

# **Australian Ethical Foundation Limited**

## **Constitution**

**ABN 14 607 166 503**

**A Public Company Limited by Guarantee**

**Approved 22 February 2016**

## Table of Contents

<b>1</b>	<b>Name of the Company</b>	<b>4</b>
<b>2</b>	<b>Type of Company</b>	<b>4</b>
<b>3</b>	<b>Replaceable Rules</b>	<b>4</b>
<b>4</b>	<b>Definitions and Interpretation</b>	<b>4</b>
	4.1 Definitions	4
	4.2 Interpretation	5
<b>5</b>	<b>Charter</b>	<b>6</b>
<b>6</b>	<b>Objects</b>	<b>7</b>
	6.1 Objects	7
	6.2 Income and Property	7
	6.3 Remuneration of Directors	8
	<b>MEMBERSHIP</b>	<b>8</b>
<b>7</b>	<b>Membership</b>	<b>8</b>
	7.1 Initial Member	8
	7.2 Member rights and responsibilities	8
<b>8</b>	<b>Applications for Membership</b>	<b>8</b>
	8.1 Applications for Membership	8
<b>9</b>	<b>Membership Entitlements Not Transferable</b>	<b>10</b>
<b>10</b>	<b>Representative</b>	<b>10</b>
<b>11</b>	<b>Entrance Fee and Subscriptions</b>	<b>11</b>
<b>12</b>	<b>Cessation of Membership</b>	<b>11</b>
<b>13</b>	<b>Disciplining of Members</b>	<b>12</b>
	13.1 Disciplining of Members	12
	13.2 Right of Appeal of Disciplined Member	13
<b>14</b>	<b>Resolution of Disputes Between Members</b>	<b>14</b>
	<b>GENERAL MEETINGS</b>	<b>14</b>
<b>15</b>	<b>Convening of General Meetings</b>	<b>14</b>
	15.1 Single Member Company	14
	15.2 AGMs	14
	15.3 Convening of General Meetings	15
<b>16</b>	<b>Notice of General Meeting</b>	<b>15</b>
<b>17</b>	<b>Cancellation or Postponement of General Meeting</b>	<b>16</b>
	<b>PROCEEDINGS AT GENERAL MEETINGS</b>	<b>16</b>
<b>18</b>	<b>Quorum</b>	<b>16</b>
<b>19</b>	<b>Chair</b>	<b>17</b>

<b>20</b>	<b>Adjournments</b>	<b>17</b>
<b>21</b>	<b>Voting Rights</b>	<b>18</b>
<b>22</b>	<b>Determination of Questions</b>	<b>18</b>
<b>23</b>	<b>Polls</b>	<b>18</b>
<b>24</b>	<b>Disqualification</b>	<b>19</b>
<b>25</b>	<b>Objection to Qualification to Vote</b>	<b>19</b>
<b>26</b>	<b>Persons of Unsound Mind and Minors</b>	<b>19</b>
<b>27</b>	<b>No Casting Vote</b>	<b>19</b>
<b>28</b>	<b>Right of Non-Members to Attend General Meeting</b>	<b>19</b>
	<b>PROXIES</b>	<b>20</b>
<b>29</b>	<b>Right to Appoint Proxies</b>	<b>20</b>
<b>30</b>	<b>Appointing a Proxy</b>	<b>20</b>
	30.1 Appointing a Proxy	20
	30.2 Instrument of Proxy	20
<b>31</b>	<b>Lodgement of Proxies</b>	<b>20</b>
<b>32</b>	<b>Validity of Proxies</b>	<b>21</b>
<b>33</b>	<b>Rights of Proxies and Attorneys</b>	<b>21</b>
	<b>APPOINTMENT AND REMOVAL OF DIRECTORS</b>	<b>22</b>
<b>34</b>	<b>Number and Appointment of Directors</b>	<b>22</b>
	34.1 Number of Directors	22
	34.2 Constitution of Board	22
	34.3 Appointed Directors	22
	34.4 Co-Opted Directors	22
	34.5 Term	23
	34.6 Office Bearers	23
<b>35</b>	<b>General Right to Appoint and Remove Directors</b>	<b>23</b>
<b>36</b>	<b>Vacation of Office</b>	<b>24</b>
<b>37</b>	<b>Filling of Vacancies on the Board</b>	<b>24</b>
<b>38</b>	<b>Acting Office Bearers</b>	<b>24</b>
<b>39</b>	<b>Alternate Directors</b>	<b>25</b>
	<b>POWERS AND DUTIES OF DIRECTORS</b>	<b>25</b>
<b>40</b>	<b>Duties of Directors</b>	<b>25</b>
<b>41</b>	<b>Powers of Directors</b>	<b>25</b>
<b>42</b>	<b>Negotiable Instruments</b>	<b>26</b>
<b>43</b>	<b>Conferment of Powers</b>	<b>26</b>
	<b>DIRECTORS' DISCLOSURE OF INTEREST</b>	<b>26</b>

