Constitution

The Barker Foundation Ltd

ABN 63 002 240 459

A Public Company Limited by Guarantee

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Preamble

A. The Barker Foundation Ltd (ACN 002 240459) (**Foundation**) was established as an Australian public company limited by guarantee on 14 August 1981, with the charitable purpose of raising funds that would endow and strengthen Barker College (**College**), including any campus or registered school operated by The Council of Barker College (**Council**). The Foundation would also enable inclusive access and community participation in the College through lowered fees and a variety of scholarship programs. The Foundation has continued fulfilling its stated charitable purposes until today.

B. The first meeting of the Foundation was held on 23 March 1982 and included the following members:

(a) Mr. G. F. S. Boyce (Chairman of Council);

(b) Mr. T. J. McCaskill (Headmaster);

(c) Mr. D. E. Gamson (Honorary Council Treasurer and Representative on CAS Committee);

(d) Mrs. A. Rickward (President of BCMA); and

(e) Mr. J. B. Allen (President of the Old Barker Association).

C. In 2023 the Foundation's governing document was reviewed to ensure compliance with applicable law and regulations, and to enable the Foundation to better serve the College's purposes through the provision of resources to support programs, scholarships, inclusivity initiatives, and future learning spaces. All objectives and activities of the Foundation must be consistent with the Mission, Vision and Values of the School, as determined from time to time by the Council of Barker College. The Foundation must support the Head of Barker College in carrying out the objectives and activities in the context of the Mission, Vision and Values of the School.

Barker College Mission, Vision and Values

A Barker education is shaped by our focus on preparing for a life beyond the School gates.

Mission: An Anglican community inspiring every learner, every experience, every day

Vision: To be a leader in Christian education that is characterised by a global vision that inspires hope

Values: Commitment, Compassion, Courage, Integrity, Respect

1 Definitions and interpretation

1.1 Definitions

In this Constitution, unless a contrary intention appears:

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

Alternate Director means an individual appointed as an alternate director under clause 22.

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

ASIC means the Australian Securities and Investments Commission.

College means Barker College and includes any campus or registered school operated by the Council.

Constitution means this constitution as amended from time to time.

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

Council means the body corporate by the name of The Council of Barker College incorporated pursuant to the provisions of the *Church of England (Bodies Corporate) Act 1938* and governed by *The Barker College Ordinance 1978*, and which bears the ABN 18 620 620 356.

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

Director Identification Number has the same meaning it has in the Corporations Act.[1]

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

Elected Director has the meaning set out in clause 11.1(a)(ii).

Executive Officer means an individual appointed as an executive officer of the Foundation in accordance with clause 17.1(a).

Foundation means The Barker Foundation Ltd being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 002 240 459.

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

Gift Fund means a management account of the Foundation that is established in accordance with clause 30.

Honorary Life Member means a Member honoured as an honorary life member by the Directors under clause 6.4.

Insolvency Event occurs where:

(a) an order is made or a resolution is passed by creditors for the winding up, dissolution or external administration of the Member;

(b) the Member enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or

(c) a controller, receiver, receiver and manager, official manager or other external administrator is appointed to the Member.

Legal Capacity means, in relation to an individual, that the individual is at least 18 years of age, and that:

(a) in the Directors' reasonable assessment, the individual is capable of understanding the nature and effect of their participation in the Foundation's affairs without the need of special assistance or explanation; or

[1] At the time of adoption of this Constitution, section 9 provides that a Director Identification Number means a director identification number given under:
(a) section 1272; or
(b) section 308-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

(b) in the Directors' reasonable assessment, the individual is able to receive and understand communications and express their will in relation to the Foundation's affairs; or

(c) their person or estate is not liable to be dealt with under the laws relating to mental health:

(i) on a permanent or ongoing basis,

(ii) in an involuntary manner, or

(iii) on a court ordered basis.

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

Objects means the objects of the Foundation as set out in clause 2.

Poll means a vote that is recorded in writing.

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

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

Rule means a rule made by the Directors in accordance with clause 16.

Schedule means a Schedule to this Constitution.

Secretary means an individual appointed as a secretary of the Foundation in accordance with clause 17.2.

Special Resolution has the same meaning it has in the Corporations Act.[2]

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

Virtual Meeting Technology has the same meaning it has in the Corporations Act.[3]

1.2 Interpretation

In this Constitution, unless a contrary intention appears:

(a) words importing any gender include all other genders;

(b) the singular includes the plural and vice versa;

(c) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;

(d) a reference to a law includes regulations and instruments made under the law;

(e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a state, a territory, the Commonwealth of Australia or otherwise;

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

[3] At the time of adoption of this Constitution, section 9 provides that Virtual Meeting Technology means any technology that allows a person to participate in a meeting without being physically present at the meeting.

