the amount of the guarantee in clause 4.

4 THE GUARANTEE

Each member must contribute an amount not more than \$100 (the guarantee) to the property of the Foundation if the Foundation is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Foundation incurred before the member stopped being a member, or
- (b) costs of winding up.

DEFINITIONS & INTERPRETATION

5 DEFINITIONS

5.1 The words in Column "A" have the meaning attributed to them in Column "B".

A	B
ACNC Act	The <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)

Alternate Director	A person appointed as an alternate to exercise some or all of the director's powers for a specified period pursuant to clause 39.
Benefactor	A person who donates a cumulative total of \$1,000.00.
Corporate Sponsor	An organisation which makes a minimum annual donation of \$5,000.00
Corporations Act	<i>Corporations Act 2001</i> (Cth)
Chairman	The person appointed under Clause 34
Enrolled Supporters	Individuals who pay an annual minimum subscription of \$10.00
General Meeting	General Meeting means a Meeting of members and includes the Annual General Meeting
Life Governor	An Enrolled Supporter who donates a total of \$500.00 and has been appointed by the Board as a Life Governor of the Foundation.
Member Present	In connection with a General Meeting, a member present in person, by representative or by proxy at the venue or venues for the Meeting.
National Benefactor	A person who gifts a cumulative total of \$20,000.00.
Registered Charity	A charity that is registered under the ACNC Act
Serving Member of the Regiment	A soldier or officer currently posted to a Battalion of the Royal Australian Regiment or the School of Infantry. Infantry soldiers and officers who have previously been posted as such and subsequently remain serving in the Australian Regular Army..
Special Resolution	A resolution: <ul style="list-style-type: none"> i. of which notice has been given under clause 23.2(c) and ii. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution.
Surplus Assets	Any assets of the Foundation that remain after paying all debts and other liabilities of the Foundation, including the costs of winding up.

6 READING THIS CONSTITUTION WITH THE CORPORATIONS ACT

6.1 The replaceable rules set out in the Corporations Act do not apply to the Foundation.

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- 6.2 While the Foundation is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 6.3 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.
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7 INTERPRETATION

- 7.1 In this constitution:
- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
 - (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).
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CHARITABLE PURPOSES AND POWERS

8 OBJECT

- 8.1 The Foundation's object is to strengthen the Royal Australian Regiment through support to the professional development and welfare of the Regiment and its serving members.
- 8.2 The Foundation supports units of the Regiment for activities that are related to the history of the Regiment, provides leadership development and resilience opportunities that are not readily available in Army and facilitates professional development within units.
- 8.3 The Foundation provides financial support to serving members of the Regiment and their immediate families to alleviate hardship when they cannot obtain support from other sources. The Foundation provides grants to Battalions and the School of Infantry to fund Regimental activities and initiatives that meet the fundamental tenets and objectives of this Constitution. The Foundation has collective and individual objects.
- 8.4 Collective objects will support the Regiment, its Associations, and other patriotic organisations; so as to enable the Regiment, as the largest single Regiment in the Australian Army, to better undertake its duties in the national interest as directed by the Government of Australia. Specific collective objects are:
- (a) The making of loans and grants to units of the Regiment or to Regimental Associations and to other patriotic community organisations with similar objects as the Foundation and whose constitutions prohibit the distribution of income and property among its members.
 - (b) The acceptance and management of gifts and endowments given to the Regiment or individual units.
 - (c) The care and control of battalion funds and the custody, preservation and storage of battalion property on behalf of the Australian Army.

- (d) The preservation or disposal of regimental property and the disbursement of battalion funds in the event of the disbandment of a battalion.
- (e) The funding or supplementary funding for:-
 - (i) Amenities, recreation and comforts for Battalions and the School of Infantry.
 - (ii) The preservation and display of Colours of the Regiment and items of historical significance.
 - (iii) Items of historical significance used for ceremonial purposes not available through other sources.
 - (iv) Dress accoutrements particular to the Regiment or a battalion and not available through other sources.
 - (v) Initiatives in support of the Regiment for:
 - (A) Leadership and professional development,
 - (B) Publications and brochures,
 - (C) Participation in media projects and the production of special videos of educational, social, ceremonial and historical activities,
 - (D) Special parades and other activities performed before the public, specifically for the enhancement of the reputation of the Regiment,
 - (E) Regimental competitions and provision of trophies and awards for these competitions,
 - (F) Individuals or groups to represent the Regiment or battalions in local, state, national and international competitions, and
 - (G) Contributions towards the construction and maintenance of Regimental museums, monuments and memorials.

