

**NEW SOUTH WALES  
CORPORATIONS LAW**

**Company Limited by Guarantee**

**CONSTITUTION**

**OF**

**AUSTRALIAN BUSINESS FOUNDATION LIMITED**

**ACN 067 381 999**

| **November 201~~1~~0**

## CORPORATIONS LAW

### A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL

## CONSTITUTION

### OF

### AUSTRALIAN BUSINESS FOUNDATION LIMITED

1. The name of the Company is "AUSTRALIAN BUSINESS FOUNDATION LIMITED" (hereinafter called "the Foundation").
2. The objects for which the Foundation is established are to establish and maintain and support policy research and in so doing to encourage and foster the interest and financial support of governments, Trusts and other grants-making bodies, corporations and commerce and industry in general and other potential benefactors and friends of NSW Business Chamber Limited for the benefit of the manufacturing and industrial resources of Australia and in particular and without limiting the generality of the foregoing:
  - (a) Principally to promote the development of the manufacturing and industrial resources of Australia through the development of research projects and the formation of policy designed to support and enhance the manufacturing and industrial resources of Australia;
  - (b) To undertake objective scientific research on issues effecting the manufacturing and industrial capabilities of Australia and economic development including utilising research facilities and expertise of public universities and members of the Foundation;
  - (c) To make known and further the objects of the Foundation by fostering and disseminating the results and conclusions of research projects undertaken by the Foundation by the conduct of seminars, discussions and forums together with the publication and distribution of papers, journals and other publications and such other means considered desirable by the Foundation in particular the issue from time to time of Policy Statements and papers on issues of public policy;
  - (d) Principally to promote, encourage, maintain, support and assist manufacturing and other producing industries, trade and commerce throughout Australia through the development of research projects and the formation of policy designed to support and enhance the international competitiveness, economic development, employment opportunities and productivity of the manufacturing and industrial resources of Australia;

- (e) To encourage support and assist government and industry in the adoption of policies which enhance the international competitiveness of Australian industry and create employment opportunities;
- (f) To contribute to the development and promotion of efficient and competitive industry in Australia particularly for export enhancement;
- (g) To advance research into primary, secondary and tertiary industries in Australia;
- (h) To establish maintain promote and support scientific charitable or public educational institutions;
- (i) To promote encourage maintain support and assist all manner of actions tending to improve the environment and in particular leading to greater efficiency in industry;
- (j) To foster and encourage international competitiveness in Australia for the purpose of promoting the development and interests of the manufacturing or industrial resources of Australia;
- (k) To collaborate with NSW Business Chamber Limited, other industry bodies, community interest groups and trade unions with a view to achieving the objects of the Foundation and like organisations;
- (l) To raise money for the purposes aforesaid by any method that seems desirable to and is approved by the Board of Directors of the Foundation;
- (m) Solely for the purpose of carrying out the aforesaid objects and not otherwise:
  - (i) To act as Trustee of Trusts and Funds which may be established for attaining any of the objects of the Foundation.
  - (ii) To promote, obtain and achieve any of the objects of the Foundation by or through the facilities available in any established University, recognised scientific or research institute, council, faculty, school or like institution and to make outright donations of money, apparatus and equipment and give subsidies to the same.
  - (iii) In furtherance of these objects of the Foundation to make such grants to or in aid of or to make donations or give assistance to or to make contracts with such individuals, trusts, corporations, associations, societies, institutions or other organisations or authorities whether within or outside the Commonwealth of Australia as may be necessary or desirable.

- (iv) To make known and further the objects and activities of the Foundation by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any means though desirable.
- (v) In furtherance of the objects of the Foundation as far as the law will permit and subject to the provisions of any relevant statute, rule, regulation or by-law and/or any licence issues in pursuance thereof to collect funds and to solicit, receive, enlist and accept financial and other aid, subscriptions, donations and bequests from individual trusts, companies, associations, societies, institutions and other organisations or authorities and from Government and public bodies.
- (vi) To establish bursaries or scholarships for educational research and training purposes, tenable both in Australia and overseas and to furnish and award prizes in matters tending to forward the interests of Australian industry and all those associated therewith.
- (vii) To hold or arrange competitions and provide or contribute towards the provisions of prizes, awards and distinctions in connection therewith.