<b>44</b>	<b>Contracts</b>	<b>26</b>
	<b>PROCEEDINGS OF DIRECTORS</b>	<b>27</b>
<b>45</b>	<b>Meetings of Directors</b>	<b>27</b>
<b>46</b>	<b>Quorum</b>	<b>28</b>
<b>47</b>	<b>Chair</b>	<b>28</b>
<b>48</b>	<b>Voting</b>	<b>28</b>
<b>49</b>	<b>Resolutions by Directors</b>	<b>29</b>
<b>50</b>	<b>Committee of Directors</b>	<b>29</b>
<b>51</b>	<b>Validation of Acts of Directors</b>	<b>29</b>
	<b>MINUTES</b>	<b>30</b>
<b>52</b>	<b>Minutes</b>	<b>30</b>
	<b>SECRETARY</b>	<b>30</b>
<b>53</b>	<b>Appointment and Tenure</b>	<b>30</b>
	<b>EXECUTION OF DOCUMENTS</b>	<b>30</b>
<b>54</b>	<b>Execution of Documents</b>	<b>30</b>
	<b>ACCOUNTS AND INSPECTION OF RECORDS</b>	<b>31</b>
<b>55</b>	<b>Accounts and Inspection</b>	<b>31</b>
	<b>NOTICES</b>	<b>31</b>
<b>56</b>	<b>Service of Notices</b>	<b>31</b>
	<b>WINDING UP</b>	<b>32</b>
<b>57</b>	<b>Winding Up</b>	<b>32</b>
	<b>INDEMNITY</b>	<b>32</b>
<b>58</b>	<b>Indemnity</b>	<b>32</b>
<b>59</b>	<b>Payment of Indemnity Policy Premium</b>	<b>33</b>
<b>60</b>	<b>Indemnity to Continue</b>	<b>33</b>
<b>Annexure A</b>	<b>Form of Appointment of Proxy</b>	<b>34</b>

---

## **1 Name of the Company**

---

The name of the Company is Australian Ethical Foundation Limited.

## **2 Type of Company**

---

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
  - (i) payment of debts and liabilities of the Company;
  - (ii) payment of the costs, charges and expenses of winding up; and
  - (iii) any adjustment to the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to ten dollars (\$10.00).

## **3 Replaceable Rules**

---

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

## **4 Definitions and Interpretation**

---

### **4.1 Definitions**

In this Constitution, unless there is something in the subject or context which is inconsistent:

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

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

**ACNC Regulation** means whichever of the *Australian Charities and Not-for-profits Commission Amendment Regulation 2013* (Clth) or any amended version of an equivalent regulation which is in force from time to time.

**AEIL** means Australian Ethical Investment Limited ABN 47 003 188 930.

**AGM** means annual general meeting.

**Alternate Director** has the meaning given to it in section 201K of the Corporations Act.

**Appointed Director** means a Director appointed pursuant to **clause 34.2(a)**.

**Appointor** means AEIL.

**Board** means the board of Directors of the Company.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales.

**Chair** means the person holding that office under this Constitution and includes any assistant or acting Chair.

**Chairperson** means a person appointed to that position pursuant to **clause 34.6(a)(i)**.

**Charity** means an entity that is registered with the ACNC.

**Charter** means the directions contained in **clauses 5(c) and 5(d)**.

**Committee** means a committee established in accordance with **clause 50**.

**Company** means Australian Ethical Foundation Limited.

**Constitution** means this constitution as amended or supplemented from time to time.

**Co-opted Director** means a person appointed as a Director pursuant to **clause 34.2(b)**.

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

**Director** means any person holding the position of a director of the Company (and includes Appointed Directors and Co-Opted Directors) and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.

**Member** means a member of the Company pursuant to **clause 7** and **clause 8**.

**Membership** has the corresponding meaning.

**Member Present** means in connection with a meeting of the Members, a Member being present by proxy or attorney or by Representative.

**Members' Guarantee Amount** means the amount referred to in **clause 2(c)**.

**Objects** means the objects of the Company as set out in **clause 6.1**.

**Office** means the registered office for the time being of the Company.

**Office Bearer** means a person holding any of the offices specified in **clause 34.6**.

**Officer** has the same meaning as given to that term in section 9 of the Corporations Act.

**Register** means the register of Members to be kept pursuant to the Corporations Act.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

**Representative** means the person authorised in accordance with section 250D of the Corporations Act to act as a representative of a Member, as described in **clause 10**.