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- 8.5 Specific individual objects are charitable and will enable the Foundation to assist the education, comfort, recreation and welfare of serving soldiers of the Regiment and of needy dependents of those soldiers. Without limiting the generality of the foregoing, specific individual objects include:
- (a) Welfare grants to alleviate hardship and/or provide assistance to those in need where that need has arisen as a result of exigencies of service.
 - (b) Welfare grants to the widows and children of persons who at the time of their death were serving members of the Regiment, so as to help alleviate hardship.
 - (c) Grants, scholarships and bursaries to help educate dependants of soldiers of those who are serving or have served in the Regiment.

9 POWERS

- 9.1 Subject to clause 10, the Foundation has the following powers, which may only be used to carry out its purpose(s) set out in clause 8:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

10 NOT FOR PROFIT

- 10.1 The Foundation must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.4.
- 10.2 Clause 8.1 does not stop the Foundation from doing the following things, provided they are done in good faith:
 - (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Foundation, or
 - (b) making a payment to a member in carrying out the Foundation's charitable purpose(s).

11 AMENDING THE CONSTITUTION

- 11.1 Subject to clause 11.2, the members may amend this constitution by passing a special resolution.
- 11.2 The members must not pass a special resolution that amends this constitution if passing it causes the Foundation to no longer be a charity.

MEMBERS

12 MEMBERSHIP AND REGISTER OF MEMBERS

- 12.1 The members of the Foundation are:
 - (a) Those Officers and Warrant Officers appointed as members of the Royal Australian Regiment Council (Commanding Officers and Regimental Sergeant Majors of each Battalion and the School of Infantry), and
 - (b) Those individuals elected or appointed to the Board of the Foundation as Directors.
- 12.2 The Foundation will maintain a register of members. The register of members is kept by the Secretary and contains:
 - (a) for each current member:
 - (i) name,
 - (ii) address,

- (iii) any alternative address nominated by the member for the service of notices, and
- (iv) date the member was entered on to the register.
- (b) for each person who stopped being a member in the last 7 years:
 - (i) name,
 - (ii) address,
 - (iii) any alternative address nominated by the member for the service of notices, and
 - (iv) dates the membership started and ended.

12.3 The Foundation must give current members access to the register of members.

12.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

13 **WHEN A PERSON STOPS BEING A MEMBER**

13.1 A person immediately stops being a member if they:

- (a) die,
- (b) are posted from their unit position, or
- (c) resign as a Director.

SUPPORTERS

14 **ENROLLED SUPPORTERS**

14.1 Enrolled Supporters are individuals who pay an annual minimum subscription of \$10.00.

14.2 An application to become an Enrolled Supporter shall be in writing, signed by the applicant, and be accompanied by the annual subscription.

14.3 On receipt of an application by a person to become an Enrolled Supporter the Secretary shall as soon as practicable acknowledge the application and donation and enter the applicant's relevant details in the appropriate register of Enrolled Supporters.

14.4 Upon same being so entered, the applicant shall be an Enrolled Supporter of the Foundation.

14.5 The annual period for donations by Enrolled Supporters is 1 July to 30 June in each year.

- 14.6 If the annual donation of an Enrolled Supporter is not received by the Foundation by 30 June each year then the individual shall cease to be an Enrolled Supporter at the end of the then current year.

15 LIFE GOVERNORS

- 15.1 A person who donates a total of \$500.00 becomes eligible to be appointed by the Board as a Life Governor.
- 15.2 Life Governors are acknowledged publicly and receive certificates of governorship.
- 15.3 Once appointed they remain a Governor for life.

