



**Constitution of
Primary Industries Education Foundation
Australia Limited**
Updated: November 2021

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Preliminary

1 Company limited by guarantee

The Company is a public company limited by guarantee, and the liability of Members is limited as provided in this document.

2 Replaceable rules excluded

The replaceable rules contained in the Act do not apply to the Company, unless otherwise specified.

3 Definitions and interpretation

3.1 Definitions

In this Constitution:

Act means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Associate Members means Members who are either Teacher Associate Members, Sponsor Associate Members or School Associate Members.

Board means the Directors acting collectively as the board.

Bond Rate means the interest rate quoted by the Reserve Bank of Australia (**RBA**) as its long term bond rate (**Published Rate**) or, should there cease to be a Published Rate, the rate at which the RBA designates as being an appropriate substitute for the Published Rate (**Substitute Rate**). A certificate signed by a manager or other officer of the RBA stating the Published Rate or the Substitute Rate at a particular date is conclusive evidence of the rate at a particular date.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office.

Chairperson, except in relation to the Selection Committee Chairperson, means the person appointed as chairperson of the Board of the Company under **clause 15**.

CEO means the person appointed as the Chief Executive Officer by the Directors under **clause 27.1**.

Commonwealth means the Commonwealth of Australia.

Company means Primary Industries Education Foundation Australia Limited.

Constitution means the constitution of the Company as amended from time to time.

Default Rate means $(x + 3)$ percent per annum where x is the Bond Rate.

Deputy Chairperson means the person appointed as deputy chairperson of the Board of the Company under **clause 18**.

Directors means the directors for the time being of the Company or the directors assembled as a board.

Educator Members means Members, not being Government Members, who are:

- (a) teacher associations;
- (b) agricultural colleges;
- (c) schools;
- (d) agricultural societies; or
- (e) other similar types of organisations or entities,

and who have paid the Membership Fee applying to Educator Members.

First Directors has the meaning given to that term in **clause 16.4**.

Foundation Members has the meaning given to that term in **clause 10.1(a)**.

Gift Fund means a fund maintained and used only for the principal purpose of a DGR endorsed fund, authority or institution to receive and distribute tax deductible gifts.

Government Members means Members who are:

- (a) departments of a local, state, territory or the Commonwealth government; or
- (b) other similar types of organisations or entities,

and who have paid the Membership Fee applying to Government Members.

Guidelines means the guidelines (if any) issued by the Directors to the Selection Committee in relation to the selection process.

Inaugural Board means the first Board of the Company appointed under **clause 15**.

Industry Members means Members who are:

- (a) industry services bodies;
- (b) cooperative research centres established under the Australian Government Cooperative Research Centres Programme;
- (c) research and development corporations established under the *Primary Industries and Energy Research and Development Act 1989*;
- (d) publicly listed or private corporations; or
- (e) other similar types of organisations or entities,

and who have paid the Membership Fee applying to Industry Members.

Member means a member of the Company.

Membership Fee means a fee determined by the Directors under **clause 12.1**.

Ordinary Resolution means a resolution passed at a meeting of Members by a majority of the votes cast by Members entitled to vote on the resolution.

Primary Industries means the agriculture, fisheries and forestry industries.

Public Fund means a fund to which the public is invited to contribute and in fact does contribute.

Qualified Person means a person who at the time of his or her first appointment as a Director is a person who, due to the tenure of some public office or position or activity in the community, may be expected to have a high degree of responsibility to the public, including a person who is:

- (a) a member of the council or governing body of any Australian university;
- (b) a professor at an Australian university;
- (c) a senior academic at an Australian university;
- (d) a barrister or solicitor;
- (e) a member of the Australian College of Veterinary Sciences;
- (f) a member of a professional body in Australia which has a professional code of ethics and rules of conduct (such as the Australian Institute of Agricultural Science and Technology');
- (g) the principal of an Australian school; or
- (h) a recipient of the Order of Australia or governmental award for services to the public or community.

Register of Members means the register of Members of the Company.

Representative means a person appointed as a Member's representative in accordance with **clause 37**.

Schools mean primary and secondary schools in Australia.

Secretary means the secretary referred to in **clause 28** and any other person appointed to perform the duties of a secretary of the Company.

Selection Committee means the committee appointed in accordance with **clause 19**.

Special Resolution has the meaning given by section 9 of the Act.

Sponsor Associate Members means Members, not being Teacher Associate Members, including but not limited to publicly listed or private corporations, who have paid the Membership Fee applying to Sponsor Associate Members.

Tax Act means the *Income Tax Assessment Act 1997* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.

Teacher Associate Members means Members who are registered teachers at Schools or other educational institutions and who have paid the Membership Fee applying to Teacher Associate Members.

Voting Members means Members who are Educator Members, Industry Members or Government Members.

3.2 Interpretation

In this Constitution:

- (a) reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular; and
 - (iii) a person includes a body corporate or government;
- (b) except so far as the contrary intention appears in this Constitution:
 - (i) an expression has in this Constitution the same meaning as in the Act; and
 - (ii) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
- (c) 'including' and similar expressions are not words of limitation;
- (d) headings are for convenience only and do not form part of this Constitution or affect its interpretation; and
- (e) a reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Act.