Provided that no members of the Foundation shall receive any prize, award or distinction of monetary value except as a successful competitor at any competition held or promoted by the Foundation.

- (viii) To amalgamate or enter into any affiliation fusion or alliance with, subscribe to, become a member of and cooperate with any other foundation, company, institution, society, association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Foundation.

Provided that the Foundation shall not subscribe to or support with its funds any foundation association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Foundation under or by virtue of Article 3 of this Constitution.

- (ix) To purchase, take on, lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with any of the objects of the Foundation.

Provided that in any case the Foundation shall take or hold any property which may be subject to any trusts the Foundation shall only deal with the same in such manner as is allowed by law having regard to such trusts.

- (x) To enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Foundation's objects or any of them; and to obtain from any such government or authority any rights, privileges and concessions which the Foundation may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
- (xi) To appoint, employ, remove or suspend such staff members and other persons as may be necessary or convenient for the purposes of the Foundation.
- (xii) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Foundation or the dependents or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object.
- (xiii) To construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the interests of the Foundation and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof.
- (xiv) To invest and deal with the money of the Foundation not immediately required in such manner as may be permitted by law for the investment of trust funds or in such other manner as the Board of the Foundation may from time to time decide.
- (xv) To borrow or raise or secure the payment of money in such manner as the Foundation may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Foundation in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Foundation's property (both present and future) and to purchase, redeem or pay off any such securities.

- (xvi) To take any gift of property whether subject to any special trust or not, for any one or more of the objects of the Foundation.
- (xxii) To take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Foundation in the shape of donations, annual subscriptions or otherwise.
- (xxiii) To print and publish any newspapers, periodicals, books or leaflets that the Foundation may think desirable for the promotion of its objects.
- (xix) To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements or any one or more of the companies, institutions, societies, or associations with which the Foundation is authorised to amalgamate.
- (xx) To transfer all or any part of the property, assets, liabilities and engagements of the Foundation to any one or more of the companies, institutions, societies or associations with which the Foundation is authorised to amalgamate.
- (xxi) To make donations for patriotic or charitable purposes.
- (xxii) To arrange, engage in and carry on general or particular research work upon such lines as the Directors may from time to time determine and to acquire, erect, equip, maintain and conduct such laboratories and other facilities as may be deemed desirable.
- (xxiii) To assist in any way deemed desirable by the Board any other body or organisation in connection with the conduct of any research or similar work which the Board consider to be in the interests of the Foundation or to be conducive to the attainment of any of its objects.
- (xxiv) Generally to do all such acts, matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of any of the objects of the Foundation.

The Foundation shall not support with its funds any activity or endeavour to impose on or procure to be observed by its members or others any regulations or restrictions, which if an object of the Foundation would make it a trade union within the meaning of the Trade Unions Act.

3. The income and property of the Foundation whencesoever derived, shall be applied solely towards the promotion of the objects of the Foundation as set forth in this Constitution; and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the members of the Foundation.

Provided that nothing herein shall prevent the payment, in good faith of remuneration to directors or servants of the Foundation or to any member of the Foundation in return for any services actually rendered to the Foundation or repayment of out-of-pocket expenses incurred on behalf of the Foundation or for goods supplied in the ordinary and usual way of business nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this paragraph by the Constitution money borrowed from any members of the Foundation or reasonable and proper rent for premises demised or let by any member to the Foundation.

4. The liability of members is limited.
5. Every member of the Foundation undertakes to contribute to the property of the Foundation, in the event of the same being wound up while he is a member, or within one year after he ceases to be a member for payment of the debts and liabilities of the Foundation contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves, such amount as may be required not exceeding fifty dollars (\$50.00).
6. If upon the winding up or dissolution of the Foundation or upon it ceasing to carry out research activities there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Foundation, but shall be given or transferred to some other like income tax exempt institution or institutions having objects similar to the objects of the Foundation and whose Constitution shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Foundation under or by virtue of Article 3 hereof, such institution or institutions to be determined by the members of the Foundation at or before the time of the dissolution and in default thereof by application to the Supreme Court of New South Wales for determination.
7. True accounts shall be kept of the sums of money received and expended by the Foundation and the matters in respect of which such receipt and expenditure takes place and of the property, credits and liabilities of the Foundation and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the regulations of the Foundation for the time being in force, shall be open to the inspection of the members. Once at least in every year, the accounts of the Foundation shall be examined by one or more properly qualified auditor or auditors who shall report to the members in accordance with the provisions of the Corporations Law.