(f) a reference to a meeting includes a meeting by technology provided the technology gives the persons entitled to attend the meeting, as a whole, reasonable opportunity to participate without being physically present in the same place, and includes a General Meeting:

(i) at one or more physical venues;

(ii) at one or more physical venues and using Virtual Meeting Technology; or

(iii) using Virtual Meeting Technology only;

(g) a reference to a person being present in person includes an individual participating in a meeting as described in clause 1.2(f);

(h) a reference to a person being present includes an individual participating in a meeting in person or through a proxy, attorney or Representative;

(i) a reference to a "place" includes the place or location where a meeting may be held, is held or is taken to be held under the Corporations Act if Virtual Meeting Technology is used in holding the meeting;

(j) a reference to a person includes a natural person, corporation or other body corporate;

(k) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and

(l) Australian dollars, dollars, A$ or $ is a reference to the lawful currency of Australia.

1.3 Signing and electronic communication

Where, by a provision of this Constitution, a document including a notice is required to be signed or communicated, that requirement may be satisfied in any manner permitted by the applicable law of a state, a territory, or the Commonwealth of Australia relating to electronic signing and transmission of documents.

1.4 Corporations Act

(a) In this Constitution unless the contrary intention appears:

(i) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;

(ii) "section" means a section of the Corporations Act; and

(iii) while the Foundation is a registered charity under the ACNC Act:

(A) subject to clause 1.4(a)(iii)(B), the provisions of the Corporations Act in Part 2G.2, except for section 250L(1), and Part 2G.3 apply as if section 111L(1) of the Corporations Act was not enacted; and

(B) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the Foundation.

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

1.5 Headings

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

2 Objects of the Foundation

The Objects of the Foundation are to pursue the charitable purpose of advancing education including by:

(a) advancing, promoting and encouraging the educational purposes of the College, including but not limited to, providing financial, fundraising and other incidental support to the Council;

(b) acting as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of the Objects; and

(c) doing such other things as are incidental or conducive to the attainment of the Objects, including the establishment of a public fund.

3 Powers

The Foundation has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act and where the Foundation is a trustee, the powers of the trustee under the relevant trust instrument and laws related to trusts and trustees.

4 Application of income for Objects only

4.1 Application of income and property

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

(a) must be applied solely towards the promotion of the Objects; and

(b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus, benefit or otherwise.

4.2 Payment in good faith

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

(a) of reasonable remuneration for services to the Foundation in the ordinary course of business;

(b) for goods supplied by the Member to the Foundation in the ordinary course of business;

(c) of fair and reasonable interest on money borrowed by the Foundation in the ordinary course of business from the Member at a rate not exceeding that fixed for the purposes of this clause 4.2(c) by the Members in a General Meeting;

(d) of reasonable rent or equivalent payment (including licence fees) for use of premises let by the Member to the Foundation; or

(e) in furtherance of the Objects.

5 Winding up

5.1 Guarantee by Members

(a) Each Member undertakes to contribute an amount not to exceed $5 to the Foundation's property if the Foundation is wound up while they are a Member, or within 1 year after they cease to be a Member.

(b) On winding up of the Foundation, this contribution is for:

(i) payment of the Foundation's debts and liabilities;

(ii) the costs of winding up; and

(iii) adjustment of the rights of the contributories among themselves.

5.2 Application of property

(a) Subject to clause 4.2(e), if any property remains on the winding up or dissolution of the Foundation after satisfaction of all its debts and liabilities, then, subject always to clause 5.3, that property may not be paid to or distributed among the Members but must be transferred to the Council.

(b) If the transfer to Council under clause 5.2(a) cannot be effected, then any surplus property of the Foundation must be transferred to one or more funds or institutions:

(i) that have charitable purposes similar to, or inclusive of, the Objects; and

(ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to at least the same extent as imposed on the Foundation under this Constitution.

(c) Subject to the prior consent of Council, the funds or institutions referred to in clause 5.2(b) will be determined by the Members at or before the time of dissolution.

5.3 Application of property if deductible gift recipient

(a) Where the Foundation has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act in relation to a fund or institution it operates, and:

(i) the fund or institution is wound up; or

(ii) the endorsement under Subdivision 30-BA of the Tax Act in relation to a fund or institution it operates is revoked,

any surplus assets of the Gift Fund for that fund or institution remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 5.2 and are each deductible gift recipients.

