

# **Lishman Health Foundation Inc.**

## **CONSTITUTION 2016**

### **CONTENTS**

1	Name of Association	2
2	Definitions	2
3	Objects of Foundation	3
4	Powers of Foundation	4
5	Membership	6
6	Use of Foundation's Name	8
7	General Meetings	9
8	The Board	10
9	Proceedings of the Board	11
10	Secretary's Duties	13
11	Treasurer	14
12	Executive Officer	14
13	Minutes	15
14	Accounts	15
15	Application of Income	15
16	Auditor	16
17	Common Seal of Foundation	16
18	Inspection of records etc of Foundation	16
19	Notices	16
20	Indemnity	17
21	Alterations to Constitution	17
22	Disposal of Funds on Winding Up	17
23	Resolution of Disputes	18
24	Mediation	19

**ASSOCIATIONS INCORPORATIONS ACT 2015 as amended**

**LISHMAN HEALTH FOUNDATION Inc.**

**CONSTITUTION**

**1.0 Name of Association**

The name of the Association is:

**“LISHMAN HEALTH FOUNDATION Inc.”**

**2.0 Definitions**

2.1 In this Constitution, unless the contrary intention appears -

- “the Act”** means the *Associations Incorporation Act (WA) 2015* as amended
- “Approved Body”** means a body or bodies prescribed by the ITAA as amended.
- “Auditor”** means the Auditor appointed by the Board in accordance with Clause 17.1
- “Board”** means the Board of Board Members constituted by this Constitution and any persons elected or appointed in addition to those persons or in their place in accordance with the provisions of this Constitution
- “Board Meeting”** means a meeting of the Board in accordance with Clause 9.0.
- “Board Members”** means the members of the Board.
- “Chairman”** and **“Chairman of the Board”** means the Chair of the Board elected in accordance with Clause 9.1.
- “Clause”** means a clause of this Constitution and includes sub-clauses, sub-sub-clauses and sub-sub-sub-clauses.
- “Constitution”** means this Constitution.
- “Executive Officer”** means the person appointed in accordance with Clause 12

**“Financial Year”** has the meaning given by Section 7(4)(e) of the Act and each subsequent financial year is the period of 12 months commencing on July 1

**“Foundation”** means this Association.

**“General Meeting”** means a general meeting of the Foundation convened under Clause 7

**"Grievance procedure"** means the procedures set out in Clause 23

**“ITAA”** means the *Income Tax Assessment Act (Cwlth) 1997* as amended.

**“Member”** means member of the Foundation.

**“Ordinary Resolution”** means a resolution other than a Special Resolution.

**"Party to a dispute"** includes a person –  
(a) who is a party to the dispute; and  
(b) who ceases to be a member within 6 months before the dispute has come to the attention of each party to the dispute.

**“Regions”** means the Regional areas Western Australia

**“Special Resolution”** means a resolution moved at a General Meeting, of which notice, specifying the intention to propose the resolution as a Special Resolution, is given in accordance with this Constitution, and which motion is passed by a majority of not less than three quarters of the Members who are present at the meeting and who are entitled to vote and vote in person or, where proxies or postal votes are allowed, by proxy or postal vote.

2.2 Headings in this Constitution have no interpretative significance

### **3.0 Objects of the Foundation**

The objects of the Foundation are:

- 3.1 to encourage and support health research of international quality and importance relevant to the Regions;
- 3.2 to encourage and support research at all levels to assist in the development of knowledge concerning maintenance and improvement of health and prevention and treatment of disease, including health promotion and education;

- 3.3 to provide money, property or benefits to or for funds, authorities or institutions referred to, and for the purposes (if any) referred to, in the ITAA, or for the purpose of establishing such funds, authorities or institutions, so as:
- 3.3.1 to encourage, promote and stimulate rural health research;
  - 3.3.2 to encourage and stimulate the development of multidisciplinary teams for the objects of the Foundation;
  - 3.3.3 to attract the highest quality postgraduate research students and scientists to regional Western Australia;
  - 3.3.4 to encourage and help provide facilities for health research by staff of Hospitals and Universities and other research facilities;
  - 3.3.5 to encourage and promote collaboration with industry and with government for technical and educational and other health developments stemming from the work of the Foundation;
  - 3.3.6 to stimulate public interest in the prevention and treatment of disease and to assist the public and medical and allied health professions in keeping up to date with the latest developments in medical and scientific research;
  - 3.3.7 to support specific fields of health research as shall be determined from time to time by the Board:
- 3.4 The Foundation will carry on its operations only in Australia and all research supported by the Foundation should comply with the appropriate ethical, biological safety, radiation safety and animal welfare guidelines.
- 3.5 The Foundation will hold the property of the Foundation and all income, rents and other benefits accruing from the Foundation's property on trust for its application in accordance with the objects of the Foundation and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to Members or former Members, except in good faith in the promotion of those objects.