4 Objects of the Company

The objects for which the Company is established are to:

- (a) provide national leadership and coordination of initiatives to encourage Primary Industries education in Schools through a partnership between industry, government and educators;
- (b) commission, co-ordinate, facilitate and manage national projects to encourage Primary Industries education in Schools;
- (c) provide a source of credible, objective and educational resources for Schools to maintain and improve community confidence in Australia's Primary Industries;
- (d) communicate Primary Industries research and development outcomes in a format accessible for Schools and encourage interest within Schools in Primary Industries related careers; and
- (e) The operation and administration of a scholarship fund for the provision of scholarships, bursaries and prizes to encourage and further primary industries education.

5 Powers

5.1 Scope of Powers

The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.

5.2 Establishment of Funds

The Company has the power to establish a Public Fund.

5.3 Powers ancillary to objects

Despite clauses 5.1 and 5.2 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in clause 4.

6 Payments by the Company

6.1 Company not for profit

The Company is a not-for-profit company.

6.2 Application of income and property

The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in **clause 4**.

6.3 No payment to Members

No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise, to the Members.

6.4 Acts not prevented

Clause 6.3 does not prevent:

- (a) the payment in good faith of remuneration to any officer, servant or Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
- (b) the payment of interest, at a rate per annum not exceeding the current Bond Rate, on money borrowed from any Member of the Company;
- (c) the payment of reasonable and proper rent by the Company to a Member of the Company for premises leased by the Member to the Company; or
- (d) the reimbursement of expenses incurred by any Member on behalf of the Company.

Membership

7 Liability of Members limited by guarantee

- (a) The liability of the Members is limited.
- (b) Every Member undertakes to contribute an amount not exceeding \$2 (two dollars) to the property of the Company in the event of its being wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:
 - (i) of the debts and liabilities of the Company (contracted before the Member ceases to be a Member);

- (ii) of the costs, charges and expenses of winding up; or
- (iii) for the adjustment of the rights of the contributories among themselves

8 Number of Members

The number of Members for which the Company proposes to be registered is unlimited.

9 Classes of Members

- (a) The classes of Members are:
 - (i) Voting Members; and
 - (ii) Associate Members.
- (b) The sub-classes of Voting Members are:
 - (i) Educator Members;
 - (ii) Industry Members; and
 - (iii) Government Members.
- (c) The sub-classes of Associate Members are:
 - (i) Sponsor Associate Members;
 - (ii) Teacher Associate Members; and
 - (iii) School Associate Members.

10 Admission as a Member

10.1 Foundation Members

- (a) Foundation Members are Members of the Company and are named in the application for registration of the Company.
- (b) The classes of membership of the Foundation Members shall also be nominated in the application for registration of the Company.
- (c) References to Members in this Constitution include Foundation Members, unless stated otherwise.

10.2 Application for admission as a Member

An Application for admission as a Member, excluding a Foundation Member, must:

- (a) be in writing in a form approved by the Directors;
- (b) be signed by the applicant; and
- (c) nominate the class of Member applied for.

10.3 Assessment of Membership Fees

Upon receipt of an application under **clause 10.1**, the Company must assess:

- (a) which class of Member the applicant qualifies as; and
- (b) the amount of Membership Fee in accordance with

clause 12, and advise the applicant of those matters.

10.4 Admission as a Member

- (a) This **clause 10.4** does not apply to Foundation Members.
- (b) Subject to **clause 10.4(d)**, the Board may admit an applicant as a Member if
 - (i) the applicant has lodged an Application in accordance with **clause 10.1**; and
 - (ii) the applicant has paid the Membership Fee within 30 days of receipt of an assessment being given under **clause 10.3**.
- (c) Upon admission of a Member, the Company must notify the Member of its admission as an Associate Member or Voting Member, including the class of Associate Member or Voting Member that the Member has been admitted as.
- (d) The Board may, in its discretion but having regard to the objects of the Company as set out in **clause 4**, reject an application for admission as a Member.

11 Register of Members

11.1 Register to be kept

A Register of Members must be kept in accordance with the Act, containing the following information:

- (a) the name and address of each Member;
- (b) the class of Member;
- (c) the date on which the entry of the Member's name in the Register is made;
- (d) the name and details of each person who stopped being a Member within the last 7 years;
- (e) the date on which the person stopped being a Member; and
- (f) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

11.2 Change to name or contact details

Each Member must notify the Secretary in writing of any change in that person's name, or address within 1 month of the change.

12 Membership Fees

12.1 Directors to determine amounts of Membership Fees

Subject to **clause 12.2**, the amount of the Membership Fee applying in relation to:

- (a) Educator Members;
- (b) Industry Members;
- (c) Government Members;
- (d) Sponsor Associate Members;
- (e) Teacher Associate Members, and
- (f) School Associate Members

will be determined by the Board, notified in advance of each annual general meeting (as part of the annual general meeting papers) and announced at each annual general meeting.

12.2 Directors to determine amounts of inaugural Membership Fees

The amount of the inaugural Membership Fee applying in relation to:

- (a) Educator Members;
- (b) Industry Members;
- (c) Government Members;
- (d) Sponsor Associate Members; and
- (e) Teacher Associate Members,

will be determined by the Board and announced at a general meeting and will apply for the period until the first annual general meeting, at which point Membership Fees will be determined in accordance with **clause 12.1**.