**Secretary** means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

**Special Resolution** has the meaning given to it by the Corporations Act.

#### 4.2 Interpretation

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
- (i) the singular includes the plural and vice versa;
  - (ii) each gender includes the other two genders;
  - (iii) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
  - (iv) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;

- (v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (viii) an expression used in a particular Part or Division of an Act or Regulation that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- (ix) headings do not form part of or affect the construction or interpretation of this Constitution.

## **5 Charter**

---

- (a) When considering any provision of financial assistance, any investment, activity or involvement in any business or any other charitable activity intended to further the Objects, the Company shall attempt to further the aims set out in this Charter.
- (b) Nothing in this Constitution shall prevent the Company from holding shares or other interests in companies, businesses or other entities where the voting power of such shares or interests is used to further the aims set out in this Charter.
- (c) The Company will order its affairs so as to provide for and to support:
  - (i) the development of workers' participation in the ownership and control of their work organisations and places;
  - (ii) the production of high quality and properly presented products and services;
  - (iii) the development of locally based ventures;
  - (iv) the development of appropriate technological systems;
  - (v) the amelioration of wasteful or polluting practices;
  - (vi) the development of sustainable land use and food production;
  - (vii) the preservation of endangered eco-systems;
  - (viii) activities which contribute to human happiness, dignity and education;
  - (ix) the dignity and well being of non human animals;
  - (x) the efficient use of human waste;
  - (xi) the alleviation of poverty in all its forms; or

- (xii) the development and preservation of appropriate human buildings and landscapes.
- (d) The Company will also order its affairs so as to avoid activity which is considered to unnecessarily:
  - (i) pollute land, air or waters;
  - (ii) destroy or waste non-recurring resources;
  - (iii) extract, create, produce, manufacture, or market materials, products, goods or services which have a harmful effect on humans, non human animals or the environment;
  - (iv) market, promote or advertise products or services in a misleading or deceitful manner;
  - (v) create markets by the promotion or advertising of unwanted products or services;
  - (vi) acquire land or commodities primarily for the purpose of speculative gain;
  - (vii) create, encourage or perpetuate militarism or engage in the manufacture of armaments;
  - (viii) entice people into financial over-commitment;
  - (ix) exploit people through the payment of low wages or the provision of poor working conditions;
  - (x) discriminate by way of race, religion or sex in employment, marketing, or advertising practices; or
  - (xi) contribute to the inhibition of human rights generally.

## **6 Objects**

---

### **6.1 Objects**

- (a) The Company is established:
  - (i) as a charitable fund to provide funds to entities carrying out charitable activities (whether or not the entities are Charities);
  - (ii) to act as the trustee of any public ancillary fund; and
  - (iii) anything ancillary to the Objects referred to in **clauses 6.1(a)(i) to 6.1(a)(ii)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
  - (i) carry out the Objects of the Company; and
  - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 6.1(b)(i)**.

### **6.2 Income and Property**

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.



- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member. However nothing in this Constitution will prevent payment in good faith to a Member:
  - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
  - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

### **6.3 Remuneration of Directors**

No payment shall be made to any Director (except any executive Director in their capacity as an employee of the Company) other than the payment:

- (a) of Directors' fees if the payment and quantum of such fees have received prior approval from the Members;
- (b) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (c) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

## **MEMBERSHIP**

### **7 Membership**

---

#### **7.1 Initial Member**

The initial Member shall be AEIL.

#### **7.2 Member rights and responsibilities**

- (a) All Members agree to assume the liability to pay the Member's Guarantee Amount.
- (b) In addition to Members being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

### **8 Applications for Membership**

---

#### **8.1 Applications for Membership**

- (a) An application for Membership of the Company must:
  - (i) be made in writing in the form prescribed by the Board from time to time;

- (ii) specify the category of Membership (if any) being applied for by the applicant;
  - (iii) include a signature, or equivalent acknowledgement by the applicant acknowledging that the applicant agrees to be bound by the Constitution of the Company as amended from time to time; and
  - (iv) be lodged with the Secretary.
- (b) As soon as practicable after receiving an application for Membership, the Secretary must refer the application to the Board which is to determine whether to approve or reject the application.
- (c) As soon as practicable after the Board makes that determination the Secretary must:
- (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
    - (A) if the Board approved the application, enter the applicant's name in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or
    - (B) if the Board rejected the application, comply with the notification requirements in **clause 8.1(d)**.
- (d) If the Board determines under **clause 8.1(b)** to reject an application for Membership, the Secretary must serve the applicant with a notice in writing:
- (i) setting out the determination of the Board;
  - (ii) stating that the applicant may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than sixty (60) days after service of the notice;
    - (A) stating the date, place and time of that meeting; and
    - (B) informing the applicant that the applicant may do either or both of the following:
      - (1) attend and speak at that meeting; and/or
      - (2) submit to the Board at or prior to the date of the meeting, written representations relating to the determination.
- (e) At a meeting of the Board held as referred to in **clause 8.1(d)**, the Board must:
- (i) give the applicant an opportunity to make oral representations and allow the applicant to use any technology (reasonably available to the Board) that gives the applicant a reasonable opportunity to do so;
  - (ii) give due consideration to any written representations submitted to the Board by the applicant at or prior to the Board meeting; and

- (iii) by 75% majority, determine whether to confirm or to revoke the determination.
- (f) The applicant must be notified in writing of the decision of the Board within seven (7) days.