16 BENEFACTORS AND NATIONAL BENEFACTORS

- 16.1 Individuals who donate a cumulative total of \$1,000.00 are recognized as a Benefactor of the Foundation.
- 16.2 The Foundation will publicly recognise Benefactors in the annual Bulletin and on the website.
- 16.3 An individual who gifts a cumulative total of \$20,000.00 is recognized as a National Benefactor.
- 16.4 The Foundation will recognise National Benefactors in the annual Bulletin and on the website. National Benefactors are invited to be a guest at the Annual Dinner.
- 16.5 Once recognized as a Benefactor or National Benefactor, they remain a Benefactor or National Benefactor for life.

17 CORPORATE SPONSORS

- 17.1 A Corporate sponsor of the Foundation is an organization which supports the Foundation by making an annual donation of \$5,000 or more. Sponsor categories, levels and benefits may vary as determined by the Board.
- 17.2 Corporate Sponsors may provide general support through annual donations or sponsor individual activities.
- 17.3 Corporate sponsor benefits by level will be determined by the Board and may include certificates of sponsorship, invitations to Foundation activities and are recognition in the annual Bulletin and on the website.
- 17.4 Recognition of Corporate Sponsors remains in place for twelve months following receipt of the last donation.

DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

18 DISPUTE RESOLUTION

18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or Director as well as an Enrolled Supporter, Life Governor, Benefactor and National Benefactors and Corporate Sponsors on the one hand and:

- (a) one or more members,
- (b) one or more Directors, or
- (c) the Foundation

on the other hand.

18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.

18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:

- (a) tell the Directors about the dispute in writing,
- (b) agree or request that a mediator be appointed, and
- (c) attempt in good faith to settle the dispute by mediation.

19 DISCIPLINING MEMBERS AND OTHERS

19.1 In accordance with this clause, the Directors may resolve to warn a member, an Enrolled Supporter, Life Governor, Benefactor, National Benefactor or Corporate Sponsor if the Directors consider that:

- (a) the member, Enrolled Supporter, Life Governor, Benefactor, National Benefactor or Corporate Sponsor has breached this constitution, or
- (b) the member's Enrolled Supporter's, Life Governor's, Benefactor's, National Benefactor's or Corporate Sponsor's behaviour is causing, has caused, or is likely to cause harm to the Foundation.

GENERAL MEETINGS OF MEMBERS

20 GENERAL MEETINGS CALLED BY DIRECTORS

- 20.1 The directors may call a general meeting.
- 20.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the Foundation for a general meeting to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a general meeting, and
 - (b) hold the general meeting within 2 months of the members' request.
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- 20.3 The percentage of votes that members have (in clause 20.2) is to be worked out as at midnight before the members request the meeting.
- 20.4 The members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting,
 - (b) sign the request, and
 - (c) give the request to the Foundation.
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- 20.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.
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21 GENERAL MEETINGS CALLED BY MEMBERS

- 21.1 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 21.2 To call and hold a meeting under clause 21.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution,
 - (b) call the meeting using the list of members on the Foundation's member register, which the Foundation must provide to the members making the request at no cost, and
 - (c) hold the general meeting within three months after the request was given to the Foundation.
-
- 21.3 The Foundation must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

22 ANNUAL GENERAL MEETING

- 22.1 A General Meeting, called the Annual General Meeting, must be held at least once in every calendar year.
- 22.2 The Notice of Meeting will include the business to be conducted at the Annual General Meeting. Business will include as a minimum:
- (a) a review of the Foundation's annual activities,
 - (b) a review of the Foundation's finances,
 - (c) any auditor's report,
 - (d) the election of Directors,
 - (e) special resolutions, and
 - (f) the appointment and payment of auditors, if any.
- 22.3 Before or at the Annual General Meeting, the Directors must give information to the members on the Foundation's activities and finances during the period since the last Annual General Meeting.
- 22.4 The Chairman of the Annual General Meeting must give members as a whole a reasonable opportunity at the Meeting to ask questions or make comments about the management of the Foundation.