12.3 Payment period

Subject to this **clause 12**, all Membership Fees shall be for the annual period from 1 July to 30 June and are due and payable no later than 30 days from the date of an invoice for them from the Company.

12.4 Membership Fees for Foundation Members

Foundation Members shall pay the inaugural Membership Fees, and any subsequent Membership Fees, determined by the Board for that class of Member, offset by any amount they have already paid on account of future Membership Fees at the time that the Company was incorporated.

12.5 New Member payment period

- (a) Where an applicant is admitted as a Member other than on 1 July, the Membership Fee payable will be for the period until the next 30 June and will be determined in accordance with **clause 12.4(b)**.

- (b) The amount of Membership Fee payable will be calculated using the following formula:

$$\text{Membership fee} = \frac{\text{Membership Fee}}{12} \times M$$

Where "M" = the number of months (whether whole or part) until 30 June in which the applicant will be admitted as a Member.

12.6 GST

The Membership Fee payable by each Member will be increased to the extent of any applicable goods and services tax. Such goods and services tax is payable at the same time as the balance of the Membership Fee.

12.7 Unpaid Membership Fee

- (a) If a Member has not paid its Membership Fee by the expiration of 2 months after the Membership Fee becomes payable, the Directors may give a notice to the Member.
- (b) Upon being give a notice under **clause 12.7**, the Member ceases to be entitled to any of the rights or privileges of Members, unless:
- (i) the Member pays all arrears, including simple interest on the unpaid amount calculated daily at the current Default Rate from the next day after the due date up to and including the date the amount is paid; and
 - (ii) the Directors reinstate the Member's rights and privileges.

12.8 Failure to pay

If a Member who has been given a notice under **clause 12.7** has not paid all arrears of the Membership Fee within 2 months of the date of the notice, the Member ceases to be a Member and the Member's name must be removed from the Register of Members.

13 Resignation and cessation of membership

13.1 Notice of resignation

A Member may resign as a Member by giving at least 1 month's written notice to the Secretary.

13.2 Effective date of resignation

The resignation of a Member takes effect on the date stated in the notice or, if no date is stated or the date stated is within 1 month of the date the notice is given, on the date 1 month after the date notice is given.

13.3 Cessation of membership

A Member ceases to be a Member if:

- (a) the Member is wound up or is otherwise dissolved or deregistered; or
- (b) the Member ceases to be a Member under **clause 12.8**.

13.4 Effect of cessation of membership

If any Member ceases to be a Member, the Member remains liable to pay to the Company any money which, at the time of the Member ceasing to be a Member, the Member owes to the Company on any account. No part year adjustment will be made to Membership Fees payable and no refund is payable in relation to Membership Fee paid.

Directors and Chairperson

14 Directors

14.1 Number of Directors

- (a) Subject to **clause 14.1(b)**, the Company must have at least 5 Directors and, until otherwise decided by ordinary resolution, not more than 7 Directors, including the Chairperson.
- (b) For the period until the Board is appointed under **clause 15**, the Company must have at least 3 First Directors.

14.2 Qualified Persons

The majority of the Directors (including First Directors) must be Qualified Persons.

15 Appointment of Directors and Chairperson

15.1 Appointment of Directors by Selection Committee

Subject to **clause 20.1**, a Director excluding a First Director is appointed, at:

- (a) for the Inaugural Board – a general meeting; or
 - (b) thereafter – each annual general meeting of the Company at which positions become vacant,
- if:
- (c) selected by the Selection Committee; and
 - (d) the Voting Members do not pass a resolution, under **clause 15.3**, rejecting the Selection Committee's decision in relation to that Director.

15.2 Remaining Director vacancies

If not all vacant Director positions are filled, because of a resolution under **clause 15.1(d)**, the Selection Committee must select other persons as Directors, for consideration by Members at a further general meeting or meetings.

15.3 Voting Member resolution to reject a Selection Committee decision

The Voting Members may pass a resolution to reject a Selection Committee decision made under **clauses 15.1(c)** if:

- (a) at least 75% of the Educator Members; or
- (b) at least 75% of the Government Members; or
- (c) at least 75% of the Industry Members,

who are entitled to vote on the resolution, vote to reject that Selection Committee decision.

15.4 Appointment of Chairperson

- (a) Subject to clause 20.1, the Board will appoint, by majority vote, one of their number as a Chairperson, being a Director who has indicated a willingness to stand.:
- (b) The appointment of a Chairperson can be varied by the Board, by majority vote, at any time.

16 Term of Directors

16.1 Term of Directors

- (a) Subject to **clause 20.3** and **clause 16.1(b)**, the term of appointment of Directors shall be for the period until the third annual general meeting after the annual general meeting of his or her appointment.
- (b) **Clause 16.1(a)** does not apply to:
 - (i) the CEO, if appointed as a Director under **clause 16.3**;
 - (ii) the First Directors; or
 - (iii) a Director who is a member of the Inaugural Board appointed for a lesser period (namely 1 year or 2 years, as the case may be).