## **9 Membership Entitlements Not Transferable**

---

A right, privilege or obligation which an entity has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the entity's Membership.

## **10 Representative**

---

- (a) Where a Member or an applicant for Membership is not a natural person, it must appoint as its Representative a natural person. Normally (but not necessarily) the Representative will be the chief executive officer (or a person holding a similar position to that of the chief executive officer) of the Member.
- (b) The name and address of the Representative will be entered in the Register as the representative of that Member.
- (c) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Member which is represented by that particular Representative.
- (d) If the appointment of a Representative by a Member is made by reference to a position held, the appointment must identify the position.
- (e) Despite **clause 7**, a Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.
- (f) A Member must give written notice to the Board in the form approved by the Board of any change to any Representative's name or address.
- (g) A signature by a Representative of a Member is taken to be the signature of that Member for the purposes of this Constitution.
- (h) Any power or right of a Member as granted by this Constitution can be exercised by the Representative of that particular Member.
- (i) A Member will be represented at meetings of the Members by its Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 29**.
- (j) The actions of a Representative bind the Member which is represented by that particular Representative.
- (k) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if the Member himself or herself.

## **11 Entrance Fee and Subscriptions**

---

There shall be no entrance fees or annual subscriptions.

## **12 Cessation of Membership**

---

- (a) A Member's Membership will cease:
- (i) on the date that the Secretary receives written notice of resignation from that Member;
  - (ii) in the case of a natural person, upon that Member dying;
  - (iii) upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
  - (iv) if the Member is expelled from the Company pursuant to **clause 13**;
  - (v) if, being a body corporate Member,
    - (A) the Member is dissolved or otherwise ceases to exist; or
    - (B) the Member has:
      - (1) a receiver;
      - (2) a receiver and manager;
      - (3) a liquidator;
      - (4) an administrator;
      - (5) an administrator of a deed of company arrangement; or
      - (6) a trustee of other person administering a compromise or arrangement between the Member and someone else;appointed to it.
- (b) A Member may at any time, pursuant to **clause 12(a)(i)**, resign as Member, but shall continue to be liable for:
- (i) any monies due by the Member to the Company;
  - (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**.
- (c) In the event that AEIL ceases to be a Member pursuant to **clause 12(a)**, AEIL has the power to appoint a new Member to the Company, the choice of that new Member being within the full and unfettered discretion of AEIL.
- (d) In the event that the sole Member vacates, and a new Member is not appointed pursuant to **clause 12(c)**, the Board may appoint a new Member to the Company, the choice of that new Member being within the full and unfettered discretion of the Board.

## 13 Disciplining of Members

---

### 13.1 Disciplining of Members

- (a) Where the Board is of the opinion that a Member has:
- (i) persistently refused or neglected to comply with a provision or provisions of this Constitution; or
  - (ii) persistently and wilfully acted in a manner prejudicial to the interests of the Company;
- the Board may:
- (iii) expel the Member from the Company; or
  - (iv) suspend the Member from Membership of the Company for a specified period.
- (b) A resolution of the Board pursuant to **clause 13.1** is of no effect unless the Board confirms the resolution in accordance with this **clause 13.1(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty eight (28) days after service on the Member of a notice pursuant to **clause 13.1(c)**.
- (c) If the Board resolves under **clause 13.1** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
- (i) setting out the resolution of the Board and the grounds upon which it is based;
  - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty eight (28) days after service of the notice;
  - (iii) stating the date, place and time of that meeting; and
  - (iv) informing the Member that the Member may do either or both of the following:
    - (A) attend and speak at that meeting;
    - (B) submit to the Board at or prior to the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 13.1(c)**, the Board must:
- (i) give the Member an opportunity to make oral representations;
  - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the Board meeting; and
  - (iii) by a resolution of at least 75% of the Directors participating in the Board meeting, determine whether to confirm or to revoke the resolution.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 13.2**.

- (f) A resolution confirmed by the Board under **clause 13.1(d)** does not take effect:
  - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
  - (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 13.2(d)(ii)**.