(b) Where the Foundation operates more than one fund or institution for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Tax Act is revoked only in relation to one of those funds or institutions then it may transfer any surplus assets of that fund or institution remaining after payment of all liabilities to any other fund or institution for which it is endorsed as a deductible gift recipient.

6 Membership

6.1 Number of Members

(a) The minimum number of Members of the Foundation will be 4.

(b) The Members at the date of adoption of this Constitution and any person who becomes a Member under clause 6.2 are the Members of the Foundation.

6.2 Admission as a Member

Any person that is eligible under clause 6.3 shall become a Member upon their name being entered in the Register.

6.3 Membership criteria

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

(a) be aged 18 years and over;

(b) contribute an amount to the Foundation prescribed by the directors from time to time;

(c) not be a bankrupt or declared insolvent;

(d) agree to be a Member and be bound by this Constitution;

(e) not have been previously removed or excluded as a Member of the Foundation, unless otherwise voted by the Directors

6.4 Honorary Life Members

(a) The Directors may honour any Member as an Honorary Life Member, who has given outstanding service to the Council or the Foundation.

(b) An Honorary Life Member has membership rights as a Member under this Constitution.

(c) An Honorary Life Member ceases to be an Honorary Life Member on:

(i) ceasing to be a Member of the Company; or

(ii) the passing of a resolution by the Directors to remove the life membership of an Honorary Life Member.

6.5 Register

(a) The Foundation must establish and maintain a Register. The Directors must cause the Register to be kept. The Register must contain:

(i) for each current Member:

(A) name;
(B) address;
(C) any alternative address nominated by the Member for the service of notice; and
(D) date the Member was entered on to the Register.

(ii) for each person who stopped being a Member in the last 7 years:

(A) name;

(B) address;
(C) any alternative address nominated by the Member for the service of notices; and
(D) date the membership started and ended.

(b) The Foundation must provide access to the Register in accordance with the Corporations Act.

7 Ceasing to be a Member

7.1 Cessation of membership

A Member ceases to be a Member on:

(a) death;

(b) resignation by written notice to the Foundation having immediate effect or with effect from a specified date in the notice;

(c) except in the case of an Honorary Life Member, failing to pay any fee that may be prescribed by the Directors from time to time within 12 months after the fee was due and payable;

(d) not having Legal Capacity;

(e) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally;

(f) the passing of a resolution by the Directors or Members in General Meeting in accordance with clause 7.2;

(g) that Member ceasing to be a Director unless agreed otherwise by the majority of the remaining Directors.

7.2 Termination of membership

(a) Subject to this Constitution, the Directors or Members in General Meeting may at any time terminate the membership of a Member if the Member:

(i) refuses or neglects to comply with this Constitution or any applicable Rules made by the Directors;

(ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Foundation; or

(iii) fails to pay any debt due to the Foundation within a period of 3 months after the date for payment (such debt not including a fee referred to in clause 7.1(c)).

(b) For a decision of the Directors or the Members in General Meeting under clause 7.2(a) to be effective, the general nature of the allegations made against the Member must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.

(c) If a dispute arises regarding the termination of a Member's membership under this clause 7.2, the dispute resolution procedure contained in clause 27 must be followed and, for the purposes of clause 27.1, written notification under clause 7.2(b) will be the notice of the dispute (as defined in clause 27.1).

7.3 Limited liability

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

8 General Meetings

8.1 Annual General Meetings

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

8.2 Convening a General Meeting

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

8.3 Notice of a General Meeting

(a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 32.

(b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

8.4 Calculation of period of notice

In computing the period of notice under clauses 8.3 and 8.6(c), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.5 Cancellation or postponement of General Meeting

(a) Where a General Meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.

(b) This clause 8.5 does not apply to a meeting convened in accordance with the Corporations Act by Members, by the Directors on the request of Members or to a meeting convened by a Court.

8.6 Notice of cancellation or postponement of a meeting

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

(i) to each Member individually; and

(ii) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

(b) A notice of postponement of a General Meeting must specify:

(i) the postponed date and time for the holding of the meeting;

(ii) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and

(iii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

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

8.7 Business at postponed meeting

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

8.8 Proxy at postponed meeting

Where by the terms of an instrument appointing a proxy:

(a) the proxy is authorised to attend and vote at one or more General Meetings to be held on or before a specified date; and

(b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by operation of this clause 8.8, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Foundation at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

8.9 Non-receipt of notice

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

9 Proceedings at General Meetings

9.1 Number of a quorum

(a) A quorum at a General Meeting is:

(i) a majority of Members or 10 Members, whichever is the lesser number, present; and

(ii) at least 5 Members present in person.