#### **4.0 Powers of the Foundation**

The powers of the Foundation in connection with the furtherance of the objects of the Foundation include those conferred on the Foundation by Section 14 of the Act subject to the following additions, exclusions or modifications:

- 4.1 to admit to membership any person, firm, company, incorporated association and Approved Body whether incorporated or unincorporated and upon such terms consistent with the Foundation's objects as may be determined from time to time;

- 4.2 to obtain, collect and receive money and funds by way of contributions, donations, subscriptions, legacies, grants, bequests or other lawful method and to accept and receive any gifts, legacies of monies and other valuable assets and property of any description, whether subject to any special trusts or not, from the public, or a significant part of the public, and to apply the money and property of the Foundation in or towards the establishment of its objects and to refuse to accept any property unless the Board deem it expedient for the Foundation to do so;
- 4.3 to invest any moneys of the Foundation not immediately required for any of its objects in such manner or on such security as the Foundation may from time to time determine including, without limiting the generality of the foregoing, by way of investment in an interest bearing account within a major financial institution;
- 4.4 to sell, develop, let, manage, lease, mortgage, dispose of or otherwise deal with all or any of the property, rights, privileges or assets of the Foundation with a view to the promotion of its objects;
- 4.5 to borrow or raise money for the purposes of the Foundation on such terms and in such manner as may be thought fit;
- 4.6 to acquire by purchase, lease, exchange, hire, gift or otherwise any property, real or personal and any estate or interest therein, and any rights or privileges over or connected with any property;
- 4.7 to guarantee and to give guarantees and indemnities in respect of the obligations of any person in connection with the furthering of the objects of the Foundation or in connection with the exercise of the powers of the Foundation;
- 4.8 to co-operate, assist or co-ordinate research with any Approved Body, society or individual organisation having objects similar to the objects of the Foundation;
- 4.9 to engage, control, suspend and dismiss contractors and employees;
- 4.10 to provide funds in accordance with its objects, whether by endowment, donation or otherwise, to support training and research positions, professorships, fellowships and the like
- 4.11 to make grants to an Approved Body for the purpose of providing grants to persons approved by the Foundation to assist them in studies, research or investigations consistent with the objects of the Foundation;
- 4.12 to offer, give or contribute toward any scholarship, prize, medal or reward for education, research, contributions or effort consistent with the objects of the Foundation;
- 4.13 to take such steps as from time to time may be deemed expedient for the purpose of procuring grants, subscriptions and contributions to the funds of the Foundation;

4.14 to pay commission or fees in respect of the fund raising activities undertaken on behalf of the Foundation;

4.15 to make a payment to a member out of the funds of the Foundation only if it is authorised under sub Clause 4.15.1.

4.15.1 A payment to a member out of the funds of the Foundation is authorised if it is —

- (a) the payment in good faith to the member as reasonable remuneration for any services provided to the Association, or for goods supplied to the Association, in the ordinary course of business; or
- (b) the payment of interest, on money borrowed by the Association from the member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
- (c) the payment of reasonable rent to the member for premises leased by the member to the Association; or
- (d) the reimbursement of reasonable expenses properly incurred by the member on behalf of the Association.

4.16 to do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them.

## **5.0 Membership**

### **5.1 Eligibility**

The following persons or other bodies shall be eligible to be Members

5.1.1 Any person, firm, company, incorporated association or Approved Body who shall nominate for membership and shall have donated to the Foundation such sum of money as the Board may from time to time in its discretion nominate as being an appropriate amount which would entitle a person, firm, company incorporated association or Approved Body to membership of the Foundation;

5.1.2 all of the Board Members during the respective periods of their appointment, and

5.1.3 such other persons, firms, companies, incorporated associations or Approved Body as the Board may invite from time to time and whom the Board considers would benefit the Foundation by becoming Members, and who shall nominate for membership.