### **13.2 Right of Appeal of Disciplined Member**

- (a) The Board will establish a committee for the purpose of conducting disciplinary proceedings against a Member (**Disciplinary Committee**). The Disciplinary Committee will comprise of an independent panel of three experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 13.1(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 13.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 13.2(b)**, the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 13.2(c)**:
  - (i) the Member must be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
  - (ii) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision, pursuant to **clause 13.2(d)(ii)** is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) The Member the subject of these disciplinary procedures is entitled to:
  - (i) subject to **clause 13.2(f)(ii)**, bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to this **clause 13**; and
  - (ii) if the support person is legally qualified, the Member must notify the Disciplinary Committee or the Board (as the case may be) at least five (5) business days before the meeting that the support person attending the meeting will be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this **clause 13**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

## **14 Resolution of Disputes Between Members**

---

- (a) Disputes between Members (in their capacity as Members), including disputes arising in relation to fundraising, shall be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the Law Institute of New South Wales.
- (d) The costs of the mediator appointed pursuant to **clause 14(b)** or **clause 14(c)** (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 14(b)** or **clause 14(c)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

## **GENERAL MEETINGS**

### **15 Convening of General Meetings**

---

#### **15.1 Single Member Company**

- (a) In the event that the Company has only one (1) Member, the Company shall be exempt from holding an AGM pursuant to section 250N(4) of the Corporations Act. The Board may, however, hold an AGM if it resolves to do so. Any such convened AGM shall comply with all of the requirements in the Corporations Act which apply to an AGM (notwithstanding the possible application of section 111L of the Corporations Act).
- (b) In the event that the Company only has one (1) Member, the Company may pass a resolution of the Member (which includes Special Resolutions) by having the Member record the resolution and sign the resolution.

#### **15.2 AGMs**

In the event that the Company has more than one (1) Member and is:

- (a) required to comply with the provisions of the Corporations Act pertaining to AGMs, the Company will do so in accordance with the requirements of those provisions; or
- (b) not required to comply with the provisions of the Corporations Act pertaining to AGMs, but the Board nevertheless desires to convene AGMs, the Company will convene and conduct AGMs in accordance with the

provisions of the Corporations Act pertaining to AGMs notwithstanding section 111L of the Corporations Act.

### **15.3 Convening of General Meetings**

- (a) Any one (1) Director may, whenever that Director thinks fit, convene a general meeting of the Company.
- (b) Members shall be entitled to require a general meeting to be convened:
  - (i) if the Company is required to comply with the provisions of the Corporations Act, in accordance with those provisions and **clause 15.3(c)(i)** will apply; or
  - (ii) if **clause 15.3(b)(i)** does not apply, if those Members hold at least 5% of the votes that may be cast at the general meeting and **clause 15.3(c)(ii)** will apply.
- (c) In the event that the Company is:
  - (i) required to comply with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting, the:
    - (A) Members may call a general meeting; and
    - (B) Company will do so;in accordance with the requirements of those provisions; or
  - (ii) not required to comply with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting, the:
    - (A) Members may call a general meeting; and
    - (B) Company will do so;in accordance with the requirements of those provisions notwithstanding section 111L of the Corporations Act.
- (d) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

### **16 Notice of General Meeting**

---

- (a) This **clause 16** is subject to **clause 15.1(b)**.
- (b) Subject to consent to shorter notice being given in accordance with the Corporations Act, at least twenty one (21) days notice of any general meeting must be given specifying:
  - (i) the place, day and hour of the meeting;
  - (ii) the general nature of any business to be transacted at the meeting;
  - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;



- (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (v) any other information required by the Corporations Act.
- (c) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (a) Subject to **clause 16(c)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
- (i) every Member;
  - (ii) every Director; and
  - (iii) the auditor for the time being of the Company (if any).

## **17 Cancellation or Postponement of General Meeting**

---

- (a) Subject to the provisions of the Corporations Act and this Constitution, the Board may cancel a general meeting of the Company:
- (i) convened by the Board; or
  - (ii) which has been convened by a Member or Members pursuant to **clause 15.3(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
- (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
  - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

### **18 Quorum**

---

- (a) No business may be transacted at any general meeting unless there is a quorum of Members Present at all times during the meeting.

- (b) Members Present representing at least ten per cent (10%) of all Members shall constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
  - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
  - (ii) in any other case:
    - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
    - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

## **19 Chair**

---

- (a) The Chairperson of the Board shall preside as Chair at each general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no Chairperson; or:
  - (ii) the Chairperson is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chair of the meeting,then the following person will be Chair in lieu of the Chairperson in the order of availability set out below:
  - (iii) another Director chosen by the Directors present at the meeting; and
  - (iv) the Representative of a Member or a Member.
- (c) The rulings of the Chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

## **20 Adjournments**

---

- (a) The Chair of a general meeting at which a quorum is present:
  - (i) may adjourn a meeting with the consent of the meeting; and
  - (ii) must adjourn the meeting if the meeting so directs;to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

## **21 Voting Rights**

---

Each Member has one (1) vote, both on a show of hands and a poll.