(b) In determining whether a quorum is present, each individual attending as a proxy appointed under clause 9.15 is to be counted, except that:

(i) where a Member has appointed more than one proxy, only one is to be counted; and

(ii) where an individual (whether a Member or not) is attending holding more than one proxy, each proxy is to be counted individually for the purposes of determining whether a quorum is present.

9.2 Requirement for a quorum

(a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.

(b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chair of the meeting (on the chair's own motion or at the request of a Member or proxy who is present) declares otherwise.

9.3 If quorum not present

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

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

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

9.4 Adjourned meeting

At a meeting adjourned under clause 9.3(b), 2 Members present in person at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

9.5 Appointment and powers of chair of General Meeting

If the Directors have elected one of their number as chair of their meetings under clause 21.1, that person is also entitled to preside as chair at a General Meeting.

9.6 Absence of chair at General Meeting

If a General Meeting is held and:

(a) a chair has not been elected by the Directors; or

(b) the elected chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

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

(c) the deputy chair if a Director has been so elected by the Directors under clause 21.1; or

(d) a Director or Member elected by the Members present in person to preside as chair of the meeting.

9.7 Conduct of a General Meeting

(a) The chair of a General Meeting:

(i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;

(ii) may require the adoption of any procedure which is, in the chair's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and

(iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting.

(b) A decision by the chair under this clause 9.7 is final.

9.8 Adjournment of a General Meeting

(a) The chair of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

(i) in exercising the discretion to do so, the chair may, but need not, seek the approval of the Members present; and

(ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

(b) Unless required by the chair, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

9.9 Notice of an adjourned General Meeting

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

9.10 Questions decided by majority

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

9.11 Equality of votes – no casting vote for chair

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

9.12 Voting at a General Meeting

(a) At any General Meeting a resolution put to the vote of the meeting must be decided on:

(i) a show of hands; or

(ii) where the meeting is being conducted by Virtual Meeting Technology, such other similar method as determined by the chair,

unless a poll is properly demanded, and the demand is not withdrawn.

(b) A declaration by the chair that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact.

(c) Neither the chair nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

9.13 Poll

(a) A poll may be demanded on any resolution instead of or after a vote by a show of hands by:

(i) at least 5 Members present; or

(ii) the chair.

(b) If a poll is demanded at a General Meeting:

(i) it must be taken in the manner and at the date and time directed by the chair and the result of the poll is the resolution of the meeting at which the poll was demanded;

(ii) on the election of a chair or on a question of adjournment, it must be taken immediately;

(iii) the demand may be withdrawn; and

(iv) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

9.14 Votes of Members

(a) Every Member has one vote.

(b) Subject to this Constitution, including clause 9.14(c):

(i) on a show of hands at a General Meeting, each Member present in person and each other person present as a proxy of a Member has one vote; and

(ii) on a poll at a General Meeting, each Member present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

(c) If the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy may vote on a show of hands and the Secretary must declare the number of proxy votes for and against the resolution put to the vote of the meeting.

9.15 Right to appoint proxy

(a) Subject to the Corporations Act, a Member entitled to attend a General Meeting is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.

(b) The instrument appointing a proxy must be in writing signed by the appointor or their attorney duly authorised in writing or, if the appointor is a corporation, either under seal or signed by an officer or attorney duly authorised.

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

(d) A Member is entitled to instruct their proxy to vote in favour of or against any proposed resolutions. The proxy may vote as they think fit unless otherwise instructed.

(e) The instrument appointing a proxy may be in the form set out in the Schedule of this Constitution.

(f) The instrument appointing a proxy (along with a certified copy of the power of attorney or other authority, if any, under which it is signed) must be received at:

(i) the Registered Office;

(ii) such other place within the state or territory in which the Foundation has its Registered Office, or to an email address, as is specified for that purpose in the notice convening the meeting; or

(iii) any other means provided by the Corporations Act, as is specified for that purpose in the notice convening the meeting,

not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. Documents received after this time will not be treated as valid.

(g) The Foundation receives a document referred to in clause 9.15(f):

(i) if the document is given by electronic means in accordance with the Corporations Act and as specified in the notice convening the meeting, when the document given by those means is received by the Foundation as prescribed by the regulations to the Corporations Act; and

(ii) otherwise, when the document is received at:

(A) the Registered Office; or
(B) a place specified for the purpose in the notice of meeting.