23 NOTICE OF GENERAL MEETINGS

- 23.1 Notice of a General Meeting must be provided in writing at least 21 days before the Meeting and be given to:
- (a) each member entitled to vote at the Meeting,
 - (b) each Director, and
 - (c) the auditor (if any).
- 23.2 Notice of a General Meeting must include:
- (a) the place, date and time for the Meeting (and if the Meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the General nature of the Meeting's business
 - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - (i) the proxy must be another member of the Foundation,

- (ii) the proxy form must be delivered to the Foundation at its registered address or the address (including an electronic address) specified in the notice of the Meeting, and
- (iii) the proxy form must be delivered to the Foundation at least 48 hours before the Meeting.

24 QUORUM AT GENERAL MEETINGS

- 24.1 For a General Meeting to be held, at least 15 members (a quorum) must be present (in person, by proxy or by representative) for the whole Meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 24.2 No business may be conducted at a General Meeting if a quorum is not present.
- 24.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the Chairman specifies.
- 24.4 If no quorum is present at the resumed Meeting within 30 minutes after the starting time set for that Meeting, the Meeting is cancelled.

25 AUDITOR'S RIGHT TO ATTEND MEETINGS

- 25.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the members on any part of the business of the Meeting that concerns the auditor in the capacity of auditor.
- 25.2 The Foundation must give the auditor (if any) any communications relating to the General Meeting that a member of the Foundation is entitled to receive.

26 USING TECHNOLOGY TO HOLD MEETINGS

- 26.1 The Foundation may hold a General Meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 26.2 Anyone using this technology is taken to be present in person at the Meeting.

27 CHAIRMAN FOR GENERAL MEETINGS

- 27.1 The President of the Foundation is entitled to chair General Meetings.
- 27.2 The members present and entitled to vote at a General Meeting may choose a Director or member to be the Chairman for that Meeting if:

- (a) the Chairman is not present within 30 minutes after the starting time set for the Meeting, or
- (b) the Chairman is present but says they do not wish to act as Chairman of the Meeting.

28 **ROLE OF THE CHAIRMAN**

- 28.1 The Chairman is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 28.2 The Chairman does not have a casting vote.

29 **ADJOURNMENT OF MEETINGS**

- 29.1 If a quorum is present, a General Meeting must be adjourned if a majority of members present direct the Chairman to adjourn it.
- 29.2 Only unfinished business may be dealt with at a Meeting resumed after an adjournment.

VOTING AT GENERAL MEETINGS

30 **HOW MANY VOTES A MEMBER HAS**

- 30.1 Each member has one vote.

31 **HOW VOTING IS CARRIED OUT**

- 31.1 Voting must be conducted and decided by:
 - (a) a show of hands,
 - (b) a vote in writing, or
 - (c) another method chosen by the Chairman that is fair and reasonable in the circumstances.
- 31.2 Before a vote is taken, the Chairman must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 31.3 On a show of hands, the Chairman's decision is conclusive evidence of the result of the vote.
- 31.4 The Chairman and the Meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

32 APPOINTMENT OF PROXY

32.1 A member may appoint a proxy to attend and vote at a General Meeting on their behalf.

32.2 A proxy must be a member.

32.3 A proxy appointed to attend and vote for a member has the same rights as the member to speak and vote at the Meeting.

32.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:

- (a) the member's name and address,
- (b) the Foundation's name,
- (c) the proxy's name or the name of the office held by the proxy, and
- (d) the Meeting(s) at which the appointment may be used.

32.5 Proxy forms must be received by the Foundation at the address stated in the notice or at the Foundation's registered address at least 48 hours before a Meeting.

32.6 A proxy appointment may specify the way the proxy must vote on a particular resolution.

DIRECTORS AND STAFF**33 NUMBER OF DIRECTORS**

33.1 The Foundation must have no more than ten Directors and three Alternate Directors.

34 APPOINTMENT OF THE PRESIDENT AND CHAIRMAN

34.1 The Colonel Commandant of the Royal Australian Regiment is the President of the Foundation and also the Chairman of the Board. He may nominate another enrolled supporter to act as Chairman of the Board. The individual so nominated shall hold the position of Chairman of the Board at the discretion of the Colonel Commandant.