## **22 Determination of Questions**

---

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
  - (i) the Chair of the meeting; or
  - (ii) at least one (1) Member Present.
- (b) Before a vote on a resolution is taken, the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chair of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **23 Polls**

---

- (a) A poll may be demanded:
  - (i) before a vote on a resolution is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chair of the meeting directs subject to **clause 23(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

## **24 Disqualification**

---

No person other than:

- (a) a Member;
- (b) a Representative of a Member; or
- (c) a proxy of a:
  - (i) Member; or
  - (ii) Representative of a Member;

shall be entitled to a vote at a general meeting.

## **25 Objection to Qualification to Vote**

---

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chair, whose decision shall be final and conclusive, and a vote allowed by the Chair shall be valid for all purposes.

## **26 Persons of Unsound Mind and Minors**

---

- (a) A Member:
  - (i) of unsound mind; or
  - (ii) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
  - (iii) who is a minor;

may vote whether on a show of hands or on a poll by that Member's committee or by such other person as properly has the management or guardianship of that Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.

- (b) Any person having the right of management or guardianship of the person or estate in respect of a Member as referred to in **clause 26(a)** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

## **27 No Casting Vote**

---

In the case of an equality of votes whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

## **28 Right of Non-Members to Attend General Meeting**

---

- (a) The Chair of a general meeting may invite any person who is not a Member to attend and address a meeting.

- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

## PROXIES

### 29 Right to Appoint Proxies

---

- (a) A Member or its Representative may appoint a person as the Member's or the Representative's proxy to attend and vote for the Member or the Representative at the meeting.
- (b) If a Member or Representative of a Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

### 30 Appointing a Proxy

---

#### 30.1 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

#### 30.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act:
  - (i) the name and address of the Member (and the name of a Representative, if applicable);
  - (ii) the name of the Company;
  - (iii) the proxy's name or the name of the office of the proxy; and
  - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 30.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

### 31 Lodgement of Proxies

---

- (a) An instrument appointing:
  - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than

twenty four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this **clause 31** it will be sufficient that any document required to be lodged by a Member or Representative be received in legible form by facsimile at the place at which the document is required to be delivered by the Member or Representative and the document shall be regarded as received at the time the facsimile was received at that place.
- (c) For the purposes of this **clause 31** it will be sufficient that any document required to be lodged by a Member or Representative be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email or other electronic transmission by the Company.

## **32 Validity of Proxies**

---

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
  - (i) the death or unsoundness of mind of the Member or Representative of a Member;
  - (ii) the bankruptcy or liquidation of the Member or Representative of a Member;
  - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least forty eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- (b) A proxy who is not entitled to vote on a resolution as a Member or Representative of a Member may vote as a proxy for another Member or Representative of a Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (c) Except on a show of hands, a proxy may vote as more than one Member or Representative of a Member if the proxy holds appointments for those Members or Representatives of Members which specify the way the proxy is to vote on the resolution and the proxy votes that way.

## **33 Rights of Proxies and Attorneys**

---

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.

- (b) Subject to **clause 33(c)**, unless a Member or Representative by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chair that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a poll.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **34 Number and Appointment of Directors**

---

#### **34.1 Number of Directors**

- (a) The Board of Directors shall consist of not less than three (3) and not more than ten (10) persons.
- (b) The Board may by resolution vary the number of Directors holding office from that referred to in **clause 34.1(a)**.

#### **34.2 Constitution of Board**

Subject to **clause 34.3**, the Board shall consist of:

- (a) up to eight (8) Appointed Directors; and
  - (b) up to six (6) Co-Opted Directors appointed by the Board from time to time;
- provided that the total number of Directors does not exceed the maximum fixed by **clause 34.1**.

#### **34.3 Appointed Directors**

- (a) All Appointed Directors shall be appointed by the Appointor. The Appointor must attempt to appoint persons to the Board who will bring skills and experience to the Board to enable the Board to advance the Objects.
- (b) The Appointor may only appoint a person to the Board who has satisfied the Appointor that the person fulfils the conditions contained in subsection 45.20(3) of the ACNC Regulation.
- (c) The Appointor must at all times ensure that at least one (1) person on the Board is a current director of AEIL.

#### **34.4 Co-Opted Directors**

- (a) The Board may appoint Co-Opted Directors to the Board at any time to fill the positions provided for in **clause 34.2(b)**.

- (b) A Co-Opted Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.

#### **34.5 Term**

- (a) Subject to **clauses 34.5(c), 34.3(a) and 34.3(b)**:
  - (i) Appointed Directors shall hold office for the term determined by the Appointor, which will usually be approximately three (3) years, but can be for any term as determined by the Appointor;
  - (ii) Co-Opted Directors shall hold office for the term determined by the Board, which will usually be approximately three (3) years, but can be for any term as determined by the Board.
- (b) The Appointor and the Board shall attempt, in determining the terms of newly appointed Directors, to appoint Directors for such terms so as to create staggered terms amongst all of the Directors.
- (c) Directors shall generally not hold office for more than nine (9) consecutive years, however the Appointor or the Board (as the case may be) shall have sole discretion to extend the length and number of terms a Director may serve.