9.16 Validity of vote in certain circumstances

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

(a) the appointing Member dies;

(b) the Member revokes the appointment or authority; or

(c) the Member is mentally incapacitated.

9.17 Objection to voting qualification

(a) An objection to the right of a person to attend or vote at a General Meeting or adjourned meeting:

(i) may not be raised except at that meeting or adjourned meeting; and

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

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

10 Circular resolutions of Members

(a) Subject to clause 10(b), the Members may pass any resolution that the Corporations Act or this Constitution requires or permits to be passed at a General Meeting in the manner set out in this clause without holding a General Meeting.

(b) A resolution under this clause 10 cannot be used:

(i) for a resolution to remove an auditor, appoint a Director or remove a Director under section 203D;

(ii) for passing a special resolution; or

(iii) where the Corporations Act or this Constitution requires a meeting to be held.

(c) A resolution under this clause 10 is passed if 100% of all Members entitled to vote on the resolution:

(i) sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy; or

(ii) send an email to the Foundation confirming that they agree to a proposed resolution, and that email includes the text of the proposed resolution.

(d) The resolution is passed when the last Member signs or when the last Member's email is received by the Foundation.

(e) The Foundation must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution. A failure to do so does not invalidate the resolution.

11 Directors

11.1 Composition of Directors

(a) The Directors will be comprised of:

(i) the chair of the Council from time to time (or their nominee); and

(ii) 4 to 9 Directors elected by the members in accordance with clause 11.2 (**Elected Directors**).

(b) Subject to clause 11.1(a)(ii), the number of Elected Directors is as the Members determine. In the absence of any such determination, the number of Elected Directors is 9.

(c) A Director may not be both a Director under clause 11.1(a)(i) and an Elected Director.

11.2 Elected Directors elected at General Meeting

(a) The Foundation may, at a General Meeting at which:

(i) an Elected Director retires or otherwise vacates office; or

(ii) an Elected Director vacancy exists by operation of clause 11.1 or otherwise,

by resolution fill the vacated office by electing an individual to that office.

(b) The Foundation must inform the Council in writing of all persons elected to the office of Director.

11.3 Qualification of Directors

(a) To be eligible for the office of Director an individual must:

(i) have a Director Identification Number; and

(ii) subject to clause 11.3(c), consent in writing to act as a Director and commit to support the purposes of the Council.

(b) In addition to the qualifications in clause 11.3(a), to be eligible for the office of an Elected Director, an individual must be a Member at the date of appointment and at all times during their term as Director.

(c) Where an individual is seeking election at a General Meeting for the first time, the signed consent must be lodged at the Registered Office at least 28 days (or such other period as determined by the Directors) before the date fixed for the holding of the General Meeting.

(d) In the event that it is required under a law, regulation or guideline applicable to the Foundation[4], the Foundation must ensure that a majority of the Directors are individuals who have the requisite level or degree of responsibility to the general public.

11.4 Terms and retirement of an Elected Director

(a) Subject to clause 11.4(b), an Elected Director is elected for a term of 3 years.

(b) At each Annual General Meeting, any Elected Director who has held office for 3 years or more since last being elected, must retire from office but subject to clause 11.5 is eligible for reappointment. A retiring Elected Director holds office until the conclusion of the meeting at which that Director retires.

(c) The Members may by ordinary resolution increase or decrease the period of time for which an Elected Director holds office under clause 11.4(a).

(d) In addition to the right to remove Directors under section 203D of the Corporations Act, the Members may by ordinary resolution remove any Director before the expiration of that Director's period of office, and may by an ordinary resolution appoint another person in the place of an Elected Director.

11.5 Reappointment of an Elected Director

(a) Subject to clause 11.5 (b), an Elected Director is entitled to seek reappointment as an Elected Director provided that an Elected Director's period of continuous service to the Foundation does not exceed a period of 9 years, excluding any period of service under clause 11.7 unless the Members, by ordinary resolution in General Meeting or unanimous written resolution, elect to waive this requirement for a particular Elected Director.

(b) An Elected Director that holds the office of chair of Directors' meetings is entitled to seek reappointment as an Elected Director on 3 occasions provided that a Director's period of continuous service to the Foundation does not exceed a period of 12 years.

[4] Such as where the Foundation or its public fund is endorsed as a deductible gift recipient and this is a condition for such endorsement.

11.6 Retirement of Elected Directors – transitional rule applying for first and second Annual General Meetings

(a) At each of the first and second Annual General Meetings from the date of adoption of this Constitution, 1/3 of the Elected Directors must retire from office but are eligible for reappointment.