16.2 Eligible for reappointment

- (a) A Director is eligible for re-appointment at the expiry of each term of appointment.
- (b) A First Director is eligible for appointment as a Director at the expiry of his or her term of appointment as a First Director.

16.3 Chief Executive Officer

If the Directors appoint a CEO under **clause 27.1**, the Directors may elect whether the CEO is appointed as a Director, in which case the CEO shall be a Director for the period of his or her appointment as CEO.

16.4 First Directors

The term of appointment of First Directors will expire upon the appointment of at least 3 Directors for the Inaugural Board under **clause 15**. For the purpose of this **clause 16.4**, First Directors means those Directors named in the application for registration of the Company, not including the CEO, if appointed as a Director under **clause 16.3**.

17 Term of Chairperson

17.1 Term of Chairperson

Subject to **clause 17.2**, the term of appointment of a Director as Chairperson shall be for the period determined by the Board and may be varied by majority vote of the Board.

17.2 Vacancy

If the position of Chairperson becomes vacant other than by expiry of the Chairperson's term of appointment, the Deputy Chairperson shall be appointed as an interim

Chairperson to replace the outgoing Chairperson (**Outgoing Chairperson**). A Deputy Chairperson appointed as Chairperson under this **clause 17.2** holds office as Chairperson until the Board appoints a new Chairperson (**New Chairperson**) in accordance with **clause 15.4**. The term of the New Chairperson shall be determined by the Board in accordance with **clause 17.1**.

17.3 Eligible for re-appointment

A Chairperson is eligible for re-appointment at the expiry of each term of appointment as Chairperson.

18 Appointment and term of Deputy Chairperson

The Directors may appoint one of their number as Deputy Chairperson for such term as the Directors determine or vary.

19 Selection Committee

19.1 Selection Committee Composition

The Selection Committee shall be comprised of no more than 7 people being:

- (a) a Selection Committee Chairperson appointed in accordance with **clause 19.3**; and
- (b) no more than 2 other Selection Committee members from each class of Voting Member appointed in accordance with **clause 19.2**, as relevant.

19.2 Voting Members to appoint

- (a) Subject to **clauses 19.2(c)** and **19.2(d)**, at the first general meeting, and each third annual general meeting thereafter, the Voting Members shall nominate and appoint the Selection Committee, with the exception of the Chairperson of the Selection Committee, in accordance with **clause 19.2(b)**.

- (b) Each class of Voting Member, being:
 - (i) Educator Members, if any;
 - (ii) Industry Members, if any; and
 - (iii) Government Members, if any,

must, by majority vote, appoint two (2) Members from that class of Voting Member to represent it on the Selection Committee. In the event that there are only one or two Members in that class of Voting Member, that Voting Member or those Voting Members are appointed to the Selection Committee.

- (c) Subject to **clause 19.2(d)**, if no Members have been admitted to a class of Voting Member, that class of Voting Member will not be represented on the Selection Committee.

- (d) If a Member is admitted to a class of Voting Member that was previously empty, that class of Voting Member must become represented on the Selection Committee, in accordance with the process in **clause 19.2(b)**, at the next annual general meeting after the Member was admitted.

19.3 Appointment of the Chairperson of the Selection Committee

- (a) The Chairperson of the Selection Committee will be an experienced director who can demonstrate knowledge of primary industries and the role of education in helping to build a sustainable future for those industries in Australia and will not be a Member.
- (b) The Selection Committee will appoint the Chairperson of the Selection Committee in accordance with this **clause 19.3** but may, in its discretion, seek the assistance of the Australian Institute of Company Directors in making that appointment.

19.4 Ineligibility for Selection Committees

Any Director, including a First Director, whose term of appointment as Director or Chairperson is to expire at the general meeting at which the selections of the Selection Committee are to be considered must not be a member of the Selection Committee or vote on the composition of the Selection Committee.

19.5 Attributes

The Selection Committee must select Directors who:

- (a) the Selection Committee considers have demonstrated the following attributes:
 - (i) professional integrity;
 - (ii) objectivity; and
 - (iii) accountability;
- (b) will result in the Board complying with the requirements of **clause 14.2**; and
- (c) will, as far as possible, result in the Board having a combination of expertise and experience in the following areas:
 - (i) Primary Industry production, natural resource management, industry operations and marketing;
 - (ii) education sector policy processes, communication, teacher professional development and international trends in education;
 - (iii) strategic planning, business and financial management and economics;
 - (iv) business and corporate affairs, and corporate leadership; and
 - (v) government relations.

19.6 Nomination of Selection Committee member prohibited

The Selection Committee must not select one of their number as Director or Chairperson.

19.7 Quorum of the Selection Committee

- (a) The quorum for a meeting of the Selection Committee is:
 - (i) 4 members of the Selection Committee comprised, to the extent possible, of at least one representative of each class of Voting Member; or
 - (ii) if there are less than 4 members on the Selection Committee, all of those members.
- (b) Quorum must be present for the whole meeting.