#### **34.6 Office Bearers**

- (a) Subject to **clause 34.6(b)** the Board shall, at the first meeting of the Board held after this Company is registered and thereafter at the first meeting of the Board held after an Office Bearer has retired, appoint from amongst the Directors sitting on the Board at the time of the Board meeting:
  - (i) a Chairperson; and
  - (ii) such additional Office Bearer positions as the Board deems necessary from time to time.
- (b) The Chairperson must be a current director of AEIL.
- (c) The term of office for Office Bearers shall be determined by the Board from time to time. Office Bearers shall be eligible for reappointment for further terms provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.

### **35 General Right to Appoint and Remove Directors**

---

The Board may act despite any vacancy in their body but if the number falls below the minimum fixed in accordance with **clause 34.1(a)** the Board may act:

- (a) for the purpose of:
    - (i) increasing the number of Directors to the minimum; or
    - (ii) convening a general meeting; or
  - (b) in emergencies;
- but for no other purpose.



## **36 Vacation of Office**

---

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
  - (i) dies;
  - (ii) is removed from the Board by the Appointor (and such removal can occur at any time and within the full and unfettered discretion of the Appointor);
  - (iii) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (iv) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
  - (v) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
  - (vi) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
  - (vii) resigns by notice in writing to the Company; or
  - (viii) is absent without permission of the Board from three (3) consecutive meetings of the Board.

## **37 Filling of Vacancies on the Board**

---

- (a) In the event of a casual vacancy occurring on the Board:
  - (i) in relation to an Appointed Director vacancy, the Appointor, if it so wishes, can appoint any person to fill that vacancy in accordance with **clause 34.3**; or
  - (ii) in relation to a Co-opted Director vacancy, the Board, if it so wishes, can appoint any person to fill that vacancy in accordance with **clause 34.4**.
- (b) Any Director appointed pursuant to **clause 37(a)** shall hold office for a full new term.

## **38 Acting Office Bearers**

---

- (a) In the event of a vacancy occurring in the position of Chairperson, the Board shall elect a new Chairperson at the next meeting of the Board in accordance with **clause 34.6**.

- (b) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.
- (c) Nothing in this **clause 38** permits any person to simultaneously hold more than one position of Office Bearer.

### **39 Alternate Directors**

---

A Director may appoint any person to be an Alternate Director in the place of the Director during such period as the Director thinks fit, and the following provisions apply with respect to any Alternate Director:

- (a) the Alternate Director is entitled to notice of Board meetings and, if the Alternate Director's appointor Director is not present at such a Board meeting, the Alternate Director is entitled to attend and vote in the place of the absent Director;
- (b) the Alternate Director may exercise any powers that the Alternate Director's appointor Director may exercise, and the exercise of any such power by the Alternate Director is deemed to be the exercise of the power by the Alternate Director's appointor Director;
- (c) the Alternate Director's appointment may be terminated at any time by the Alternate Director's appointor Director, despite the period of the appointment of the Alternate Director not having expired, and the appointment must terminate in any event if the Alternate Director's appointor Director vacates office as a Director; and
- (d) the appointment or the termination of an appointment of an Alternate Director must be effected by a written notice signed by the Director who made the appointment given to the Company.

## **POWERS AND DUTIES OF DIRECTORS**

### **40 Duties of Directors**

---

- (a) Each Director is subject to, and must comply at all times with, the duties set out in Governance Standard 5 in section 45.25 of the ACNC Regulation if the Company is legally required to comply with that regulation.
- (b) In accordance with Governance Standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.
- (c) The Board must order the affairs of the Company in accordance with the Charter.

### **41 Powers of Directors**

---

- (a) Subject to **clause 40(c)**, the control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Corporations Act, the ACNC Act, the

ACNC Regulation or by this Constitution required to be exercised in any other manner.

- (b) If the Company is a wholly-owned subsidiary of a Member, a Director is, pursuant to section 187 of the Corporations Act, taken to have acted in good faith in the best interests of the Company even if that Director is acting in the best interests of that Member, if the following conditions are satisfied:
- (i) the Director acts in good faith in the best interests of that Member; and
  - (ii) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

## **42 Negotiable Instruments**

---

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board. The Board may authorise:

- (a) a Director(s);
- (b) the Secretary;
- (c) the chief executive officer of the Company; or
- (d) a staff member of the Company,

to sign such instruments.