34.2 The Head of the Infantry Corps shall be the Deputy President of the Foundation and shall be represented by the Deputy Head of Corps in his absence.

34.3 The President is an office bearer of the Foundation.

35 APPOINTMENT AND ROLE OF THE SECRETARY

35.1 The Foundation must have a Secretary, who may also be a Director.

35.2 A Secretary must be appointed by the Directors and may be removed by the Directors.

35.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.

35.4 The role of the Secretary includes:

- (a) maintaining a register of the Foundation's members, and
- (b) maintaining the minutes and other records of General Meetings (including notices of Meetings), Directors' Meetings and regulatory correspondence.

35.5 The Secretary is an office bearer of the Foundation and is the Corporate Public Officer.

36 APPOINTMENT AND ROLE OF THE TREASURER

36.1 The Foundation may have a Treasurer, who may also be a Director.

36.2 A Treasurer may be appointed by the Directors and may be removed by the Directors.

36.3 The role of the Treasurer includes:

- (a) maintaining the Foundation books of account, and
- (b) completing annual financial statements.

37 APPOINTMENT AND ROLE OF THE FOUNDATION GENERAL MANAGER

37.1 The Board must appoint a General Manager who is responsible for the management of the Foundation's activities and operations.

37.2 The Directors must decide the terms and conditions under which the General Manager is appointed, including any remuneration.

37.3 The role of the General Manager includes:

- (a) maintaining the membership data base,
- (b) preparing the Foundation books of account and completing annual financial statements and fiduciary/regulatory statements and reports,
- (c) managing the activities and operations of the Foundation,
- (d) liaison with Commanding Officers and units,
- (e) the Battalions and units of the Regiment,
- (f) maintaining office files, mail, marketing, phone and IT systems and social media sites,
- (g) preparing information and content for dissemination through the Foundation website and social media by editing for style and form, maintaining consistency

- of the sites and collection of updated information from stakeholders in order to keep information current,
- (h) preparing the annual newsletter and coordinating activities including dinners, fund raisers and tours,
- (i) coordination of professional development activities and events, and
- (j) management of grants to units and individuals.

38 ELECTION AND APPOINTMENT OF DIRECTORS

38.1 The members may elect a Director by a resolution passed in a General Meeting.

38.2 A person is eligible for election as a Director of the Foundation if they:

- (a) are an Enrolled Supporter of the Foundation,
- (b) are nominated by two members entitled to vote,
- (c) give the Foundation their consent to be appointed as a Director of the Foundation, and
- (d) are not ineligible to be a Director under the Corporations Act or the ACNC Act.

38.3 The Directors may appoint a person as a Director to fill a casual vacancy or as an Alternate Director if that person is:

- (a) Head of the Royal Australian Infantry Corps,
- (b) Commandant of the Royal Military College of Australia, or
- (c) A current Commanding Officer of a battalion of the Regiment and,
- (d) Meets the criteria specified in clause 34.2

39 ALTERNATE DIRECTORS

39.1 Subject to clause 38.2 and 38.3, with the other Directors' approval, a Director may appoint an alternate to exercise some or all of the Director's powers for a specified period.

39.2 If the appointing Director requests the Foundation to give the alternate notice of Directors' meetings, the Foundation must do so.

39.3 When an alternate exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.

39.4 The appointing Director may terminate the alternate's appointment at any time.

39.5 An appointment or its termination must be in writing. A copy must be given to the Foundation.

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- 39.6 The Secretary must give ASIC notice of the appointment and termination of appointment of an alternate.

40 **TERM OF OFFICE**

- 40.1 At each Annual General Meeting:
- (a) any Director appointed by the Directors to fill a casual vacancy must retire, and
 - (b) at least one-third of the remaining Directors must retire.
-
- 40.2 The Directors who must retire at each Annual General Meeting under clause 40.1(b) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- 40.3 A Director's term of office starts at the end of the Annual General Meeting at which they are elected and ends at the end of the Annual General Meeting at which they retire.
- 40.4 Each Director must retire at least once every three years.
- 40.5 A Director who retires under clause 40.1(b) may nominate for election or re-election, subject to clause 40.6 and 40.7.
- 40.6 No person may be elected or re elected as a Director of the Foundation if at the time of his election or re election he shall have attained the age of seventy two years. The term of any Director who shall attain such age while serving as a Director shall terminate effective immediately upon his seventy second birthday.
- 40.7 A Director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution

41 **WHEN A DIRECTOR STOPS BEING A DIRECTOR**

- 41.1 A Director stops being a Director if they:
- (a) give written notice of resignation as a Director to the Foundation,
 - (b) die,
 - (c) are removed as a Director by a resolution of the members,
 - (d) stop being an Enrolled Supporter,
 - (e) are absent for 2 consecutive Directors' Meetings without approval from the Directors, or
 - (f) become ineligible to be a Director of the Foundation under the Corporations Act or the ACNC Act.

POWERS OF DIRECTORS

42 POWERS OF DIRECTORS

- 42.1 The Directors are responsible for managing and directing the activities of the Foundation to achieve the purposes set out in clause 8.
- 42.2 The Directors may use all the powers of the Foundation except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 42.3 The Directors must decide on the responsible financial management of the Foundation including:
- (a) any suitable written delegations of power, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
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- 42.4 The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a members' resolution at a General Meeting.
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PAYMENTS TO DIRECTORS

- 42.5 The Foundation must not pay fees to a Director for acting as a Director.
- 42.6 The Foundation may:
- (a) pay a Director for work they do for the Foundation, other than as a Director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Foundation.
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- 42.7 Any payment made under clause 42.6(a) must be approved by the Directors.
- 42.8 The Foundation may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this constitution.
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43 EXECUTION OF DOCUMENTS

- 43.1 The Foundation may execute a document without using a common seal if the document is signed by:
- (a) two Directors of the Foundation, or
 - (b) a Director and the Secretary.

DUTIES OF DIRECTORS

44 DUTIES OF DIRECTORS

- 44.1 The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Foundation;
 - (b) to act in good faith in the best interests of the Foundation and to further the charitable purpose(s) of the Foundation set out in clause 8;
 - (c) not to misuse their position as a Director;
 - (d) not to misuse information they gain in their role as a Director;
 - (e) to disclose any perceived or actual material conflicts of interest;
 - (f) to ensure that the financial affairs of the Foundation are managed responsibly; and
 - (g) not to allow the Foundation to operate while it is insolvent.

45 CONFLICTS OF INTEREST

- 45.1 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:
- (a) to the other 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.

- 45.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the Meeting.

DIRECTORS' MEETINGS

46 WHEN THE DIRECTORS MEET

- 46.1 The Directors will meet between three and five times per annum, usually in March, June, September and December. Meetings will usually be conducted in Canberra.

47 CALLING DIRECTORS' MEETINGS

- 47.1 A Director may call a Directors' Meeting by giving reasonable notice to all of the other Directors.
- 47.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

48 CHAIRMAN FOR DIRECTORS' MEETINGS

- 48.1 The President will chair Directors' Meetings.
- 48.2 The Directors at a Directors' Meeting may choose a Director to be the Chairman for that Meeting if the Chairman is:
- (a) not present within 30 minutes after the starting time set for the Meeting, or
 - (b) present but does not want to act as Chairman of the Meeting.

49 QUORUM AT DIRECTORS' MEETINGS

- 49.1 Unless the Directors determine otherwise, the quorum for a Directors' Meeting is a majority (more than 50%) of Directors.
- 49.2 A quorum must be present for the whole Directors' Meeting.

50 USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS

- 50.1 The Directors may hold their Meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 50.2 The Directors' agreement may be a standing (ongoing) one.

51 PASSING DIRECTORS' RESOLUTIONS

- 51.1 A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

52 CIRCULATING RESOLUTIONS

- 52.1 The directors may pass a circular resolution without a directors' meeting being held.

52.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 52.3 or clause 52.4

52.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

52.4 The Foundation may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

52.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 52.3 or clause 52.4

53 MINUTES AND RECORDS

53.1 The Foundation must make and keep the following records:

- (a) minutes of proceedings and resolutions of General and Director's Meetings, and
- (b) a copy of a notice of each General and Director's Meeting.