CORPORATIONS LAW  
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**CONSTITUTION**  
**OF**  
**AUSTRALIAN BUSINESS FOUNDATION LIMITED**

INTERPRETATION

1. In these regulations:

"the Act" means the Corporations Law;

"Approved Fund" means any Fund established for the benefit of any one or more of the objects of the Foundation and approved as an approved Fund by the Board and for the purposes of the Foundation;

"NSW Business Chamber Limited" means the company limited by guarantee known as "NSW Business Chamber Limited ACN 000 014 504".

"Board" means the Board of Directors of the Foundation;

"The Foundation" means "AUSTRALIAN BUSINESS FOUNDATION LIMITED";

"Gift" means a gift of cash or a gift of an asset made or transferred during the donor's life time;

"the Seal" means the common seal of the Foundation;

"Secretary" means any person appointed to perform the duties of a secretary of the Foundation and includes an honorary secretary;

"State" means the State of New South Wales;

Words importing the singular number shall include the plural number and vice-versa and words importing the masculine gender shall include all genders. Words importing persons include corporations and organisations whether incorporated or not;

Expressions referring to writing shall, unless the contrary intention appears, be construed as including reference to printing, lithography, photography and other modes of representing or reproducing words in a visible form;

Words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Companies & Securities (Interpretation & Miscellaneous Provisions {New South Wales}) Law and of the Act as in force at the date at which this Constitution becomes binding on the Foundation.

2. The Foundation is established for the purposes set out in the Constitution.

### **MEMBERSHIP**

3. The Foundation shall consist of:-

- (a) The subscribers to the Constitution.
- (b) Members comprising persons firms and corporations admitted to membership of the Foundation in accordance with these regulations and whose names are entered on the Register.
- (c) Honorary members comprising persons appointed by the Board to be an honorary member for life or any lesser period in accordance with these regulations.

4. Any person wishing to become a member of the Foundation shall make application for membership in writing in such form as shall be prescribed by the Board from time to time. Applications from other than individual natural persons shall include the nomination (which may be altered from time to time by giving written notice to the Foundation) of an individual natural person to represent such applicant and that person alone shall be able to represent act as and exercise the membership rights of such member.

5. At the next meeting of the Board after receipt of any application for membership, such application shall be considered by the Board, who shall thereupon determine upon the admission or rejection of the applicant. In no case shall the Board be required to give any reason for the rejection of an applicant or any gift.

6. Upon acceptance of any application for membership or upon appointment of an honorary member the Secretary shall forthwith send to the applicant written notice of his acceptance and the name of the applicant or appointee shall on payment (except in the case of an honorary member) of the subscription determined by the Board be entered in the register and thereupon and whilst the name shall be so entered such persons shall unless in arrears with any monies due and owing to the Foundation be entitled to all privileges of membership.

7. Membership of the Foundation shall subject to this Constitution be for such period of time as the Board shall determine.

8. NSW Business Chamber Limited is Patron of the Foundation.

## CESSATION OF MEMBERSHIP

9. Any member may resign from membership of the Foundation by giving notice in writing delivered to the registered office of the Foundation and such member shall thereupon cease to be a member.
10. Any member whose subscription or levy is in arrears six (6) months after having become due shall after notice of default has been sent to that member by the Secretary be liable to have their membership cancelled by the Board PROVIDED THAT the Board may reinstate the member on payment of all arrears if the Board thinks fit so to do.
11. All gifts made to the Foundation or an Approved Fund by a member prior to the cessation of his membership shall remain the absolute property of the relevant recipient.
12. If any member of the Foundation shall wilfully refuse or neglect to comply with the provision of the Constitution of the Foundation or shall be guilty of any conduct which in the opinion of the Board is unbecoming of a member or prejudicial to the interests of the Foundation the Board shall have the power to censure fine suspend or expel the member from the Foundation.