## **43 Conferment of Powers**

---

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 43** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

# **DIRECTORS' DISCLOSURE OF INTEREST**

## **44 Contracts**

---

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest of a Director must be dealt with in accordance with the relevant legislation, being either:

- (i) the Corporations Act; or
  - (ii) the ACNC Regulation,
- which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.
- (c) Subject to **clause 44(b)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
    - (i) not be present while the matter is being considered at a meeting;
    - (ii) not vote on the matter;
    - (iii) still be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
    - (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
    - (v) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
  - (d) The Company shall not make any payment for services rendered by a Director in a professional or technical capacity, except where the provision of such services and the amount payable have prior approval of the Board and where the amount does not exceed an amount that is commercially reasonable for those services.
  - (e) A Director's failure to make disclosure under this **clause 44** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
  - (f) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

## PROCEEDINGS OF DIRECTORS

### **45 Meetings of Directors**

---

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that the Board must meet not less than four (4) times each calendar year.
- (b) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least twenty four (24) hours notice of the meeting to all Directors, provided that the Director or Secretary must have used their best endeavours to ensure that the notice was properly served and received.

- (c) Notice of a meeting of the Board need not be in writing.
- (d) Subject to **clause 45(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 45(d)**, must be available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting

#### **46 Quorum**

---

- (a) The quorum necessary for the transaction of the Board's business is two (2) Directors.
- (b) A quorum must be present at all times during the meeting.
- (c) A Director who is disqualified from voting on a matter pursuant to **clause 44** shall be counted in the quorum despite that disqualification.

#### **47 Chair**

---

- (a) The Chairperson of the Board shall be the Chair.
- (b) The Chairperson shall, if present, preside as Chair of every meeting of the Board.
- (c) If a meeting of Board is held and the Chairperson is:
  - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
  - (ii) if present, does not wish to chair the meeting,then the other Directors present must elect one of their number to be Chair of the meeting.

#### **48 Voting**

---

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.

- (c) In case of an equality of votes at a meeting of the Board, the Chair has a casting vote in addition to a deliberative vote.

## **49 Resolutions by Directors**

---

- (a) The Board may pass a resolution without a Board meeting being held if a majority of the total number of Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one document.
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this **clause 49** be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 49** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- (d) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 49** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

## **50 Committee of Directors**

---

- (a) The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- (b) The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (c) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (d) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (e) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

## **51 Validation of Acts of Directors**

---

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

## **MINUTES**

### **52 Minutes**

---

- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
  - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
  - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
  - (iii) such matters as are required by the Corporations Act or the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the Chair of the meeting, or the Chair of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

## **SECRETARY**

### **53 Appointment and Tenure**

---

- (a) There must be at least one Secretary appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board may remove any Secretary so appointed.

## **EXECUTION OF DOCUMENTS**

### **54 Execution of Documents**

---

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
  - (i) two (2) Directors signing the same; or
  - (ii) one (1) Director and one (1) Secretary signing the same.

- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

## **ACCOUNTS AND INSPECTION OF RECORDS**

### **55 Accounts and Inspection**

---

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act or the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Director's report;
- (b) where required by the Corporations Act or the ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act or the ACNC Act (as the case may be); and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

## **NOTICES**

### **56 Service of Notices**

---

- (a) A notice may be given by the Company to any Member by:
- (i) serving it on the Member personally;
  - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
  - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
  - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office its place of address for inclusion in the Register as the place at which notices may be given to the Member, the Member shall not be entitled to receive any notice.
- (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the second day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the



notice and in such case shall be taken to have been effected on the business day after it is sent.

- (e) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

## WINDING UP

### 57 Winding Up

---

- (a) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution(s) or corporation(s) which has:
  - (i) objects which are similar to the Objects;
  - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
  - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 6.2(b)**.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 57(a)** is to be determined:
  - (i) by the Members; or
  - (ii) if the Members do not decide or do not wish to decide, then by the Board;

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

## INDEMNITY

### 58 Indemnity

---

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or

- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

## **59 Payment of Indemnity Policy Premium**

---

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
  - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of sections 182 or 183 of the Corporations Act, to the extent that these sections apply.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

## **60 Indemnity to Continue**

---

The indemnity granted by the Company contained in **clauses 58 and 59** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

# Annexure A Form of Appointment of Proxy

AUSTRALIAN ETHICAL FOUNDATION LIMITED

(incorporated under the *Corporations Act 2001*)

## PROXY FORM

### 1. Your details

*(Please print your name and address)*

Name of Member/Representative: \_\_\_\_\_

ACN/ABN: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Postcode: \_\_\_\_\_

Telephone: \_\_\_\_\_

### 2. Appoints

Name: \_\_\_\_\_

*(Please print name of proxy)*

or failing the person so named, or if no person is named, the **Chair of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chair sees fit at the (Annual) General Meeting of Australian Ethical Foundation Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

### 3. Directions

### 4. Signature

### 5. Date