53.2 To allow members to inspect the Foundation's records the Foundation must give a member access to the records set out in clause 53.1.

53.3 The Directors must ensure that minutes of a General Meeting or a Directors' Meeting are signed within a reasonable time after they are approved by the Chairman and Secretary of the Meeting.

54 APPOINTMENT OF AUDITOR

54.1 If the Foundation ceases to be a small company limited by guarantee or if subsection 301(3) of the Corporations Act no longer applies to the Foundation's financial reports, the Foundation must:

- (a) appoint an auditor of the Foundation at its next AGM, and
- (b) appoint an auditor of the Foundation to fill any vacancy in the office of auditor at each subsequent AGM.

54.2 An auditor appointed under clause 54.1 holds office until the auditor:

- (a) dies; or
- (b) is removed, or resigns, from office in accordance with section 329 of the Corporations Act; or

- (c) ceases to be capable of acting as auditor because of sections 324BA-324BE of the Corporations Act; or
- (d) ceases to be auditor under subsections 327B(2A), 327B(2B) or 327B(2C) of the Corporations Act.

55 FINANCIAL AND RELATED RECORDS

- 55.1 The Foundation must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
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- 55.2 The Foundation must also keep written records that correctly record its operations.
- 55.3 The Foundation must retain its records for at least 7 years.
- 55.4 The Directors must take reasonable steps to ensure that the Foundation's records are kept safe.

BY-LAWS

56 BY-LAWS

- 56.1 The Directors may pass a resolution to make by-laws to give effect to this constitution.
- 56.2 Members and Directors must comply with by-laws as if they were part of this constitution.

NOTICE

57 WHAT IS NOTICE

- 57.1 Anything written to or from the Foundation under any clause in this constitution is written notice and is subject to clauses 58 to 60, unless specified otherwise.
- 57.2 Clauses 58 to 60 do not apply to a notice of proxy.

58 NOTICE TO THE FOUNDATION

- 58.1 Written notice or any communication under this constitution may be given to the Foundation, the Directors or the Secretary by:

- (a) delivering it to the Foundation's registered office,
- (b) posting it to the Foundation's registered office or to another address chosen by the Foundation for notice to be provided, or
- (c) sending it to an email address or other electronic address notified by the Foundation to the members as the Foundation's email address or other electronic address.

59 NOTICE TO MEMBERS

- 59.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any); or
 - (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

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- 59.2 If the Foundation does not have an address for the member, the Foundation is not required to give notice in person.
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60 WHEN NOTICE IS TAKEN TO BE GIVEN

- 60.1 A notice:
- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered,
 - (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs, and
 - (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent.

FINANCIAL YEAR

61 FOUNDATION'S FINANCIAL YEAR

- 61.1 The Foundation's financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

INDEMNITY, INSURANCE AND ACCESS**62 INDEMNITY**

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- 62.1 The Foundation indemnifies each officer of the Foundation out of the assets of the Foundation, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Foundation.
- 62.2 In this clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- 62.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the Foundation is not precluded by law (including the Corporations Act) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
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- 62.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Foundation.

63 INSURANCE

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- 63.1 To the extent permitted by law (including the Corporations Act), and if the Directors consider it appropriate, the Foundation may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Foundation against any liability incurred by the person as an officer of the Foundation.

64 DIRECTORS' ACCESS TO DOCUMENTS

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- 64.1 A Director has a right of access to the financial records of the Foundation at all reasonable times.
- 64.2 If the Directors agree, the Foundation must give a Director or former Director access to:
- (a) certain documents, including documents provided for or available to the Directors, and
 - (b) any other documents referred to in those documents.

WINDING UP**65 SURPLUS ASSETS NOT TO BE DISTRIBUTED TO MEMBERS**

- 65.1 If the Foundation is wound up, any surplus assets must not be distributed to a member or a former member of the Foundation, unless that member or former member is a registered charity.

66 DISTRIBUTION OF SURPLUS ASSETS

- 66.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Foundation is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 8, and
 - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Foundation.
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- 66.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Foundation may apply to the Supreme Court to make this decision.