(b) The Elected Directors who retire at each of these meetings under clause 11.6(a) will be decided by lot, unless they agree otherwise.

(c) For the avoidance of doubt, this clause 11.6 ceases to have any application following the second Annual General Meeting from the date of adoption of this Constitution.

11.7 Casual vacancy

(a) The Directors may at any time appoint any person meeting the requirements of clause 11.3 to be an Elected Director to fill a casual vacancy, provided the total number of Elected Directors does not exceed the number determined in clause 11.1(b).

(b) An Elected Director appointed under clause 11.7(a) holds office until the conclusion of the next Annual General Meeting but is eligible for election at that meeting.

11.8 Appointment of officers

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

12 Remuneration of Directors

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

13 Expenses of Directors

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

(b) Any payment to a Director must be approved by the Directors.

14 Vacation of office of Director

(a) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act and this Constitution, the office of a Director becomes vacant if the Director:

(i) ceases to be eligible under clause 11.3;

(ii) resigns from the office by notice in writing to the Foundation having immediate effect or with effect from a specified date in the notice;

(iii) in the case of an Elected Director, is not present at 3 successive meetings of the Directors without prior approval from the Directors.

(iv) does not have Legal Capacity;

(v) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;

(vi) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator;

(vii) is given a written communication from Council stating that the Council has determined that their office should be vacated; or

(viii) dies.

(b) If the chair of the Council appoints an Elected Director as their nominee, the office of that Elected Director becomes vacant upon that Elected Director accepting the appointment.

15 Powers and duties of Directors

15.1 Directors to manage the Foundation

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

15.2 Specific powers of Directors

Without limiting the generality of clause 15.1, and subject to any trusts relating to the assets of the Foundation, the Directors may exercise all the powers of the Foundation to:

(a) borrow or raise money;

(b) charge any property or business of the Foundation; and

(c) give any security for a debt, liability or obligation of the Foundation or of any other person.

15.3 Compliance with duties

While the Foundation is a registered charity under the ACNC Act, each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the ACNC Act or the Corporations Act from time to time.

15.4 Delegation

(a) The Directors may resolve to delegate any of their powers to:

(i) a committee in accordance with clause 26;

(ii) a Director;

(iii) an employee of the Foundation on terms and subject to any restrictions to be decided by the Directors; or

(iv) any other person on terms and subject to any restrictions to be decided by the Directors.

(b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.

(c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.

(d) The Directors may continue to exercise any power they have delegated.

16 Rules

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

17 Executive Officer, Secretary and Public Officer

17.1 Executive Officer

(a) The Directors may appoint an Executive Officer on such terms and conditions (including as to remuneration) as they think fit.

(b) The Directors may delegate any of their powers to the Executive Officer and the Executive Officer must exercise those powers:

(i) in accordance with the terms and subject to any restrictions or the directions of the Directors; and

(ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,

and may revoke the delegation at any time.

(c) The Executive Officer and Headmaster of the College may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

(d) The chair of the Finance Committee of Council may be invited to attend all meetings of the Directors.

17.2 Secretary

(a) There must be at least one Secretary who is to be appointed by the Directors.

(b) The Directors may suspend or remove a Secretary from that office.

(c) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

17.3 Public Officer

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

18 Appointment of attorney

(a) By power of attorney, the Directors may appoint any person to be an attorney of the Foundation, with such powers, authorities and discretions of the Directors as the Directors think fit and for such purposes, period and conditions as determined by the Directors.

(b) A power of attorney granted under clause 18(a) may contain any provisions for the protection and convenience of the attorney and persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

19 Conflicts of interest

19.1 Disclosure of conflict of interest

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

(a) to the Directors; or

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

19.2 Disclosure recorded in minutes

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

19.3 Material personal interest

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 19.4:

(a) be present at the meeting while the matter is being discussed; or

(b) vote on the matter.

19.4 Present and voting

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

(a) their interest arises because they are a Member of the Foundation and the other Members have the same interest;

(b) their interest arises in relation to remuneration as a Director of the Foundation;

(c) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Foundation (see clause 33.2);

(d) their interest relates to a payment by the Foundation under clause 33.1, or any contract relating to an indemnity that is allowed under the Corporations Act;

(e) ASIC makes an order allowing the Director to vote on the matter; or

(f) the Directors who do not have material personal interest in the matter pass a resolution that:

(i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Foundation; and

(ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

20 Proceedings of Directors

20.1 Directors' meetings

(a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

(b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

20.2 Questions decided by majority

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

20.3 Alternate Director and voting

(a) A person who is present at a Directors' meeting as an Alternate Director:

(i) is entitled to participate and vote in the appointor's place if the appointor would have been entitled to vote and does not participate in that meeting; and

(ii) has one vote for each person for whom they have been appointed as Alternate Director.