Provided that at least one week before the meeting of the Board at which such an intended resolution is submitted, the member shall have had notice of such meeting and of what is alleged against him and of the intended resolution and that he shall at such meeting and before the passing of such resolution have had an opportunity of giving orally or in writing any explanation or defence he may think fit and provided further that any such member may by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Foundation in general meeting and in that event, a general meeting of the Foundation shall be called for the purpose and if at the meeting such a resolution be passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the member concerned shall be dealt with accordingly and in the case of a resolution for the expulsion of the member that the member shall be expelled.

## GENERAL MEETINGS

13. The first general meeting shall be held within twelve (12) months after the incorporation of the Foundation and at such place as the Board may determine.
14. An annual general meeting of the Foundation shall be held in accordance with the provisions of the Act. All meetings, other than the annual general meeting, shall be called General Meetings.
15. Any three (3) members of the Board may requisition a General Meeting stating the purpose of the meeting in writing. A General Meeting shall be convened on such requisition or in default may be convened by such requisition as provided by the Act.

16. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, twenty one (21) days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which notice is given) specifying the place the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the Foundation.

17. For the purpose of Article 15 all business shall be special that is transacted at a General Meeting and also all that is transacted at an Annual General Meeting, with the exception of the consideration of the accounts, balance sheets and the report of the Board and auditors, the election of office bearers and other members of the Board in the place of those retiring and the appointment and fixing of the remuneration of the auditors, if necessary.

### PROCEEDINGS AT GENERAL MEETINGS

18. No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided five (5) members present in person shall be a quorum. For the purposes of this Article, "member" includes a person attending as a proxy or as representing a corporation which is a member.

19. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (not being less than three) shall be a quorum.

20. The Chairperson shall preside as chairman at every General Meeting of the Foundation or if there is no Chairperson or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the Deputy Chairperson shall be the chairman or if the Deputy Chairperson is not present or is unwilling to act then the members present shall elect one of their members to be chairman of the meeting.

21. The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

22. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

(a) by the Chairperson; or

(b) by at least three members present in person or by proxy and entitled to vote.

Unless a poll is so demanded a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the Foundation 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. The demand for a poll may be withdrawn.

23. If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken forthwith.

24. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to second or casting vote.

25. A member may vote in person or by proxy or by attorney and on a show of hands every person present who is a member or a representative of a member shall have one vote and on a poll every member present in person or by proxy or by attorney or other duly authorised representative shall have one vote provided however that an Associate Member shall not be entitled to vote but shall be entitled to notice of meetings.

26. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or a poll, by his committee or by his trustees or by such other person as properly has the management of his estate and any such committee trustee or other person may vote by proxy or attorney.

27. Any member by whom moneys shall be owing to the Foundation which shall be three (3) months in arrears shall be debarred from voting and shall not be entitled to vote until all such moneys have been paid.

28. The instrument appointing a proxy shall be in writing (in the common or usual form) under the hand of the appointor or his attorney duly authorised in writing or, if the appointer is a corporation either under seal or under the hand of an office bearer or attorney duly authorised. A proxy may but need not be a member of the Foundation. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

29. The instrument appointing a proxy may be in the following form or in a common or usual form:

AUSTRALIAN BUSINESS FOUNDATION LIMITED

I

.....  
.....

of

.....  
.....

being a member of the abovenamed Foundation hereby appoint

.....  
or failing him

of

.....  
.....

as my proxy to vote for me on my behalf at the (Annual or General as the case may be) General Meeting of the Foundation to be held on the ..... day of

.....  
and at any adjournment thereof.

Signed this ..... day of .....

This form is to be used\* in favour of/against the resolution.

\*Strike out whichever is not desired. (Unless otherwise instructed the proxy may vote as he thinks fit).