19.8 Chairperson of Selection Committee has casting vote

The Chairperson of the Selection Committee has a casting vote in relation to a decision of the Selection Committee, if necessary and in addition to any vote he or she has as a member of the Selection Committee. The Chairperson has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

20 Casual vacancies and additional Directors

20.1 Board to appoint

- (a) Subject to **clauses 20.1(b)** and **20.2**, a person qualified to be a Director may be appointed by the Board, in its discretion, to fill a Director casual vacancy.
- (b) The Directors may elect not to fill a casual vacancy.
- (c) An appointment by the Board in accordance with this **clause 20.1** must be the subject of a vote of the Voting Members under **clause 15.3**, as if the appointment was an appointment made by the Selection Committee.

20.2 Vacation by Chairperson

If a casual vacancy is caused by a Chairperson vacating his or her office as Director, then such vacancy shall remain until the next annual general meeting of the Company (or, if the notice of that meeting has already been given to Members, the following general meeting), at which time:

- (a) if the meeting is an annual general meeting at which the Chairperson's term as Director was due to expire, a new Director must be appointed in accordance with **clause 15.1**; or
- (b) if the Chairperson's term as Director was not due to expire at the meeting, a new Director must be appointed in accordance with **clause 15.1** as if the meeting was an annual general meeting at which the term had expired.

20.3 Term

Any Director appointed under **clause 20.1** or **clause 20.2(b)** holds office for the remainder of the term of the Director replaced. Any Director appointed under **clause 20.2(a)** shall hold office for a term in accordance with **clause 15.2**.

21 Insufficient Directors

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only pursuant to **clause 19** and for the purpose of convening a general meeting of the Company.

22 Powers and obligations of Directors

22.1 Powers generally

Except as otherwise required by the Act or any other applicable law, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting.

22.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with **clause 29**; or
- (b) in accordance with a delegation of the power under **clause 23**.

22.3 No invalidation of prior act

No rule made or resolution passed by the Company in a general meeting can invalidate any prior act of the Directors which would have been valid if that rule or resolution had not been made or passed.

22.4 Validation of acts of Directors and Secretaries

- (a) The acts of a Director or Secretary are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- (b) Where a person whose office as Director is vacated under a provision of the Act purports to do an act as a Director, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

22.5 Strategic plan

- (a) The Directors must approve and update (as and when the Directors require) a strategic plan for the Company in consultation with the Members.
- (b) The strategic plan is to be made available to all Members.
- (c) The Directors must keep the Members informed about:
 - (i) significant changes to the strategic plan; and
 - (ii) matters that arise that might significantly affect the achievement of objectives in the strategic plan.

22.6 Annual operational plan

The Directors must ensure an annual operational plan for the Company is prepared each year based on the strategic plan. The annual operational plan is to be made available to all Members.

22.7 Reports on significant matters

The Directors must report to Members as to the following significant matters:

- (a) the formation by the Company of a subsidiary company; and
- (b) participation by the Company in a significant:
 - (i) partnership;
 - (ii) trust; or
 - (iii) unincorporated joint

venture, that may affect the financial risk of the Company.

22.8 Borrowing powers

Without limiting the generality of **clause 22**, the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

22.9 Appointment of Director's attorney

- (a) The Directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Directors), for the period and subject to the conditions they see fit.
- (b) A power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the Directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

23 Delegation of Board powers

23.1 Power to delegate

The Board may delegate any of its powers as permitted by section 198D.

23.2 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

23.3 Terms of delegation

A delegation of powers under **clause 23.1** may be made:

- (a) for a specified period or without specifying a period; and

- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

23.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the clauses of this document which regulate the meetings and proceedings of the Board.

24 Removal and resignation of Directors

24.1 Removal of Directors

A Director may be removed from holding office as a Director by:

- (a) the Company by resolution; or
- (b) the Directors, by unanimous vote of the Directors not including the Director proposed to be removed by the vote.

24.2 Resignation of Director

A Director may resign as a Director by giving a written notice of resignation to the Company at its registered office.

24.3 Vacation of office of Director

In addition to any other circumstances in which the office of a Director becomes vacant under the Act, the office of a Director becomes vacant if the Director:

- (a) is not permitted by the Act (or an order made under the Act) to be a Director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns in accordance with **clause 24.2**; and
- (e) is removed from office under **clause 24.1**.

25 Directors' duties and interests

25.1 Compliance with duties under the Act

Each Director must comply with sections 180 to 183.

25.2 Director can hold other offices

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;

- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

25.3 Disclosure of interests

Each Director must comply with section 191.

25.4 Director interested in a matter

Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
- (b) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, **clause 25.4(c)** applies only if it is disclosed before the transaction is entered into.

25.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

25.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this clause. A Director or Secretary must do so if required by the Company.

26 Directors' remuneration

26.1 Remuneration

The remuneration of the Directors, including the Chairperson but not including the CEO (if appointed as a Director under **clause 16.3**):

- (a) will be determined by the Board; and
- (b) must be consistent with the remuneration for Committees of Research and Development Corporations determined from time to time by the Australian Government Remuneration Tribunal.

26.2 Payments to Directors with Board approval

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered by the Director to the Company;
- (c) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (f) reasonable rent for premises leased by the Director to the Company.

26.3 Financial benefit

Each Director must ensure that the requirements of the Act are complied with, to the extent applicable, in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.

27 Chief Executive Officer

27.1 Power to appoint

The Directors may appoint a person to the position of CEO for the period and on the terms (including as to remuneration) the Directors see fit.