(b) If that person is also a Director, then that person also has one vote as a Director in that capacity.

21 Chair and deputy chair of Directors

21.1 Appointment and terms of chair and deputy chair

(a) The Council shall appoint a Director as chair of Directors' meetings and may also determine the period for which the person elected as chair is to hold office.

(b) The Directors may elect from their number a Director or Directors as deputy chair or deputy chairs, respectively, of Directors' meetings and, subject to clause 11.5(b), may also determine the period for which the persons elected as deputy chair(s) are to hold office.

21.2 Absence of chair at Directors' meeting

If a Directors' meeting is held and:

(a) a chair has not been appointed under clause 21.1; or

(b) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then a deputy chair, if appointed under clause 21.1, must be the chair of the meeting or, if a deputy chair is not present, the Directors present must elect one of their number to be a chair of the meeting.

21.3 No casting vote for chair at Directors' meetings

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

22 Alternate Director

22.1 Appointment

(a) Subject to the Corporations Act, a Director may appoint a person, with the approval of the Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit. The approval of the Alternate Director's appointment may be withdrawn by the Directors at any time.

(b) Subject to the Corporations Act, an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment, and delivered to the Foundation together with a consent to act and confirmation that they will support the objectives of the Foundation.

22.2 Notice

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

22.3 Alternate Director's powers

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

22.4 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Director:

(a) is an officer of the Foundation and not the agent of the appointor; and

(b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

22.5 Termination of appointment of Alternate Director

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

22.6 Termination in writing

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

22.7 Alternate Director and number of Directors

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

23 Quorum for Directors' meeting

(a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is a majority of Directors holding office or 3, whichever is the greater.

(b) The Directors may act despite a vacancy in their number. If their number is reduced below 3, the Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

24 Circular resolutions of Directors

(a) The Directors may pass a resolution without a Directors' meeting being held in the manner set out in this clause.

(b) A circular resolution is passed if at least 75% of Directors entitled to vote on the resolution:

(i) sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy; or

(ii) send an email to the Foundation confirming that they agree to the proposed resolution, and that email includes the text of the proposed resolution.

(c) The resolution is passed when the last Director signs.

25 Validity of acts of Directors

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

(a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or

(b) a person acting as a Director was disqualified or was not entitled to vote.

26 Committees

26.1 Delegation to committees

(a) The Directors may delegate any of their powers, to a committee consisting of one or more Directors and such other persons as they think fit and may revoke the delegation at any time.

(b) A committee to which any powers have been delegated under clause 26.1(a) must exercise those powers:

(i) in accordance with the terms and subject to any restrictions and any directions of the Directors; and

(ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,

and a power so exercised is taken to have been exercised by the Directors.

26.2 Meetings of committees

A committee may meet and adjourn as it thinks proper.

26.3 Chair of a committee

The Directors must appoint a Director as the chair of a committee. If a meeting of a committee is held and:

(a) a chair has not been appointed; or

(b) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

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

26.4 Determination of questions

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

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

27 Dispute resolution

27.1 Handling a dispute

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

(a) the Member and the Foundation must in the period of 14 days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute;

(b) if the Foundation and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to the Chair of Council;

(c) if the Chair of Council is unable to resolve the Dispute within 60 days from the date of the referral, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Foundation;

(d) if the disputants are unable to agree on a mediator within 7 days of being notified that the Chair of Council has not been able to resolve the Dispute, the Member or the Foundation may request the chair of Resolution Institute[5] to nominate a mediator to whom the Dispute will be referred;

(e) the costs of the mediation must be shared equally between the Member and the Foundation; and

(f) where:

(i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 27.1(b);

(ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or

(iii) the mediation fails to resolve the Dispute;

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

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

27.2 Urgent interlocutory relief

The procedure in clause 27.1 will not apply in respect of proceedings for urgent interlocutory relief.

28 Execution of documents

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

(a) 2 Directors;

(b) a Director and the Secretary; or

(c) such other persons as the Directors by resolution appoint from time to time.

29 Accounts

(a) The Directors must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Foundation or otherwise considered by the Directors to be appropriate, cause the accounts of the Foundation to be audited or reviewed accordingly.

(b) The Directors must distribute to the Members copies of the annual financial reports of the Foundation accompanied by a copy of the report of the auditor or reviewer (as required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.