30. The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Foundation or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than twenty four hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

31. A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Foundation, at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

32. On a show of hands every person will have one vote and on a poll every member present will have one vote.

## BOARD

33. (a) The Board will comprise a minimum of 4 Board members at any time including:
- (i) up to five (5) persons as representatives of the members of the Foundation elected by members of the Foundation;
  - (ii) two (2) representatives of NSW Business Chamber Limited appointed by the Board;
  - (iii) ex-officio the Chief Executive Officer of NSW Business Chamber Limited;
  - (iv) ex-officio the Chairperson of any standing committee of the Foundation;
  - (v) such other persons the appointment of whom is approved by a unanimous resolution passed by all the Directors then holding offices; and
  - (vi) the Immediate Past Chairperson for a term of one year from the date that that Board member's term as Chairperson expired.
- (b) A member of the Board has the same rights, responsibilities and duties as a Director under the Act.
- (c) Other than the Chairperson, all Board members elected or appointed must retire biennially. The Chairperson must retire as a Board member at the first Annual General Meeting which falls at least 12 months after the end of their term as Chairperson. All retiring Board members will be eligible for re-election or re-appointment.
- (d) Elections of Board members and office bearers will be conducted according to procedures determined by the Board.
34. A member of the Board shall cease to be a member thereof if he:
- (a) ceases to be a member thereof by virtue of the Act;
  - (b) becomes bankrupt or makes an arrangement or composition with his creditors;
  - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (d) resigns his office by notice in writing to the Foundation;

- (e) becomes prohibited from being a member thereof by reason of any order made under the Act;
- (f) is absent without the permission of the Board for three (3) consecutive meetings;
- (g) in the case of members of the Board elected pursuant to Article 33(a)(i) ceases to be a member or a nominee of a member of the Foundation;
- (h) ceases to be a representative of NSW Business Chamber Limited;
- (i) is directly or indirectly interested in any contract or proposed contract with the Foundation provided however that a member shall not vacate his office by reason of his being a member of any corporation society or association which has entered or proposed to enter into a contract with the Foundation if such corporation society or association is among the class of companies referred to in the last proviso to Article 3 of the Constitution of the Foundation and if he shall have declared the nature of his interest in manner required by the Act. Provided always that nothing in this Article shall affect the operation of Article 3 of the Constitution of the Foundation.

#### OFFICE BEARERS

35.

- (a) The office bearers of the Foundation will consist of a Chairperson and a Deputy Chairperson.
- (b) The Chairperson shall not be a nominee or ex-officio representative of NSW Business Chamber.

36. (a) The Board will from amongst its members elect a Chairperson and a Deputy Chairperson who will hold office until such time as their respective successors have been elected.

(b) For the purpose of Article 36(a), the Board may elect a person to the office of Chairperson on the conditions that:-

- i. The elected person consents to that appointment
- ii. The term of the appointment does not exceed three years
- iii. The terms and conditions of the appointment are consistent with this Constitution and are recorded in a written agreement duly executed by the Foundation and the person

(c) The Board may, by special resolution (75 percent majority of all Directors of the Board) terminate the appointment of the Chairperson on reasonable grounds.

37. The Foundation may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of office bearers or other members of the Board.

## POWERS AND DUTIES OF THE BOARD

38.(a) The business of the Foundation shall be managed by the Board who may pay all expenses incurred in promoting and registering the Foundation and may exercise all such powers of the Foundation as are not, by the Act or by this Constitution, required to be exercised by the Foundation in General Meeting, subject nevertheless, to any of this Constitution, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid Articles or provisions, as may be prescribed by the Foundation in general meeting; provided that any rule regulation or by-law of the Foundation made by the Board may be disallowed by the Foundation in general meeting provided further that no resolution or regulation made by the Foundation in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.

(b) All monies received by or on behalf of or as a result of the activities of the Foundation shall after meeting normal management operation and collection costs be applied for the promotion of the objects of the Foundation.

39. Until otherwise determined by the Board all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Foundation shall be signed drawn accepted endorsed or otherwise executed as the case may be by any two members of the Board and all moneys received by the Foundation shall be deposited intact at the earliest possible date to the credit of the Foundation's bank account. Receipts for moneys received shall also be issued promptly.