27.2 Powers

- (a) The Directors may, upon terms and conditions and with any restrictions they see fit, confer on a CEO any of the powers that the Directors can exercise.
- (b) Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the Directors.

27.3 Withdrawal of appointment or powers

The Directors may revoke or vary:

- (a) an appointment of; or
- (b) any of the powers

conferred on, a CEO.

27.4 Temporary appointments

If a CEO becomes incapable of acting in that capacity the Directors may appoint any other person to act temporarily as CEO.

28 Secretary

The Directors must appoint a Secretary. The Secretary shall hold office on the terms and conditions (including as to remuneration) that the Directors determine.

29 Board meetings

29.1 Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

29.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

29.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chairman of the meeting is located.

29.4 Chairing Board meetings

- (a) Board meetings will be chaired by the Chairperson.
- (b) If there is no Chairperson, or the Chairperson is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Deputy Chairperson will chair the Board meeting.
- (c) If the position of Deputy Chairperson is vacant or the Deputy Chairperson is not then present or is unwilling to act, the Directors present must elect a Director present to chair the meeting. If the Chairperson subsequently joins the meeting, he or she may take the chair

29.5 Quorum

- (a) Unless the Board decides otherwise, the quorum for a Board meeting, excluding a meeting of First Directors, is:
 - (i) if there are 5 or 6 Directors appointed, 4 Directors; or
 - (ii) if there are 7 Directors appointed, 5 Directors, and a quorum must be present for the whole meeting.
- (b) Unless the First Directors decide otherwise, the quorum for a meeting of First Directors is 3 First Directors and a quorum must be present for the whole meeting.
- (c) An Alternate who is also a Director or a person who is an Alternate for more than 1 Appointor may only be counted once toward quorum.
- (d) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

29.6 Majority decisions

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) The chair of the meeting has a casting vote if necessary in addition to any vote he or she has as a Director. The chair has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

29.7 Procedural rules

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

29.8 Written resolution

If a majority of the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

29.9 Additional provisions concerning written resolutions

For the purpose of **clause 29.8**:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and

- (d) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

29.10 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

29.11 Minutes

The minutes of any meeting of the Directors must state the method of meeting and the persons present.

30 Officers' indemnity and insurance

30.1 Indemnity

Subject to and so far as permitted by Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this clause, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

30.2 Insurance

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

30.3 Former officers

The indemnity in favour of officers under **clause 30.1** is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

30.4 Deeds

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this **clause 30**, enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this **clause 30** on any terms and conditions that the Board thinks fit.

Inspection of records

31 Rights of inspection

31.1 Authorisation

The Directors, or the Company by a resolution passed at a general meeting, may authorise a Member to inspect the books of the Company.

31.2 Limitation

A Member does not have the right to inspect any document of the Company other than the minute books for general meetings, except as provided by law or authorised by the Directors or by the Company in a general meeting.

32 Confidential information

Except as provided by the Act or authorised by the Directors or the Company in a general meeting, no Member is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Meetings of Members

33 Annual general meeting

The Company must hold an annual general meeting as required by section 250N.

34 Calling and notice of meetings of Members

34.1 Calling meeting

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

34.2 Notice of meeting

Subject to **clause 34.3**, at least 21 days' written notice of a meeting of Members must be given individually to:

- (a) each Member (whether or not the Member is entitled to vote at the meeting);
- (b) each Director (other than an Alternate); and

(c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

34.3 Short notice

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

34.4 Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of Members;
- (b) cancel a meeting of Members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

34.5 Fresh notice

If a meeting of Members is postponed or adjourned for 1 month or more, the Company must give new notice of the resumed meeting.

34.6 Technology

The Company may hold a meeting of Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

34.7 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

35 Proceedings at Members' meetings

35.1 Member present at meeting

If a Member has appointed a proxy or attorney or (in the case of a Member which is a body corporate) a representative to act at a meeting of Members, that Member is taken to be present at a meeting at which the proxy, attorney or representative is present.

35.2 Quorum

The quorum for a meeting of Members is 10 Voting Members including at least one from each class of Voting Member, provided there is at least one Member in that class of Voting Member. Each individual present may only be counted once toward a quorum. If a Member has appointed more than 1 proxy or representative only 1 of them may be counted towards a quorum.

35.3 Quorum not present

If a quorum is not present within 15 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

35.4 Chairing meetings of Members

- (a) If a Chairperson has been appointed, that Chairperson may also chair meetings of Members.
- (b) If:
 - (i) the position of Chairperson is vacant; or
 - (ii) the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Deputy Chairperson shall chair the meeting. If the position of Deputy Chairperson is vacant or the Deputy Chairperson is not then present or is unwilling to act, the Members present may appoint any Representative present or any Director present to be chair of the meeting.

35.5 Attendance at general meetings

- (a) Every Member has the right to attend all meetings of Members.
- (b) Every Director has the right to attend and speak at all meetings of Members.
- (c) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

35.6 Adjournment

Subject to **clause 34.5**, the chair of a meeting of Members at which a quorum is present:

- (a) may; and

(b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

35.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

36 Business of an annual general meeting

36.1 Ordinary business

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Directors' report and auditor's report;
- (b) the appointment of Directors; and
- (c) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all other business transacted at any other general meeting is special business.