30 Gift Fund

(a) Without limiting clause 29, the Foundation must maintain a Gift Fund:

(i) to identify and record gifts of money or property for the principal purpose of a fund or institution it operates;

(ii) to identify and record contributions of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for the principal purpose of a fund or institution it operates; and

(iii) to identify and record money received by the Foundation because of such gifts or contributions; and

(iv) that does not identify and record any other money or property.

(b) The Gift Fund forms part of the accounts of the Foundation.

(c) Where the Foundation operates more than one fund or institution for which it is endorsed as a deductible gift recipient, the Foundation must maintain a separate Gift Fund for the principal purpose of each fund or institution for which it is endorsed as a deductible gift recipient.

31 Inspection of records

31.1 Inspection by Members

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

31.2 Right of a Member to inspect

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

32 Service of documents

32.1 Document includes notice

In this clause 32, a reference to a document includes a notice.

32.2 Methods of service

(a) The Foundation may give a document to a Member or Director:

(i) personally;

(ii) by sending it by post to the address for the Member or Director in the Register or an alternative address nominated by the Member or Director;

(iii) by sending it to an electronic address nominated by the Member or Director; or

(iv) by any other method of service provided by the Corporations Act.

(b) A Member or Director may give a document to the Foundation:

(i) by serving it on the Foundation at the Registered Office;

(ii) by sending it by post to the Registered Office; or

(iii) by sending it to the electronic address nominated by the Foundation.

(c) Except in relation to service of a document referred to in clause 9.15(f), a document is taken to be given:

(i) if it is sent by post, on the 3rd business day after the date of its posting;

(ii) if it is sent by electronic transmission:

(A) by properly addressing and transmitting the electronic transmission; and

(B) if the document is properly addressed and transmitted in accordance with clause 32.2(c)(ii)(A), on the day following its transmission; and

(iii) if it is given in any other way permitted under the Corporations Act, then when it is taken to have been given under the Corporations Act.

32.3 Evidence of service

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

33 Indemnity and insurance

33.1 Indemnity

(a) The Foundation must indemnify any current or former Director, Secretary or Executive Officer of the Foundation out of the property of the Foundation against:

(i) every liability incurred by the person in that capacity; and

(ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;

except to the extent that:

(iii) the Foundation is forbidden by law (including the Corporations Act) to indemnify the person against the liability or legal costs;

(iv) an indemnity by the Foundation of the person against the liability or legal costs would, if given, be made void by any law; or

(v) the person is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).

(b) The indemnity is a continuing obligation and is enforceable by a person even though they are no longer a Director, Secretary or Executive Officer of the Foundation.

33.2 Insurance

The Foundation may pay or agree to pay, whether directly or through an interposed entity[6], a premium for a contract insuring a person who is or has been a Director or Secretary or Executive Officer of the Foundation against liability arising out of conduct by the person in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

(a) the Foundation is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or

(b) the contract would, if the Foundation paid the premium, be made void by any law (including the Corporations Act).

33.3 Contract

The Foundation may enter into an agreement with a person referred to in clauses 33.1 and 33.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 33 may include provisions relating to rights of access to the books of the Foundation conferred by the Corporations Act or otherwise by law.

[6] At the date of adoption of this Constitution, the Directors are insured under a policy of the College.

34 Amendment to Constitution

(a) Subject to clause 34(d), this Constitution may only be amended by Special Resolution.

(b) A Special Resolution under clause 34(a) does not have any effect unless the Foundation has previously submitted the proposed amendments to the Constitution to Council and Council has consented in writing to the proposed amendments by resolution.

(c) While the Foundation is a registered charity under the ACNC Act, the Members must not pass a Special Resolution that amends this Constitution if passing it causes the Foundation to no longer be a charity.

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

Schedule

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

The Barker Foundation Ltd
ACN 63 002 240 459

I/We, ... (name)

of ..... (address)

being a member/members of the abovenamed Company hereby appoint

..... (name)

of ..... (address)

or in their absence ..... (name)

of ..... (address)

as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the Company to be held on the ..... day of ..... 20 ..... and at any adjournment of that meeting.

[TO BE INSERTED IF DESIRED] This form is to be used in favour of / against the resolution (Strike out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed: .....

Name: .....

Dated: .....

This notice must be returned to The Barker Foundation Ltd ACN 63 002 240 459 at:

[ADDRESS/EMAIL ADDRESS/FAX No]

by [TIME] on [DATE]

[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME FOR THE MEETING]