40. The Board shall cause minutes to be made:

- (a) of all appointments of office bearers and servants;
- (b) of names of members of the Board present at all meetings of the Foundation and of the Board and of any Committee; and
- (c) of all proceedings at all meetings of the Foundation and of the Board and of any Committee.

Such minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next succeeding meeting.

## PROCEEDINGS OF THE BOARD

41. The Board may meet together for the despatch of business adjourn and otherwise regulate its meetings as it thinks fit but not less than four (4) times each year.

Questions arising at any meeting shall be decided by a majority of votes and a determination by a majority of the members of the Board shall for all purposes be

deemed a determination of the Board. In the case of an equality of votes the Chairperson will have a second casting vote. The Chairperson or a Deputy Chairperson may at any time summons a meeting of the Board.

42. The quorum necessary for transacting the business of the Board will be the lesser of four (4) members of the Board or one half of the members of the Board, or such greater number as may be fixed from time to time by the Board. The Chairperson will preside and if at any meeting he is not present within ten minutes after the commencement of the meeting then the Deputy Chairperson will be Chairperson and if neither of them be so present the members of the Board may choose one of their number to be Chairperson of the Meeting.

43.(a) Where under this Constitution a meeting is required to be held of the Board, the Chairperson or the office bearers may decide that the matters required or proposed to be dealt with at such a meeting shall nevertheless be dealt with by:

- (i) a postal ballot of the members of the Board which may include the use of facsimile or telex media; or
- (ii) a telephone or video conference or other electronic or like communications process which permits members to express their views and as necessary vote on the business which is under consideration.

(b) Where the alternative methods specified in paragraph (a) above of dealing with the business in question are used, the provisions of this Constitution as to:

- (i) notice of meetings, including the period of notice, and of the business to be conducted; and
- (ii) the quorum and majority required;

shall, mutatis mutandis apply to those alternative methods.

(c) Any decision or resolution made in accordance with the provisions of this Article shall be and shall be regarded as being a decision or resolution of the Board as the case may be.

(d) A record shall be kept of the proceedings or the correspondence involved in any of the alternative methods adopted under this Article and shall be signed by the person who, under this Constitution would have been the Chairperson had a meeting taken place. Such a record shall have the same status under this Constitution as Minutes under Article 40.

44. A resolution in writing signed by all the members of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened

and held. Any such resolution may consist of several documents in like form each signed by one or more members of the Board.

45. The continuing members of the Board may act notwithstanding any vacancy in the Board but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of the Board the continuing member or members may act for the purpose of increasing the number of members of the Board to that number or of summoning a general meeting of the Foundation but for no other purpose.

46. The Board may delegate any of its powers, functions and duties (not being duties imposed on the Board by the Act or the general law) to one or more committees consisting of such member or members of the Foundation and such other persons as the Board thinks fit. Any committee so formed must conform to any regulations that may be imposed on it by the Board. The Board will determine if any such committee will be a standing committee and its responsibilities.

47. The Board shall appoint a sub-committee (not being a Standing Committee) as the "Research Advisory Committee" which shall consist of not less than five members, four of whom shall be suitably qualified to assess research. Any changes in the membership of the Research Advisory Committee shall likewise be subject to the prior approval of the Board.

48. All acts done by any meeting of the Board or of a Committee formed in pursuance of Article 46 or by any person acting as a member of the Board or other Committee, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or other Committee or person acting as aforesaid or that the members of the Board or other Committee or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a member of the Board or other Committee.

#### THE RESEARCH FUND

49.(a) The Board shall cause to be established a separate "Research Fund" Account to be used exclusively for scientific research purposes, and all gifts to the Foundation for which tax deductibility is sought must be paid into that account.

(b) The "Research Fund" Account shall be administered by the Research Advisory Committee in accordance with the objects of the Foundation and the Constitution of the Foundation.

(c) In the event of the Foundation being wound up, or upon it ceasing to carry out research activities, any surplus remaining in the Research Fund shall be transferred to another approved research institute or organisation which has been approved by the Commissioner of Taxation for the purposes of any of the sub-paragraphs of paragraph 78 (1) (a) of the Income Tax Assessment Act.