36.2 Special business

The business of the annual general meeting also includes any other business which under this Constitution or the Act ought to be transacted at an annual general meeting.

36.3 Questions from Members

The chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

36.4 Questions to auditor

If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

37 Proxies, Attorneys and Representatives

37.1 Appointment of proxies

A Member may appoint a proxy to attend and act for the Member at a meeting of Members. An appointment of proxy must be made by written notice to the Company:

- (a) that complies with section 250A(1); or
- (b) in any other form and mode that is, and is signed or otherwise authenticated by the Member in a manner, satisfactory to the Board.

37.2 Member's attorney

A Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of Members. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

37.3 Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities

An appointment of a proxy or an attorney is not effective for a particular meeting of Members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

37.4 Corporate representatives

A Member that is a body corporate may appoint an individual to act as its representative at meetings of Members as permitted by section 250D.

37.5 Appointment for particular meeting, standing appointment and revocation

A Member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a Member.

37.6 Suspension of proxy or attorney's powers if Member present

A proxy or attorney has no power to act for a Member at a meeting at which the Member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a Member at a meeting at which the Member is present by attorney.

37.7 Priority of conflicting appointments of attorney or representative

If more than 1 attorney or representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to **clause 37.7(a)**, an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

37.8 More than 1 current proxy appointments

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than 1 proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this clause.

37.9 Continuing authority

An act done at a meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

38 Voting at Meetings of Members

38.1 Show of hands unless poll demanded

A resolution put to the vote at a general meeting of Members must be decided on a show of hands of Voting Members unless a poll is demanded in accordance with **clause 40.1**.

38.2 Result of show of hands vote

On a show of hands, a declaration by the chair of the meeting is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

38.3 Exercise of Voting Member's vote

The vote of a Voting Member may be exercised by:

- (a) a duly appointed attorney of that Voting Member; or
- (b) a duly appointed proxy for that Voting Member.

39 Entitlement to vote

39.1 Number of votes

Subject to section 250A(4):

- (a) each Voting Member has 1 vote on a show of hands or a poll; and
- (b) a Voting Member who is present and entitled to vote and is also a proxy, attorney or representative of another Voting Member has 1 vote on a show of hands.

39.2 Casting vote of chairperson

In the case of an equality of votes, the chair of the meeting has a casting vote. The chair has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

39.3 Voting restrictions

If:

- (a) the Act requires that some Voting Members are not to vote on a resolution, or that votes cast by some Voting Members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those Voting Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Company must not count it and on a poll **clause 40.2(c)** applies.

39.4 Decision on right to vote

A Voting Member or Director may challenge a person's right to vote at a meeting of Members. A challenge may only be made at the meeting. A challenge, or any other

doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

40 Polls at Meetings of Members

40.1 Demand for a poll

At a meeting of Members, a poll may be demanded on any resolution (except a resolution concerning the election of the chair of a meeting) by:

- (a) at least fifty percent of Voting Members entitled to vote on the resolution; or
- (b) the chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

40.2 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to **clause 40.2(c)**, in the manner that the chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to **clause 40.2(c)**, in the manner that the chair of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;

- (d) each Voting Member has the right to cast 1 vote; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

41 Associate Members not entitled to vote

41.1 Not entitled to vote

Associate Members are not entitled to vote in relation to any resolution on a show of hands or a poll.

41.2 Right to attend meetings

Associate Members have the right to receive notices of and to attend and be heard at any meeting of Members.

42 Resolutions proposed by Members

42.1 Moving a resolution

No Member may at any meeting move any resolution unless:

- (a) the Member is a Voting Member;
- (b) the Member has given not less than:
 - (i) 30 business days' notice in writing of the Member's intention to move an ordinary resolution; or
 - (ii) 2 months' notice in writing of the Member's intention to move a special resolution,at the meeting by leaving the notice and a signed copy of the resolution at the registered office of the Company; or
- (c) the resolution has previously been approved by the Directors and notified to Members as required by the Act.

42.2 Notice of proposed resolution

Upon receiving a notice referred to in **clause 42.1(a)** the Secretary must, subject to the notice requirements under the Act:

- (a) if the notice convening the meeting has already been dispatched, immediately notify the Members of the proposed resolution; or
- (b) otherwise include notice of the proposed resolution in the notice convening the meeting.

43 Variation or cancellation of rights

43.1 Variation or cancellation

Except as otherwise provided in this Constitution, rights attached to a Voting Member's entitlement may be varied or cancelled only:

- (a) by special resolution of the Company; and

- (b) either:
 - (i) by special resolution passed at a meeting of the Voting Members holding rights in the same class of membership as the Voting Member; or
 - (ii) with the written consent of Voting Members with at least 75% of the votes in the same class of membership as the Voting Member.

43.2 Applies whether or not winding up

Clause 43.1 applies whether or not the Company is being wound up.

43.3 Notice of variation or cancellation

The Company must give a notice in writing of the variation or cancellation of entitlements referred to in **clause 43.1** to Members of the class affected by the resolution within 7 days after variation or cancellation of the entitlement.

44 Application of meetings provisions

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every meeting of Members holding rights in a class of membership.

Minutes

45 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under **clause 23**);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A.

45.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

45.3 Inspection of minute books

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B.

Accounts, audit and records

46 Company must keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

47 Financial reporting

The Board must cause the Company to prepare a financial report and a directors' report that comply with Part 2M.3 and must report to Members in accordance with section 314 no later than the deadline set by section 315.

48 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

49 Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

50 Inspection of financial records and books

Subject to **clause 45.3** and section 247A, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

Execution of documents and negotiable instruments

51 Company seals

51.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

51.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

51.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

52 Execution of documents without common seal

The Company may execute a document without using a common seal if the document is signed by:

- (a) 2 Directors; or
- (b) a Director and the Secretary.

53 Execution of document as a deed

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with **clause 51** or **clause 52**.

54 Execution - general

54.1 Dual capacities

The same person may not sign in the dual capacities of Director and Secretary.

54.2 Interested Director

A Director may sign any document as Director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested, provided that his or her signature complies with the requirements of this Constitution as to execution despite his or her interest.

54.3 No limitation

Clauses 51 and **52** do not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

54.4 Execution by counterparts

The Directors may execute documents (including deeds) on behalf of the Company by counterpart, in which case the date of execution is the date upon which the last Director executes the document.

55 Negotiable instruments

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

Inadvertent omissions

56 Formalities omitted

If some formality required by this Constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

Notices

57 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

58 Overseas Members

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

59 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
 - (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;

- (b) if it is sent by fax or electronic message:
 - (i) by 5 pm (local time in the place from which it is sent or given) on a business day – on that day; or
 - (ii) after 5 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
- (c) if it is sent by mail:
 - (i) within Australia - 1 business day after posting; or
 - (ii) to a place outside Australia - 3 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

60 Business days

For the purposes of **clause 59**, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

61 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

62 Notices to "lost" Members

If:

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this clause is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under **clause 58**,

the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.

This clause ceases to apply if the Member gives the Company notice of a new address.

63 Governing Rules of the Primary Industries Education Foundation Australia Scholarship Fund

63.1 The Public Fund will be known as 'Primary Industries Education Foundation Australia Scholarship Fund' ('the Fund')

63.2 The Objects

The objects for which this Fund is established are to:

- (a) Provide money for scholarships, bursaries and prizes to encourage and further primary industries education.

- (b) Establish and maintain a gift fund to enable the Fund to achieve and retain DGR endorsement for the continuance of its first objective.

63.3 Criteria for the provision of scholarships, bursaries and prizes

All scholarships, bursaries and prizes provided by the Fund will meet the following criteria:

- a) They will only be awarded to Australian citizens or permanent residents of Australia within the meaning of the Australian Citizen Act 2007; and
- b) They will be open to individuals and groups of individuals throughout a region of at least 200,000 people, or throughout at least an entire State or Territory; and
- c) They will promote the recipients' education in either or both of the following:
 - (i) Pre-school courses, primary school courses, secondary school courses or tertiary courses;
 - (ii) Educational institutions overseas, by way of study of a component of a course by subparagraph (i); and
- d) They will be awarded on merit or for reasons of equity.

63.4 Public Contributions

The public is invited to contribute to this fund.

63.5 Management Committee

The Fund will be managed by a committee, which is made up of responsible persons, appointed by the PIEFA Board

63.6 Not-for-profit

The Fund is a not-for-profit Fund.

63.7 Separate Bank Account

The gifts, contributions and earnings of the Fund will be kept separate from the sponsoring entity, the Company, through the operation of a separate bank account.

63.8 Receipts

Receipts will be issued in the Fund's name, using the approved form, when deductible gifts and contributions are made.

63.9 Gift Fund

The Fund will establish and maintain a gift fund for the receipt of deductible gifts, contributions and their earnings.

63.10 Winding up and DGR endorsement Revocation

At the first occurrence of the Fund's:

- (a) Dissolution or
- (b) DGR endorsement revocation,

the Fund will transfer to another deductible gift fund any surplus assets of its gift fund.

Winding Up

64 Winding up

64.1 Distribution of surplus

If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the Members but must be given or transferred to some other institution or institutions determined by the Members at or before the time of dissolution.

If the Company operates a fund, authority or Institution with DGR endorsement, any surplus assets of that DGR endorsed entity will be transferred to another DGR as specified by the fund, authority or institution's constitutional documents.

64.2 Application to Supreme Court

If the Members do not make the necessary determination under **clause 64.1** the Company may apply to the Supreme Court to determine the institution or institutions.

64.3 Eligibility of institutions

No institution is eligible to receive property under this **clause 64** unless:

- 64.3.1 it has objects similar to the objects of the Company;
- 64.3.2 its constitution prohibits 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 Company under **clause 6** and this **clause 64**; and
- 64.3.3 its income is exempt from income tax under the Tax Act.

Alteration of Constitution

65 Alteration of Constitution

This Constitution may be amended by a resolution of the Voting Members in which:

- (a) a majority of the Educator Members, if any; and
- (b) separately, a majority of the Government Members, if any; and
- (c) separately, a majority of the Industry Members, if any,

who are entitled to vote on the resolution, each vote to pass the resolution.