5.1.4 Any person, firm, company, incorporated association or Approved Body whose nomination for membership is seconded by a current member.

### **5.2 Applications for Membership**

Applications for membership shall be in such form as the Board shall from time to time prescribe or in any particular case accept.

### 5.3 Applications to be referred to Board

As soon as practicable after the receipt of any application for membership of the Foundation, the application shall be considered by the Board which may, in its absolute discretion, determine whether or not the applicant shall be accepted as a Member. In no case shall the Board be required to give any reason for failure or refusal to admit an applicant as a Member.

### 5.4 Acceptance

When an applicant has been accepted for membership the Secretary shall forthwith enter his or her or its name in the Register and send to the applicant written notice of such acceptance. Membership shall continue until terminated as provided in Clause 5.5.

### 5.5 Cessation of Membership

5.5.1 A Member may at any time by giving notice in writing to the Secretary resign his, her or its membership of the Foundation.

5.5.2 If any Member shall wilfully refuse or neglect to comply with the objects 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 power by resolution to expel the Member from the Foundation as set out in Clause 5.5.3.

#### 5.5.3 Expulsion of Members of Foundation

5.5.3.1 If the Board considers that a Member should be expelled from membership of the Foundation because of conduct which is unbecoming of a Member or which is prejudicial to the interests of the Foundation, the Board shall serve on that Member notice of the proposed expulsion, and of the time, date and place of the Board Meeting at which the question of that expulsion will be decided, and particulars of that conduct, such notice to be served not less than 30 days before the date of that Board meeting.

5.5.3.2 At the Board Meeting of which a notice has been given under Clause 5.5.3.1, the Board may, having afforded the Member concerned a reasonable opportunity to be heard or to make representations in writing, expel or decline to expel that Member from membership of the Foundation, and shall forthwith after deciding whether or not so to expel that Member, communicate that decision in writing to that Member.

5.5.3.3 Subject to Clause 5.5.3.5, a Member who is expelled under Clause 5.5.3.2 from membership of the Foundation ceases to be a Member 14 days after the day on which the decision so to

expel him, her or it is communicated to him, her or it under Clause 5.5.3.2.

5.5.3.4 A Member who is expelled under Clause 5.5.3.2 from membership of the Foundation shall, within 14 days after receiving notice of the Board's decision under Clause 5.5.3.3 if he, she or it wishes to appeal against that expulsion, give written notice to the Secretary requesting the appointment of a mediator under Clause 24.3.

5.5.3.5 When notice is given under Clause 5.5.3.4, the Foundation in General Meeting may, after having afforded the Member who gave that notice a reasonable opportunity to be heard or to make representations in writing to the Foundation in that General Meeting, by Special Resolution confirm or set aside

5.5.3.6 the Member who gives that notice does not cease to be a Member unless and until the decision of the Board to expel him, her or it is confirmed under Clause 5.5.3.5 by a Special Resolution passed at a General Meeting as referred to in Clause 5.5.3.5.

## 5.7 Honorary Life Membership

Honorary life membership of the Foundation may, on the recommendation of the Board, be conferred by the Foundation by Special Resolution at an Annual General Meeting on any person who has rendered distinguished service to the Foundation.

## 5.8 Special Classes of Membership

The Board shall be entitled in its discretion to create additional special classes of membership, the rights and obligations relating to which, and the conditions under which persons, firm, companies, incorporated associations or an Approved Body might be made Members under such special class or classes, to be determined by the Board at the time of creation of each such class.

## 5.9 Patrons

The Board may appoint a person, firm, or company as a patron or patrons of the Foundation and may terminate any such appointment at any time. Any such appointment, during its currency, will bestow membership of the Foundation on the patron so appointed.

## **6.0 Use of the Foundation's Name**

6.1 Membership of the Foundation does not give any rights in respect of the use of the Foundation's name or in respect of any intellectual property or other assets of the Foundation. The Foundation reserves to itself the sole use and control over its name.



- 6.2 Research personnel receiving funds or other support from the Foundation for their work will, subject to approval of the Board not to do so, acknowledge the Foundation in all scientific communications.
- 6.3 Nothing in this Clause 6 shall preclude any Member from so describing himself, herself or itself in any communication, advertisement or notice.

## **7.0 General Meetings**

- 7.1 An Annual General Meeting shall be held within 4 months of the 30th of June each year at such time and place as may be determined by the Board, such Annual General Meeting being the minimum number of General Meetings to be held by the Foundation in each year.
- 7.2 A General Meeting may be convened by the Board when and at such times and places as it thinks fit. A General Meeting shall be convened within fourteen days of receipt of a requisition in writing of no fewer than 20% of members specifying the object of the meeting.
- 7.3 At least 14 clear days before each General Meeting the Secretary shall give to each Member notice in writing of the meeting and such notice shall specify the place, date and hour of the meeting, and the general nature of the business expected to be transacted.
- 7.4 The accidental omission to give notice of a meeting to or the non receipt of notice of a meeting by any Member entitled to receive notice shall not invalidate the proceedings at that meeting.
- 7.5 The chairman of all General Meetings shall be the Chairman of the Board or in his or her absence the Vice Chairman of the Board. In the absence of both of them, a Board Member shall be elected as chairman by the Members present.
- 7.6 Every Member may attend a General Meeting either in person or by proxy and shall be entitled to one vote.
- 7.7 No business shall be transacted at any General Meeting unless 7 Members, (either in person or by proxy) or 50% of Members plus one (either in person or by proxy), whichever is the lesser are present.
- 7.8 All Members shall be entitled to vote at General Meetings. In the case of an equality of votes, the motion shall be deemed lost.
- 7.9 At any General Meeting a resolution put to the vote shall be decided by a show of hands, unless a request for a poll is made by not less than 3 Members present and entitled to vote.
- 7.10 An instrument appointing a proxy must be in writing signed by the appointing Member. A proxy need not be a Member.

- 7.11 A Member being a firm, company, incorporated association or an Approved Body may in writing appoint a representative of that firm, company, incorporated association or Approved Body to attend and vote at any General Meeting as the duly accredited representative of such Member.
- 7.12 A declaration of the Chairman of that meeting that a resolution has been carried or lost at that meeting shall be conclusive.
- 7.13 The Chairman may, with the consent of any meeting at which a quorum is present, adjourn the General Meeting to a date, time and place to be fixed by him or her, but no business shall be transacted at any adjourned meeting other than the business left unfinalised at the General Meeting which was adjourned.
- 7.14 Where a Special Resolution is contemplated, notice of intention to move such motion may be given by the mover thereof orally at a prior General Meeting or included in the notice referred to in Clause 7.3.

## **8.0 The Board**

- 8.1 The Board shall comprise:-  
a Chairman;  
a Vice Chairman;  
a Secretary; and  
a Treasurer  
(collectively called “the Office Bearers”) and sufficient additional Members so as to constitute a total of not less than 6 Board Members.
- 8.2 The Chairman and Vice Chairman shall be appointed at each Annual General Meeting and hold office until the next Annual General Meeting or his or her prior resignation. If the Chairman or Vice Chairman ceases to hold office prior to the Annual General Meeting following his or her appointment, the office must be filled by the Board from amongst Board Members.
- 8.3 The general policy and administration of the affairs of the Foundation shall be vested in the Board.
- 8.4 The Board shall at all times consist of at least six persons who must each be a Member and who must be nominated by a Member in writing or alternatively nominated from the floor by a Member at an Annual General Meeting. Whether nominated in writing or from the floor, such nominee cannot be accepted as a Board Member unless that nominee has given consent whether orally at the meeting or prior thereto in writing.
- 8.5 If at any time there are less than fifty percent plus one Board Members present at a Board Meeting, those present may appoint a Member or Members as additional Board Members sufficient to bring the total number of Board Members up to six, and until that has been done, no other business can be conducted by the Board. The Board may at its discretion and at any time appoint additional Board Members up to a total of ten. Board Members who gain such position by nomination at a Board Meeting must be approved by the Board at that Board Meeting and will hold office until the next Annual General

Meeting but during such period will have all the rights and voting powers of Board Members elected at an Annual General Meeting.

- 8.6 At no time shall there be more than 10 Board Members.
- 8.7 A Board Member shall cease to hold office:-
- 8.7.1 at the next Annual General Meeting following his or her appointment;  
or
  - 8.7.2 upon his or her death in the case of natural persons; or
  - 8.7.3 upon his, or her resignation as a Board Member; or
  - 8.7.4 if he or she is permanently incapacitated by mental or physical ill-health; or
  - 8.7.5 if he or she is absent from more than three consecutive Board Meetings without leave of absence or apology; or three Board Meetings in the same financial year, of which he or she has received notice, leave of absence or without tendering an apology; or
  - 8.7.6 if, upon a Special Resolution of the Board, his or her conduct is deemed by the Board to be not in keeping with the objects of the Foundation; or
  - 8.7.7 if he or she being a natural person, is bankrupt.
- 8.8 A Board Member who ceases to be a Board Member by virtue of Clause 8.7.1 or 8.7.3 shall be eligible for re-appointment

## **9.0 Proceedings of the Board**

- 9.1 Any casual vacancy on the Board may be filled by the Board. If at any Board Meeting neither the Chairman nor the Vice-Chairman is present within five minutes after the time appointed for holding the Board Meeting, the Board Members present may choose one of their numbers to be chairman of the Board Meeting.
- 9.2 The Board shall arrange the opening of a bank account or accounts through which all income of the Foundation and all expenditure of the funds of the Foundation must pass, and it must give appropriate authority to suitable persons for signature. The Board must keep records of such authority.
- 9.3 The Board may meet together for the dispatch of business, adjourn and otherwise regulate Board Meetings and proceedings as it thinks fit, and may determine the quorum necessary for the transaction of business, provided however that at no time shall the quorum be less than half the then number of Board Members plus one.

- 9.4 On the written request of a Board Member to the Chairman that a Board Meeting be convened within 21 days, the Chairman must direct the Secretary to call such Board Meeting. In any event the Board shall meet at least quarterly.
- 9.5 All Board Members shall be entitled to vote at Board Meetings and shall each have one vote.
- 9.6 Motions arising at any Board Meeting shall be first decided by simple majority. In the case of an equality of votes, the motion shall be deemed lost.
- 9.7 Meetings at which a quorum is present shall be competent to exercise all or any of the authorities, discretions and powers of the Foundation which are not required by law or these rules to be exercised by the Foundation in a General Meeting.
- 9.8 All acts done by Board Meeting shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of any Board Member or that any such Board Member were disqualified, be as valid as if every such Board Member had been duly appointed and was qualified to be a Board Member.
- 9.9 A resolution in writing signed by a majority of Board Members or emailed and agreed to by a majority of Board members by reply all email shall be as valid and effectual as if it had been passed at a Board Meeting duly called and constituted.
- 9.10 Electronic Meetings
- 9.10.1 Board Meetings may be held by use of conference telephoning or video link (“electronic meeting”), provided that all Board Members receive appropriate notice of such electronic meeting and provided further that if any Board Member is unable to take part in such electronic meeting by virtue of not having available the appropriate electronic facilities for participating, and such Board Member gives notice of that fact to the Secretary, such Board Member may consent to the electronic meeting being held without the participation of that Board Member.
- 9.10.2 If any Board Member who has given notice to the Secretary in compliance with Clause 9.10.1 refuses to consent to an electronic meeting being held without his or her participation, then an electronic meeting will not be held.
- 9.10.3 In the event of an electronic meeting being held, a certificate signed by the chairman of the Board Meeting certifying minutes made by the Secretary shall be conclusive evidence that such electronic meeting was held in accordance with this Constitution.
- 9.11 No Board Member shall be disqualified by his or her office from contracting or entering into any arrangement with the Foundation whether as vendor, purchaser or otherwise, nor shall any such contract or arrangement entered

into by or on behalf of the Foundation in which any Board Member shall be in any way interested be avoided, nor shall any Board Member so contracting or being so interested be liable to account to the Foundation for any profit realised by any such contract or arrangement, by reason only of such Board Member's holding that office or of the fiduciary relationship thereby established, provided that such Board Member must disclose his or her interest to the Board in accordance with Section 42 of the Act.

- 9.12 No Board Member shall, as a Board Member, vote in respect of any contract or arrangement in which he or she is so interested as aforesaid, and, if he or she does so vote, his or her vote shall not be counted, but this prohibition as to voting shall not apply to any contract by or on behalf of the Foundation to give any Board Member any security for advances or by way of indemnity, or to any contract or arrangement where the Board Member is interested merely as a shareholder or member of a Board of a company.
- 9.13 A Board Member who is interested in any contract or arrangement as aforesaid may, notwithstanding such interest, attest the affixing of the Common Seal of the Foundation to any document evidencing or otherwise connected with such contract or arrangement.
- 9.14 The Board shall consider submissions for funding of projects presented by any potential Approved Body or by any potential donor as soon as practicable.
- 9.15 The Board may delegate the review of project submissions to a Sub Committee appointed by the Board.

## **10.0 Secretary's Duties**

- 10.1 The Board shall appoint a Secretary from its own numbers, or may employ a person to be the Secretary, and in the discretion of the Board may pay such person a reasonable salary for performing such duties.
- 10.2 The Secretary under the direction of the Chairman must keep minutes of any Board Meeting.
- 10.3 The Secretary must see that all notices are duly given in accordance with the provisions of this Constitution or as required by law.
- 10.4 The Secretary shall be custodian of the common seal of the Foundation and shall see that it is affixed to all documents, the execution of which under the common seal of the Foundation is duly authorised by the Board, and
- 10.5 In general the Secretary shall perform such duties as are commonly incidental to the office of Secretary or as may from time to time be assigned to him or her by the Board or as are prescribed by law or by this Constitution. The Secretary shall comply on behalf of the Foundation with:
- 10.5.1 Section 53 of the Act in respect of the register of Members;
- 10.5.2 Section 35 of the Act in respect of this Constitution; and

10.5.3 Section 58 of the Act in respect of the records of the Office Bearers, Executive Committee Members, any Board Members and persons appointed as trustees of the Foundation.

## **11.0 Treasurer**

11.1 The Treasurer is required to be a Board Member and the Board may determine to pay the Treasurer appropriate fees for professional services carried out on behalf of the Board.

11.2 The Treasurer shall:

11.2.1 be responsible for the receipt of all monies paid to or received by the Foundation or by the Treasurer on behalf of the Foundation, and shall issue receipts for those monies in the name of the Foundation;

11.2.2 be responsible for payment of all monies referred to in Clause 11.2.1 into such account or accounts of the Foundation as the Board may from time to time direct;

11.2.3 be responsible for payments from the funds of the Foundation with the authority of a General Meeting or of the Board and in so doing ensure that all cheques are signed by two Board Members or by one Board Member and himself or herself;

11.2.4 ensure compliance with Sections 66 and 68 of the Act in respect of the accounting records of the Foundation, for which purposes the Treasurer may engage a qualified professional accountant whose fees shall be paid by the Foundation;

11.2.5 whenever directed to do so by the Chairman, submit to the Board a report, balance sheet or financial statement in accordance with that direction;

11.2.6 have custody of all securities, books and documents of a financial nature and accounting records of the Foundation, including those referred to in Clauses 11.2.4 and 11.2.5;

11.2.7 perform such other duties as are imposed by the Board.

## **12.0 Executive Officer**

12.1 There shall be an Executive Officer appointed by the Board. The terms of the appointment shall be decided by the Board.

12.2 The Executive Officer shall:

12.2.1 be accountable for the day to day operations of the Foundation

- 12.2.2 use his or her best endeavours at all times to enhance the good name of the Foundation;
  - 12.2.3 insofar as resources available permit, implement the objects of the Foundation and other policies of the Board;
  - 12.2.4 prepare an annual report for the Board on the work and activities of the Foundation during the preceding 12 months;
  - 12.2.5 exercise such other functions, duties and responsibilities as may be determined from time to time by the Board.
- 12.3 The Executive Officer shall remain subject to the control of the Board. The Board may confer upon the Executive Officer such powers as are required for the day to day operations of the Foundation which are not inconsistent with the provisions of the Act.

### **13.0 Minutes**

The Foundation shall cause to be kept and recorded minutes of all resolutions and proceedings of all meetings of the Foundation and shall cause such minutes to be signed by the Chairman of the meeting or of the next meeting. Copies of all such minutes shall be sent forthwith to all the Board Members.

### **14.0 Accounts**

- 14.1 The Board shall cause true accounts to be kept;
  - 14.1.1 of all monies received and expenses incurred by the Foundation and the matters in respect of which such receipt and or expenditure took place; and
  - 14.1.2 of the assets and liabilities of the Foundation.
- 14.2 The books of account, records, documents and securities of the Foundation shall be kept under the direction of the Treasurer at the office of the Foundation or at such other place as the Board from time to time may direct.
- 14.3 A financial report including an income and expenditure statement and balance sheet shall be prepared in accordance with Australian Accounting Standards as at 30th June in each year for presentation to the Annual General Meeting.
- 14.4 The accounts of the Foundation shall be audited by the Auditor.

### **15.0 Application of Income**

The net income and property of the Foundation shall be applied solely towards the promotion of the objects of the Foundation and no part of that income or property shall be paid or otherwise distributed, directly or indirectly to Members or former

Members, except in good faith and in promotion of those objects, or as remuneration to any Member, Office Bearer or employee of the Foundation or to any person, company or firm in return for services rendered to the Foundation.

## **16.0 Auditor**

16.1 The Members at an Annual General Meeting will appoint a person or firm being a member of a recognised accounting body as the Auditor.

16.2 The Auditor's fee, if any, shall be fixed by the Board.

## **17.0 Common Seal of the Foundation**

17.1 The Foundation shall have a common seal on which its name shall appear in legible characters.

17.2 The common seal of the Foundation shall not be used without the express authority of the Board and every use of that common seal shall be recorded in the minute book referred to in Clause 10.2.

17.3 The affixing of the common seal of the Foundation shall be attested by any two Board Members, or any one Board Member and the Secretary.

17.4 The common seal of the Foundation shall be kept in the custody of the Secretary or of such other person as the Board from time to time may decide.

## **18.0 Inspection of Records etc of the Foundation**

A Member may at any reasonable time inspect, without any charge, the books, documents, records, Constitution and securities of the Foundation. Such inspection shall be made at the office of the Foundation and no such documents shall be removed from these premises save with the authority of the Board.

## **19.0 Notices**

19.1 Notices under this Constitution may be served by the Foundation on Members either personally or by sending them through the post in a prepaid letter, envelope or wrapper addressed to Members at their respective places of residence or business as provided by the Members to the Secretary from time to time or, where a Member has given a facsimile number or email address to the Secretary as an acceptable means of serving notices on such Member, then a transmission of such notice by any electronic means to such Member shall constitute service on such Member of the material so transmitted, and shall be deemed served 12 hours after such transmission.



- 19.2 Any notice sent by post shall be deemed to have been served 48 hours after the letter, envelope or wrapper containing the same is posted, and in proving such service, it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and posted.

## **20.0 Indemnity**

- 20.1 The liability of the Members is limited to the assets held by the Foundation from time to time.
- 20.2 Every Member shall be indemnified out of the funds of the Foundation against all liabilities for which such Member becomes liable arising out of being a Member or an Office Bearer where such Member or Office Bearer has acted honestly and in good faith.

## **21.0 Alterations to Constitution**

- 21.1 The Foundation shall have power, subject as hereinafter provided, to change its name or to alter, amend or make additions to this Constitution, and the changes, alterations, amendments or additions shall be as binding and effectual as if the same were inserted and contained in the original Constitution.
- 21.2 Any such changes, alterations, amendments or additions as referred to in Clause 21.1 shall be made in accordance with the procedures set out in Sections 30, 31, 32, 33 and 34 of the Act.
- 21.3 No changes, alterations, amendments or additions to this Constitution shall be made except by a Special Resolution of Members at an Annual General Meeting or a Special General Meeting of which at least 14 days written notice has been given to all Members.
- 21.4 The Board shall give notice to the Deputy Commissioner of Taxation in Western Australia of any changes, alterations, amendments or additions proposed to be made to this Constitution.

## **22.0 Disposal of Funds on Winding Up**

- 22.1 If upon the dissolution or winding up of the Foundation there remains, after the satisfaction of all its debts and liabilities, any property whatsoever ("the surplus"), the surplus shall not be paid to, transferred to or distributed amongst the Members or former Members.
- 22.2 The surplus shall be given or transferred to another organisation incorporated under the Act which has similar objects to the Foundation, and to which income tax deductible gifts can be made as approved by the Commissioner of Taxation and which association shall be determined by resolution of the members.

22.3 The Deputy Commissioner of Taxation for Western Australia shall be notified of the date of dissolution or winding up.

### **23.0 Resolution of disputes**

23.1 The procedure set out in this Clause (the grievance procedure) applies to disputes —

- (a) between members; or
- (b) between one or more members and the Association.

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

#### **23.3 How grievance procedure is started**

If the parties to a dispute are unable to resolve the dispute between themselves within the time required by Clause 23.2, any party to the dispute may start the grievance procedure by giving written notice to the secretary of —

- (a) the parties to the dispute; and
- (b) the matters that are the subject of the dispute.

23.3.1 Within 28 days after the secretary is given the notice, a Board meeting must be convened to consider and determine the dispute.

23.3.2 The secretary must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.

23.3.3 The notice given to each party to the dispute must state —

- (a) when and where the Board meeting is to be held; and
- (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.

23.3.4 If —

- (a) the dispute is between one or more members and the Association; and
- (b) any party to the dispute gives written notice to the secretary stating that the party —
  - (i) does not agree to the dispute being determined by the Board; and
  - (ii) requests the appointment of a mediator under Clause 24.3,the Board must not determine the dispute.

#### **23.4 Determination of dispute by Board**

23.4.1 At the Board meeting at which a dispute is to be considered and determined, the Board must —

- (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute; and
- (b) give due consideration to any submissions so made; and
- (c) determine the dispute.

23.4.2 The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the Board meeting at which the determination is made.

23.4.3 A party to the dispute may, within 14 days after receiving notice of the Board's determination under sub Clause 23.4.1(c), give written notice to the secretary requesting the appointment of a mediator under Clause 24.3.

23.4.4 If notice is given under sub Clause 23.4.3, each party to the dispute is a party to the mediation.

## **24.0 Mediation**

24.1 This Clause applies if written notice has been given to the secretary requesting the appointment of a mediator —

- (a) by a member under Clause 5.5.3.4 or
- (b) by a party to a dispute under Clause 23.3.4(b)(ii) or 23.4.3

24.2 If this Clause applies, a mediator must be chosen or appointed under Clause 24.3

### **24.3 Appointment of Mediator**

24.3.1 The mediator must be a person chosen —

- (a) if the appointment of a mediator was requested by a member under Clause 5.5.3.4 — by agreement between the Member and the Board; or
- (b) if the appointment of a mediator was requested by a party to a dispute under Clause 23.3.4(b)(ii) or 23.4.3 — by agreement between the parties to the dispute.

24.3.2 If there is no agreement for the purposes of sub Clause 24.3.1(a) or (b), then, subject to sub Clauses 24.3.3 and 24.3.4, the Board must appoint the mediator.

24.3.3 The person appointed as mediator by the Board must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by —

- (a) a member under Clause 5.5.3.4; or
- (b) a party to a dispute under Clause 23.3.4(b)(ii); or
- (c) a party to a dispute under Clause 23.4.3 and the dispute is between one or more members and the Association.

- 24.3.4 The person appointed as mediator by the Board may be a member or former member of the Association but must not —
- (a) have a personal interest in the matter that is the subject of the mediation; or
  - (b) be biased in favour of or against any party to the mediation.

24.4 Mediation Process

24.4.1 The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.

24.4.2 Each party to the mediation must give the mediator a written statement of the issues that need to be considered at the mediation at least 5 days before the mediation takes place.

24.4.3 In conducting the mediation, the mediator must —

- (a) give each party to the mediation every opportunity to be heard; and
- (b) allow each party to the mediation to give due consideration to any written statement given by another party; and
- (c) ensure that natural justice is given to the parties to the mediation throughout the mediation process.

24.4.4 The mediator cannot determine the matter that is the subject of the mediation.

24.4.5 The mediation must be confidential, and any information given at the mediation cannot be used in any other proceedings that take place in relation to the matter that is the subject of the mediation.

24.4.6 The costs of the mediation are to be paid by the party or parties to the mediation that requested the appointment of the mediator.

24.5 If mediation results in decision to suspend or expel being revoked

If —

- (a) mediation takes place because a member whose membership is suspended or who is expelled from the Association gives notice under Clause 5.5.3.4; and
- (b) as the result of the mediation, the decision to suspend the member's membership or expel the member is revoked,

that revocation does not affect the validity of any decision made at a Board meeting or general meeting during the period of suspension or expulsion.