- (d) The results of research financed from the "Research Fund" Account shall be freely available and, wherever possible, published in the scientific press.

#### SECRETARY

50. The Secretary shall in accordance with the Act, be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any secretary so appointed may be removed by it.

#### SEAL

51. The Board shall provide for the safe custody of the seal, which shall only be used by the authority of the Board in that behalf and every instrument to which the seal is affixed shall be signed by a member of the Board and shall be countersigned by the Secretary or by a second member of the Board or by some other person appointed by the Board for the purpose.

#### ACCOUNTS

52. The Board shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document copy required by law to be attached thereto) accompanied by a copy of the auditor's report thereon as required by the Act provided however that the Board shall cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to a date not more than five months before the date of the meeting. The financial year shall conclude on 30<sup>th</sup> June in each year.

53. The Board shall from time to time determine in accordance with Article 7 of the Constitution at what times and places and under what conditions or regulations the accounting and other records of the Foundation shall be open to the inspection of members not being members of the Board and no member or (not being a member of the Board) shall have any right of inspecting any account or book or paper of the Foundation except as conferred by statute or by Article 7 of the Constitution or authorised by the Board or by the Foundation in General Meeting.

54. Intentionally deleted ~~For the purpose of Article 3 of the Constitution the rate of interest payable in respect of money lent by members to the Foundation shall not exceed the lowest rate paid for the time being by banks in the State in respect of term deposits.~~

#### AUDIT

55. A properly qualified auditor or auditors shall be appointed and his or their remuneration fixed and duties regulated in accordance with the Act and Article 7 of the Constitution. An auditor shall not be a member or closely related to a member of the Board.

#### NOTICES

56. Any notices required by law or under this Constitution to be given to any member shall be sent by the member's chosen method to the address provided by the member.

~~Any notice required by law or by or under this Constitution to be given to any member shall be given by sending it by post to him at his registered address, or (if he has no registered address within the State) to the address, if any, within the State supplied by him to the Foundation for the giving of notices to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the date after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.~~

57.(a) Notice of every General Meeting shall be given in any manner hereinbefore authorised to:

- (i) every member including associate members except those who (having no registered address within the State) have not supplied to the Foundation an address within the State for the giving of notices to them; and
  - (ii) the auditor or auditors for the time being of the Foundation.
- (b) No other persons shall be entitled to receive notices of General Meetings.

#### WINDING UP

58. The provisions of Article 6 of the Constitution relating to the winding up or dissolution of the Foundation shall have effect and be observed as if the same were repeated in these regulations.

#### INDEMNITY

59.(a) To the extent permitted by law:

- (i) every person who is or has been an Officer of the Foundation or of a subsidiary of the Foundation will be indemnified out of the property of the Foundation against any liability for costs and expenses incurred by that person in defending any proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the Act; and
- (ii) every person who is or has been an Officer of the Foundation or of a subsidiary of the Foundation will be indemnified out of the property of the Foundation against any liability to another person (other than the Foundation or a related body corporate of the Foundation) where the liability is incurred by the Officer in his or her capacity as an Officer of the Foundation or a subsidiary of the Foundation

PROVIDED THAT this indemnity shall not apply where the liability arises out of conduct involving a lack of good faith.

- (b) To the extent permitted by law the Foundation may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Foundation or of a subsidiary of the Foundation against a liability
  - (i) incurred by the person in his or her capacity as an Officer of the Foundation or a subsidiary of the Foundation PROVIDED THAT the liability does not arise out of conduct involving a willful breach of duty in relation to the Foundation or a subsidiary of the Foundation or a contravention of sections 232(5) or (6) of the Act; or
  - (ii) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.
- (c) In Articles 59(a) and 59(b):
  - (i) the term "Proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as an Officer of the Foundation or of a subsidiary of the Foundation (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Foundation or a subsidiary of the Foundation);
  - (ii) the term "Officer" has the meaning given to that term in section 241(4) of the Act and includes every member of the Board of Directors.

We, the several persons whose signatures are subscribed, being subscribers to the Constitution hereby agree to the foregoing Constitution.

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Leslie Butterfield  
Chairperson  
Australian Business Foundation Limited

Dated: