

**CORPORATIONS ACT 2001
PUBLIC COMPANY LIMITED BY GUARANTEE (NOT-FOR-PROFIT)**

**Constitution of the Newington Foundation Limited
ACN 645 428 600**

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CONSTITUTION OF THE NEWINGTON FOUNDATION

1. NAME OF THE FOUNDATION AND PRELIMINARY

1.1 Name of Foundation

The name of the Foundation is the Newington Foundation Limited.

1.2 Replaceable Rules

The Replaceable Rules do not apply to the Foundation.

1.3 Interpretation of this Constitution

- (a) This Constitution is designed for a public company limited by guarantee which is:
 - (i) incorporated under the *Corporations Act 2001 (Cth)* (the **Act**); and is or will be a
 - (ii) a charity registered under the *Australian Charities and Not for Profits Commission Act 2012 (Commonwealth)* (the **ACNC Act**).
- (b) If the Act and/or the ACNC Act is repealed or amended, then this Constitution may require amendment.
- (c) To the extent of any inconsistency between this Constitution and a mandatory requirement of a relevant law (including the Act and the ACNC Act), the relevant law takes priority.

A word or expression that is defined in the Act has the same meaning as in this Constitution

2. NATURE OF THE FOUNDATION

- (a) The Foundation is a not for profit company limited by guarantee and the Foundation is prohibited from doing anything to change its not for profit status.
- (b) The liability of the Members is limited.
- (c) Every Member undertakes to contribute \$10 to the assets of the Foundation if it is wound up while they are a Member, or within one year afterwards.

3. OBJECTS

3.1 Objects of the Foundation

- (a) The dominant objects of the Foundation are
 - (i) To act as the Trustee of the Newington Foundation
 - (ii) to advance, preserve, develop and benefit Newington College and particularly to encourage the advancement of religion, music, the arts,

literature, science and sport undertaken by students attending Newington College at any of its campuses.

- (iii) to encourage academic excellence, cultural and artistic accomplishment, prowess in sporting and outdoor activities and pastoral care consistent with the values of the Uniting Church and in harmony with the policies of Newington College
- (b) the objects of the Foundation are further to
 - (i) provide financial support for the four pillars of Newington College which underpinned the broad education that the school provides namely academic, sport, cultural and pastoral;
 - (ii) provide financial means whereby the students of Newington College may obtain benefit from scholarship, music, the arts, literature, science, sport and religious study and worship;
 - (iii) provide funds for the erection of buildings or the provision of facilities in pursuance of the foregoing objects;
 - (iv) attract and encourage bequests and legacies;
 - (v) solicit donations and gifts to or for the benefit of Newington College from past students, parents and friends and from any other source deemed appropriate to the promotion of the objects of the Foundation;
 - (vi) make administrative arrangements in order to facilitate the efficient operation of the Foundation, and
 - (vii) generally such other objects as are for the advancement, preservation, development and benefit of Newington College as a place of education;

3.2 Sub Funds

For the purposes of achieving the Objects the Foundation will create and administer sub funds including but not limited to:

- (a) ***The Foundation Endowment Fund*** - which shall include all money and personal property held in trust for the purposes of the Foundation other than funds donated, bequeathed or appropriated to the Building Fund, the Education Fund, and the Scholarship Fund for Newington College
- (b) ***The Building Fund*** - which shall be used and maintained exclusively for providing money for the acquisition, construction, improvement or maintenance of building used, or to be used as a school or by Newington College
- (c) ***The Education Fund*** - which shall be used to enable teachers, members of staff and pupils of Newington College to gain special skills, qualifications, knowledge or experience and to provide such other benefits as may be required for the advancement and development of the Newington College as a place of education

- (d) **The Scholarship Fund** - which shall be used to supplement any scholarships or bursaries contributed to by the Council of Newington College and/or the old Newingtonians Union

3.3 Prohibited Acts

- (a) The Foundation does not have the power to:
 - (i) issue shares of any kind; or
 - (ii) pay, transfer, apply, directly or indirectly, any portion of the income and property of the Foundation, by way of dividend, bonus or otherwise howsoever by way of profit, to or for the benefit of a Member.
- (b) The Foundation must not be operated for the purpose of the profit or gain of any Member.
- (c) Nothing in this Constitution authorises the Foundation to do an act that is prohibited by law of a State or a Territory of Australia or gives the Foundation a right that the law of a State or Territory of Australia denies to the Foundation.
- (d) Even though section 124(1) of the Act may prescribe additional purposes and powers, the Foundation may only act in furtherance of the purposes described in clause 3.

4. MEMBERSHIP

4.1 Membership

The Members of the Foundation at any point in time shall comprise those persons or entities whom the Board admits to membership in accordance with this Constitution or under relevant by-laws or rules approved by the Board from time to time provided that at no time shall the members of the Council of Newington College comprise 50% or more of the total number of members of the Foundation. For the purposes of this clause the term "Council of Newington College" includes any sitting members of that Council, and any employees or subcontractors of that Council.

4.2 Categories of Membership

- (a) The Members of the Foundation shall be ordinary Members.
- (b) The Board may from time to time resolve to apply one or more descriptive or honorific titles to any individual, group of individuals or company, reflecting to their relationship with the Foundation. The application of these titles will not create a new category of Members or imply any ability by those individuals to bind the Foundation.

4.3 Becoming A Member

- (a) The following provisions apply to applications for admission as a Member:

- (i) Membership is open to organisations and individuals that are supportive of the objects of the Foundation and which are accepted to membership by the Board following the application procedure set out in this Constitution or in By laws.
 - (ii) An application for Membership must be made by completing and signing the form approved for the purpose by the Board from time to time, and lodging it with the Secretary.
 - (iii) Upon lodging the application, the applicant must pay the relevant application fee (see clause 5) which will be held by the Foundation in its trust account pending determination of the application.
- (b) In respect of each application for Membership duly made in accordance with this Constitution:
- (i) the Secretary shall provide the application to the Board at the next meeting after receipt of the application;
 - (ii) the Board shall consider the application promptly and may, after considering it, determine in the Board's sole and absolute discretion to accept or reject the application.
 - (iii) if the application is accepted, the applicant shall be admitted as a Member and shall be notified in accordance with clause 4.4;
 - (iv) the Board does not have to give reasons for rejecting an application; and
 - (v) if the application is rejected, all amounts paid by the applicant on account of the application shall be refunded in full.

4.4 Notifying Member of Admission

Following admission of a new Member, the Secretary must promptly:

- (a) notify the Member in writing of the admission to membership by issuing a receipt for the application fee paid by the Member on account of the application for membership; and
- (b) cause the required details to be entered in the Register.

4.5 Ongoing Member Obligations and Rights

- (a) The Members of the Foundation agree to be bound by the provisions of this Constitution and relevant by-laws and Rules approved by the Board from time to time.
- (b) For so long as a Member abides by the provisions of this Constitution, the Member shall enjoy the rights and privileges of membership under this Constitution and the Act.

- (c) All Members have the right to receive notices of, and to attend and be heard at, and to vote (subject to the other provisions of this Constitution and relevant by-laws promulgated by the Board including any clauses dealing with the classes of membership) at any general meeting.
- (d) The rights and privileges of every Member are personal to that Member and may not be transferred by any act of that Member or by operation of law.
- (e) Members shall indicate their membership of the Foundation only in such form and manner and subject to any conditions in any by-laws or Rules approved by the Board from time to time.
- (f) Each Member shall notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership or class of membership.

4.6 Register of Members

- (a) A Register of the Members must be kept in accordance with the Act.
- (b) The following details must be entered and kept current in the Register in respect of each Member:
 - (i) The full name and contact details of the Member.
 - (ii) The date of admission to and cessation of membership.
 - (iii) Such other information as the Board requires.
- (c) Each Member is responsible to notify the Secretary in writing of any change in that person's name, address, telephone or facsimile number within one month after the change.

4.7 Certificate of Membership

- (a) The Board may in its discretion issue a certificate of membership to Members in such form and upon payment of such fees as it may prescribe from time to time.
- (b) Certificates of membership remain the property of the Foundation and must be promptly returned to the Foundation if requested by the Board or if the holder of the certificate ceases to be a Member.
- (c) The Board may approve from time to time the manner in which certificates of membership of the Foundation can and cannot be used.
- (d) Without limiting clause 4.7(c), Members with a certificate of membership must not use the certificate to make false or misleading representations about the Foundation and their membership thereof including representing that they are a Member when membership has ceased.

5. APPLICATION FEE

5.1 Amount of Fees

The application fee, payable by applicants for Membership of the Foundation (if demanded), shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time.

5.2 Discretion regarding Fees

The Board may in its discretion:

- (a) determine that no application or subscription fee is payable by a Member or Class of Members (in whole or in part) for any given year; and
- (b) extend the time for payment of any application fee or subscription fee by any Member or class of Members.

5.3 Return of Fees

No part of any application fee or subscription fee shall be refunded to a Member who ceases to be a Member pursuant to clauses 6.2 or 6.3.

6. REMOVAL AND CESSATION OF MEMBERSHIP

6.1 Resignation

A Member may resign from membership of the Foundation by giving written notice to the Secretary, and the resignation shall take effect from the date of receipt of the notice of resignation or such later date as may be stated in the notice.

6.2 Removal from Membership

- (a) Subject to clause 6.2(b) and 6.2(c) a Member may be removed by special resolution of the Board at a general meeting.
- (b) The following provisions must be fulfilled before a Member can be removed by a resolution of the Members under clause 6.2(a):
 - (i) A majority of the Directors must agree that the Member has failed to comply with a provision of this Constitution or is otherwise no longer considered suitable to be a Member.
 - (ii) The Board must give at least two months' written notice to the Member of the intention to terminate their membership and the grounds of the intended termination.
 - (iii) The Member must be invited, in the written notice, to provide to the Board any written representations which the Member wishes the meeting of Members to consider.
 - (iv) If the Member makes written representations, and requests that they be notified to the other Members, in sufficient time before the notices of

meeting are sent to the Members, the Board must ensure that a copy of the representations is included in the notices calling the meeting.

- (v) If copies of the representations have not been included in the notices of meeting, for any reason, the Member may require the representations to be read out at the meeting.
 - (vi) Whether or not representations have been circulated or read, the Member must be given a full and fair opportunity to address the relevant meeting.
- (c) If the Council of Newington College forms the reasonable opinion (as evidenced by a Special Resolution of the Council) that a member or members of the Foundation have:
- (i) engaged in fraudulent or criminal activity; or
 - (ii) have acted in a manner contradictory to the terms of the Newington Foundation Trust;
 - (iii) have engaged in misconduct or conduct unbecoming which in the reasonable opinion of the Council has or may impact adversely and seriously on the very high and long standing reputation of Newington College or upon the interests of the Foundation;

then, notwithstanding any other provision of this Constitution, the Board shall, as soon as practical after receipt of a copy of the Special Resolution, remove the Member or Members by providing notice thereof and remove the Member from the Register of Members.

6.3 Other Grounds of Cessation of Membership

A Member ceases to be a Member:

- (a) on the dissolution of the Member;
- (b) on the insolvency of the Member;
- (c) if the member, being a company, ceases carrying on a business;
- (d) if the member become of unsound mind or become liable to be dealt with in any way under a law relating to mental health; or
- (e) if the member dies.

6.4 Effect of Cessation of Membership

- (a) Any Member who has been removed as a Member under clause 6.2 is not entitled to enjoy any of the privileges of membership including receiving notice of, attendance and voting at, any meeting of Members.
- (b) Any Member whose membership has ceased for any reason continues to remain liable for:

- (i) all money owing by the Member to the Foundation as at the date of cessation of membership; and
 - (ii) the Guarantee.
- (c) Whenever any person or Foundation ceases to be a Member, the Board shall direct that his or her name or the Foundation's name shall be removed from the Register of Members.

7. NO PROFITS FOR MEMBERS

7.1 Transfer of Income or Property

Subject to clause 7.2, all of the assets and income of the Foundation shall be applied solely in the furtherance of the objects of the Foundation and no portion shall be distributed directly or indirectly to any Member.

7.2 Payments, Services and Information

Nothing in clause 7.1 or this Constitution prevents the payment, in good faith, of an amount, calculated on arm's length terms, in respect of:

- (a) remuneration payable to an employee of the Foundation, who is also a Member's Representative under clause 10, for services actually rendered to the Foundation; or
- (b) goods or services actually supplied to the Foundation by a Member in the ordinary and usual course of the Member's business; or
- (c) expenses incurred by a Director as specified in clause 13.1(b); or
- (d) principal and interest at a rate not exceeding the rate for the time being charged by Australian banks for overdrawn accounts, upon money lent by any Member to the Foundation; or
- (e) reasonable and proper rent for premises let by any Member to the Foundation; or
- (f) reimbursement of reasonable travelling and other expenses incurred by a Member when engaged in the affairs or business of the Foundation as approved by the Board, the CEO or the Deputy CEO.

8. GENERAL MEETINGS

8.1 Convening of Meetings

The Chair or any Director may at any time request the Secretary to convene a general meeting of the Members and the Secretary must comply with all such requests.

8.2 Notice of General Meeting

- (a) Notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.

- (b) Notice of a general meeting:
 - (i) may be given by any form of communication permitted by the Act; and
 - (ii) must specify the place, the day and the hour of meeting, the general nature of the business to be transacted and any other matters as are required by the Act.
- (c) The Foundation shall give notice of meeting of Members in accordance with this clause 8.2.
- (d) Except for resolutions of Members under section 203D of the Act, the Foundation may call:
 - (i) an Annual General Meeting on shorter notice if all Members entitled to attend and vote at the Annual General Meeting agree beforehand; and
 - (ii) any other meeting of Members on shorter notice if all Members entitled to attend and vote at that meeting agree beforehand.
- (e) The Foundation must give the Auditor (if any):
 - (i) notice of a general meeting in the same way that a Member is entitled to receive notice; and
 - (ii) any other communication relating to the general meeting that a Member is entitled to receive.
- (f) The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

8.3 Cancellation of General Meetings

- (a) The Directors may cancel a general meeting, other than a general meeting which they are required to convene and hold under the Act.
- (b) A meeting may only be cancelled in accordance with clause 8.3(a) if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in the notice of meeting.

8.4 Quorum at General Meetings

- (a) Subject to clause 8.4(b), a quorum for the purposes of a general meeting of Members shall be at least 50% of the Members and must comprise at least three members, whether present personally, by their Representative or by proxy and a quorum must be present at all times during a general meeting.
- (b) A quorum will not be present if the members of the Council of Newington College comprises 50% or more of the Members present and eligible to vote (whether personally, by proxy or by Representative). For the purposes of this clause the

term “Council of Newington College” includes any sitting members of that Council, and any employees or subcontractors of that Council.

- (c) In determining whether a quorum is present:
 - (i) individuals who attend as proxies or Representatives are to be counted;
 - (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted; and
 - (iii) if an individual is attending both as a Member and as a proxy or Representative, they are to be counted only once.
- (d) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the Chair:
 - (i) if the meeting was convened by or on the requisition of Members, it must be dissolved; or
 - (ii) in any other case it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.
- (e) If a meeting has been adjourned to another time and place determined by the Board, then notwithstanding any other provision, no less than seven days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.
- (f) If, at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

8.5 Appointment of Chair and Powers of Chair

- (a) If the Directors have elected one of their number as Chair of their meetings, that person is entitled to preside as Chair at every general meeting. In the absence of the Chair, the deputy Chair of the board is entitled to preside as Chair.
- (b) The Directors present at a general meeting must elect one of their number to Chair the meeting if either of the following applies:
 - (i) a Director has not been elected as the Chair or deputy Chair of Directors meetings; or
 - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or he/she is unwilling to act.
- (c) The Chair or, in his/her absence, the Deputy Chair, shall preside as Chair at every general meeting of Members.
- (d) If for any reason there is no Chair nor a Deputy Chair, or neither of them is present within 15 minutes of the time nominated for the meeting to start, the Members

who are present and entitled to vote at the meeting shall select one of their number to Chair the meeting.

- (e) The Chair of a general meeting may, in his/her discretion, expel any person from a general meeting if the Chair reasonably considers that the person's conduct is inappropriate.
- (f) Subject to the other terms of this document, the ruling of the Chair on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the Chair may be accepted.

8.6 Adjournment of Meetings

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) When a meeting is adjourned for less than 30 days, it is not necessary to give a further notice of the adjourned meeting.

8.7 Voting on Show of Hands

- (a) All resolutions put to the vote of a general meeting of Members must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, every Member present in person has one vote.
- (c) On a show of hands, a declaration by the Chair that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Foundation, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

8.8 Poll

- (a) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded on any resolution (other than on the election of the Chair of a meeting or the adjournment of a meeting) by:
 - (i) at least 50% of members present entitled to vote on the resolution; or
 - (ii) members present (having the right to vote at the meeting) with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the Chair.

- (b) A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.

8.9 Objections to Voter Qualification

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a voter must be referred to the Chair, whose decision is final.
- (c) A vote not disallowed according to an objection as provided in this document is valid for all purposes.

8.10 Mode of Meeting for Members

A general meeting may be called or held using any technology consented to by all the Members. The consent may be a standing one. A Member may only withdraw their consent within a reasonable period before the meeting. The Members may otherwise regulate their meetings as they think fit.

8.11 Written Resolutions

The Members may pass a resolution in writing without holding a meeting if the following conditions are met:

- (a) The resolution is set out in a document or documents indicating that all of the Members who are entitled to vote are in favour of it.
- (b) All Members who are entitled to vote on the resolution (excluding Members who have been given leave of absence) sign the document or documents or identical copies of it or them.

8.12 Form of Resolution in Writing

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.
- (b) If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.
- (c) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

8.13 Annual General Meeting of Members

- (a) The Foundation must hold an Annual General Meeting at least once in each calendar (at a place and time determined by the Board) to:
 - (i) verify the minutes of the last General Meeting;
 - (ii) receive the financial reports, statements and accounts of the Foundation and reports of the Board and the Auditor (if any) for the preceding Financial Year;
 - (iii) elect Directors as required;
 - (iv) determine and, if so required, appoint or confirm the appointment of the Auditor;
 - (v) fix the Auditor's remuneration (if applicable) ;
 - (vi) consider any matter which may be submitted by a Member to the meeting in accordance with the Act or this Constitution;
 - (vii) transact any other business which:
 - (A) under this Constitution ought to be transacted at an annual general meeting of the Foundation; or
 - (B) which the Board considers appropriate;
 - (viii) consider any special resolutions to be considered at that meeting of which notice has been given in accordance with this Constitution and the Act; and
 - (ix) conduct any other business as required by the Act.
- (b) Subject to the Act and this Constitution, all other business transacted at an annual general meeting and all business transacted at a general meeting shall require an Ordinary Resolution to be carried.
- (c) The AGM may only consider other business of which notice has been given in accordance with clause 8.2.

8.14 Special General Meetings

- (a) The Board must convene a special general meeting if.
 - (i) members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 members who are entitled to vote at a general meeting,

gives to the Foundation a notice of a proposed resolution which complies with the Act.

- (b) Special general meetings may only consider business of which notice has been given in accordance with clause 8.14(a).
- (c) A court may order a meeting of Members to be called in accordance with the Act if it is impracticable to call the meeting in any other way.

9. PROXIES

9.1 Proxies and Representatives of Members

- (a) At meetings of Members, each Member entitled to vote may vote in person by its Representative (see clause 10) or by proxy.
- (b) A person appointed as a proxy must be a Member or a Representative of a Member.
- (c) A person attending as a proxy shall be deemed to have all the powers of the relevant Member, except where expressly stated to the contrary in this Constitution or the Act.

9.2 Appointment of Proxies

A Member may appoint another Member's Representative as their proxy to attend and vote in their place at a general meeting.

9.3 Form of Proxy

- (a) A document appointing a proxy may be in a form acceptable to the Foundation, including that set out in Schedule 1. It must be signed in one of the following ways:
 - (i) signed by the Member;
 - (ii) signed by the Member's authorised attorney;
 - (iii) if the Member is a body corporate, under seal or signed by an authorised officer or attorney.
- (b) An instrument appointing a proxy shall be valid if it contains the following information:
 - (i) the members' name and address;
 - (ii) the Foundation's name;
 - (iii) the proxy's name or the office held by the proxy; and
 - (iv) the meetings at which the proxy may be used.
- (c) An appointment of a proxy may be a standing proxy.
- (d) An undated proxy shall be taken to be dated on the day that it is received by the Foundation.

- (e) Any instrument of proxy in which the name of the appointee is not filled in shall be deemed to be given in favour of the chair of the meeting to which it relates.
- (f) If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

9.4 Verification of Proxies

- (a) Notwithstanding any other provision, a proxy shall be deemed to be invalid unless the following provisions are fulfilled:
 - (i) Each Member appointing a proxy must send or deliver to the Foundation, for receipt by 5pm on the last business day before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote, the following:
 - (A) the document appointing the proxy; and
 - (B) if the appointment is signed by the Member's attorney, the authority under which the appointment was signed or a certified copy of that authority.
 - (ii) The required documents must be either sent or delivered to the Foundation's office address, fax number or electronic address, and marked to the attention of the relevant person, as specified for that purpose in the notice convening the meeting.

9.5 Revocation of Appointment of Proxy

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite:

- (a) the death or unsoundness of mind of the appointor, or
- (b) the revocation of the instrument or of the authority under which the instrument was executed,

except where the Secretary has been notified in writing of such event before the commencement of the meeting or adjourned meeting at which the proxy is used, in which case the proxy shall be deemed to be invalid.

10. MEMBERS' REPRESENTATIVES

- (a) Any Member that is an organisation shall appoint an individual (**Representative**) as a representative to exercise all or any of the powers of the Member under this Constitution or the Act or otherwise at law.
- (b) The appointment may be a standing one.

- (c) The appointment may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (d) A Member may appoint more than one Representative but only one Representative may exercise the body's powers at any one time.
- (e) Unless otherwise specified in the appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.
- (f) The nomination of a Representative must be in writing and provided to the Secretary. Where a Member that is an incorporated or unincorporated organisation has not named a Representative, the Representative shall be deemed to be that Member's secretary.
- (g) A Representative will cease to hold their appointment:
 - (i) on the date of receipt by the Secretary of a written notice from the Member that it has withdrawn its nomination of the Representative; or
 - (ii) on the date of receipt by the Secretary of a written notice from the Representative resigning, refusing or remitting nomination.

11. BOARD OF DIRECTORS

11.1 Number of Directors

- (a) The number of directors of the Foundation shall be five two of whom shall be members of the Newington College Council and three Elected Directors who are not members of the Newington College Council
- (b) The Foundation may, by ordinary resolution of its Members, increase or decrease the minimum or maximum number of Directors (provided that the minimum must not fall below three as required by the Act) and may also determine in what rotation the Directors appointed as the result of any such alteration are to go out of office provided that at no time (whether by resolution of Members, the filling of a casual vacancy, the appointment of an alternate director, rotation and retirement or in any other case) shall members of the Council of Newington College comprise 50% or more of the total number of directors of the Foundation. For the purposes of this clause 11 (including all subclauses), the term "Council of Newington College" includes any sitting members of that Council, and any employees or subcontractors of that Council.

11.2 Eligibility for Election as Director

- (a) The Foundation shall appoint a person as an Elected Director by resolution passed in general meeting.
- (b) The Board shall elect from its Directors such office bearers as it considers necessary.

- (c) Candidates for election to the Board as an Elected Director shall be proposed and seconded in writing by Members entitled to vote at a general meeting. The candidate must consent in writing to be a Director and his or her consent must be lodged with the Foundation Secretary thirty (30) days prior to the date of the general meeting at which his or her candidacy is to be voted on.
- (d) The Auditor (if appointed) is ineligible to be elected or appointed as a Director or alternate Director.
- (e) The election of Directors shall take place at each AGM and a ballot if necessary shall be held in such manner as the Chair of the meeting may decide.
- (f) Where there are more nominees for the position for Director at an AGM than there are vacant positions for Directors, then person or persons elected shall be those persons receiving both a majority of votes on the resolution, and the greatest number of votes as between those persons nominated for the vacancy or vacancies.

11.3 Casual vacancies

- (a) Subject to clause 11.1(a), if a casual vacancy in the Board occurs, it may be filled by the appointment by the Board of a person considered by it to be suitable and the Director so appointed shall retire at the next AGM of the Foundation and is eligible for re-election.

11.4 Rotation and Retirement of Elected Directors

- (a) There shall be a rotational system of elections of Elected Directors so that at each AGM, one third of the Elected Directors (rounded up to the nearest whole number if necessary) must retire.
- (b) The Elected Directors to retire at each AGM are those who have been the longest in office since their last election. If two or more persons became Elected Directors on the same day those to retire must be determined by lot unless they otherwise agree among themselves.
- (c) An Elected Director retiring at an AGM, and who is not disqualified by law or by this Constitution (see clause 11.2) from being reappointed, is eligible for re-election.
- (d) A retiring Director shall hold office until the dissolution of the meeting at which his or her successor is appointed. Newly elected Directors shall take office at the conclusion of the meeting at which they were elected (or where results of the election were declared).
- (e) Despite this clause 11.4, and subject to the resignation of Directors in the ordinary course of business and the replacement of those Directors who have resigned, the Board elected to the Foundation shall hold office for three years. At the first AGM of the Foundation, one-third of the Elected Directors (rounded up to the nearest whole number if necessary) shall retire from office, having served only up to one years since they were elected, but shall be eligible to stand for re-election. And at the second AGM one-third of the Elected Directors (rounded up to the

nearest whole number if necessary) shall retire from office, having served only up to two years since they were elected, but shall be eligible to stand for re-election

- (f) Which of the Elected Directors is to retire under clause 11.4(e) will be decided by lot unless the Board of Directors otherwise agree amongst themselves.

11.5 Appointment of Independent Directors

- (a) The Board may, in its discretion, and from time to time, appoint up to a maximum of two Directors (**Independent Directors**) to serve at any one time, on the basis that they are persons whose background, skills and/or experience may be thought prudent or necessary to enhance the ability of the Board to better discharge its role and the legal duties and responsibilities of the Directors.
- (b) Each Independent Director shall serve for a term for a period of three (3) years from the date of their appointment, but shall be eligible for reappointment for up to a maximum of six (6) years.
- (c) A person who is a member of the Council of Newington College is not eligible to be an Independent Director

11.6 Ballot for Election of Elected Directors

The election of the Directors appointed by Members at each AGM shall take place in the following manner:

- (a) A postal ballot of the Members who are entitled to vote may in the Board's discretion be held prior to the AGM and if so, subject to this clause, the postal ballot shall be conducted in the manner determined from time to time by the Board.
- (b) All nominations for election as a Director must be in writing and signed by the Members and also signed by the nominee consenting to such nomination and shall be delivered to and lodged with the Secretary not less than 30 days prior to the date fixed for the holding of the relevant AGM.
- (c) Only persons who are eligible for election as a Director under this Constitution (see clause 11.2) may be nominated to stand for election.
- (d) The Board must ensure that the postal ballot is conducted in such a fashion as to enable all Members sufficient opportunity to consider all nominations.
- (e) The Board must ensure that a sufficient period is allowed to complete the postal ballot at least seven days prior to the holding of the relevant AGM.
- (f) At the relevant AGM, the postal votes duly received by the Secretary prior to the AGM shall be added to the votes cast at the AGM, whether by show of hands or on a poll, to determine the results of the election of Directors.
- (g) To avoid doubt, under no circumstances shall a person who has cast a postal vote be entitled to a second vote at an election of Directors, whether on a show of hands or on a poll.

11.7 Filling Casual Vacancies of Directors

- (a) The Board may at any time appoint a person who would be eligible to stand for election as an Director, to be a Director to fill a casual vacancy:
 - (i) created by the early retirement of Elected Director ;
 - (ii) resulting from a vacant position for an Elected Director on the Board not having been filled at an AGM; or
 - (iii) in any other circumstances where the maximum number of Elected Directors on the Board will not be exceeded as a result of the appointment, as an addition to the existing Directors.
- (b) If a Director has been duly appointed to fill a casual vacancy:
 - (i) that Director shall, notwithstanding any other provision, be required to retire, but be eligible for election, at the next AGM following their appointment;
 - (ii) if a Director appointed to fill a casual vacancy has been elected at an AGM following their initial appointment, that Director shall be regarded thereafter as an Elected Director entitled to serve for [two] years from the AGM at which they were first put up for election and thereafter subject to clauses 11.2, 11.4(a), 11.4(b) and 11.4(c) in respect of their eligibility for, and nomination for, re-election at future AGMs.
- (c) A person who is a member of the Council of Newington College is not eligible to be appointed to fill a Casual Vacancy under this clause.

11.8 Retirement and Removal from Office

- (a) A Director may retire from office by giving notice in writing to the Foundation of that Director's intention to retire. A notice of resignation takes effect at the time of giving the notice to the Foundation or, if another time is specified in the notice, at that time.
- (b) The Members may by ordinary resolution remove an Elected Director from office and may by ordinary resolution appoint another person as a replacement.
- (c) A person appointed to replace an Elected Director under clause 11.8(b) must retire as a Director at the next AGM at which the Director they are replacing would have been required to retire if they had not been removed.
- (d) The Board may by ordinary resolution remove an Appointed Director from office by Ordinary Resolution and may appoint another person as a replacement.
- (e) A person appointed to replace an Appointed Director under clause 11.8(d) removed from office must retire as a Director at the next AGM at which the Director they are replacing would have been required to retire if they had not been removed.

- (f) If the Council of Newington College forms the reasonable opinion (as evidenced by a Special Resolution of the Council) that a director or directors of the Foundation have:
- (i) engaged in fraudulent or criminal activity; or
 - (ii) have acted in a manner contradictory to the terms of the Newington Foundation Trust;
 - (iii) have engaged in misconduct or conduct unbecoming which in the reasonable opinion of the Council has or may impact adversely and seriously on the very high and long standing reputation of the school, or upon the interests of the foundation. or
 - (iv) have acted in a way that is in gross violation of their duties as directors,
- then, notwithstanding any other provision of this Constitution, the Council may remove the Director or Directors from the Board by providing notice thereof to the Board and that Board Member, and the Board shall forthwith act conformably with that notice.

11.9 Vacation of Office

- (a) Without limiting any other provision, the office of a Director becomes vacant if required by the Act, Charities Legislation or if the Director:
- (i) becomes an insolvent under administration;
 - (ii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (iii) is absent without the consent of the Directors from three consecutive meetings of the Directors and the Board resolves that the office of that Director be vacated; or
 - (iv) becomes prohibited from being a Director by reason of an order made under the Act or Charities Legislation
- (b) The Board may continue to act despite any vacancy in its Membership.

11.10 Members may obtain information about directors' remuneration

- (a) The Foundation must disclose the remuneration paid to each Director of the Foundation or a subsidiary (if any) by the Foundation or by an entity controlled by the Foundation if the Foundation is directed to disclose the information by:
- (i) members with at least 5% of the votes that may be cast at a general meeting of the Foundation; or
 - (ii) at least 100 members who are entitled to vote at a general meeting of the Foundation.

- (b) The Foundation must disclose all remuneration paid to the Director, regardless of whether it is paid to the Director in their capacity as a Director or another capacity.

12. CHAIR AND DEPUTY CHAIR

12.1 Chair and Deputy Chair

- (a) At the first meeting of the Board after each annual general meeting, the Board shall elect from amongst the then current Directors who are not also sitting members on the Council of Newington College:
 - (i) a Chair;
 - (ii) a Deputy Chair.
- (b) A Director shall not serve more than six consecutive years as Chair without the approval of the members by ordinary resolution.
- (c) The Chair or, in his/her absence, the Deputy Chair, shall preside as Chair at every meeting of the Board.
- (d) If for any reason there is not then a Chair nor a Deputy Chair, or neither of them is present within 15 minutes of the time nominated for the Board meeting to start, the Directors who are present and entitled to vote at the meeting shall select one of their number to Chair the meeting.

13. DIRECTORS' REMUNERATION

13.1 Director's Remuneration and Payment for Expenses

- (a) The Foundation may not pay any Director any amount except as expressly provided for in this Constitution.
- (b) Directors shall be entitled, on an equitable basis, to be paid all reasonable travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board or any of its committee or general meetings or otherwise in the execution of their duties as Directors provided that such expenses have first been approved by the Board.

13.2 Payment in Good Faith

Any payment made to a Director by the Foundation under this clause 13 must be made in good faith.

14. POWERS OF DIRECTORS

14.1 Powers of Directors

- (a) The Directors may exercise all of the powers of the Foundation which are not, by the Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

- (b) No delegation by the Board under this clause limits the duties and liability of each Director of the Board.

14.2 Public Statements

- (a) The Board may by resolution authorise the Chair, CEO or another person to make public statements on behalf of the Foundation.
- (b) No person may make any public statement on behalf of the Foundation unless authorised by the Board.

14.3 Duties

The Directors must comply with their duties under common law and under the Act and Charities Legislation.

14.4 Convening of Directors' Meetings

- (a) A Director may at any time, and a Secretary must on the request of a Director, convene a meeting of the Directors.
- (b) The Board shall meet not less than four times per year, but otherwise as necessary to discharge their duties and functions.
- (c) Notice of each meeting of the Directors must be given to each Director at least 48 hours before the meeting, or otherwise as determined by resolution of the Board, except in the case of a Director who is out of Australia or who has been given leave of absence from the Board.
- (d) A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

14.5 Quorum and Voting at Directors' Meetings

- (a) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is 75% of the Board as then constituted, provided that at no time shall members of the Council of Newington College comprise 50% or more of the Directors present. For the purposes of this clause the term "Council of Newington College" includes any sitting members of that Council, and any employees or subcontractors of that Council.
- (b) Each Director has one vote.
- (c) Questions arising at a meeting of the Board must be decided in the manner from time to time determined by the Board, and in the absence of any such agreement, by a majority of votes of Directors present and voting.
- (d) In the event of equality of votes, the Chair has a second and casting vote, but not if, thereby, the votes of directors who are members of the Council of Newington College would be 50% or more of the votes of the director's present and voting.

14.6 Chair and Deputy Chair

If for any reason, within 15 minutes of the time nominated for a Board meeting to start, neither the Chair nor the Deputy Chair is present, but a quorum is present, the Directors who are present at the meeting shall select one of their number to Chair the meeting until such time as the Chair or the Deputy Chair arrives, upon which they shall assume the Chair.

14.7 Delegation of Powers to Committee

- (a) The Board may delegate any of their powers, except this power to delegate, to committees consisting of such Directors and such other persons as they think fit.
- (b) In the exercise of any powers delegated to it, a committee formed by the Board:
 - (i) must conform to the directions of the Board;
 - (ii) provide such reports as required by the Board; and
 - (iii) otherwise shall conduct its meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.

14.8 Validity of Acts of Directors

All acts done by a meeting of the Board or of a committee appointed by the Board or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

14.9 Minutes

- (a) The Board must cause minutes of all proceedings of general meetings, of meetings of the Board and of committees formed by the Board to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.

14.10 Resolution in Writing

- (a) The Board may pass a resolution in writing without holding a meeting if the following conditions are met:
 - (i) The resolution is set out in a document or documents indicating that all of the Directors are in favour of it.
 - (ii) All Directors who are entitled to vote on the resolution (excluding Directors who have been given leave of absence) sign the document or documents or identical copies of it or them.

- (b) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- (c) If a resolution in writing is signed by an alternate Director, it must not also be signed by the appointor of the alternate Director and vice versa.
- (d) In relation to a resolution in writing:
 - (i) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
 - (ii) a document bearing a facsimile of a signature is to be treated as signed.

14.11 Conflict of Interest

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the Foundation must give the Board notice of the interest.
- (b) The notice required by clause 14.11(a) must:
 - (i) include details of:
 - (A) the nature and extent of the interest; and
 - (B) the relation of the interest to the affairs of the Foundation; and
 - (ii) be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter, the details of which must be recorded in the minutes of the meeting.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting shall not be present while the matter is being considered at the meeting or vote on the matter unless:
 - (i) the other Directors on the Board who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature of his or her interest in the matter and its relation to the affairs of the Foundation; and
 - (B) states that the Board is satisfied that the interest should not disqualify the Director from voting or being present.
- (d) A Director who votes when not otherwise authorised to do so under this clause shall have his or her vote discounted.
- (e) A Director with an interest in a matter may give the Board standing notice of the nature and extent of this interest.

14.12 Negotiable instruments

- (a) The Board shall determine the mechanism for signing, drawing, accepting, endorsing or otherwise executing a negotiable instrument.
- (b) Receipts for money payable to or receivable by the Foundation may be signed by a Director or the Secretary or by any other person authorised by the Board to receive money either generally or any particular sum of money on behalf of the Foundation and such receipt shall be deemed to be valid.

15. ALTERNATE DIRECTORS

15.1 Appointment of Alternate Directors

- (a) A Director may appoint a person to be an alternate Director in the Director's place, during the period up to three months.
- (b) The appointment of an alternate Director must be in writing, signed by the Director.
- (c) The appointment of an alternate Director takes effect immediately on the signing of the notice of appointment by the Director.
- (d) The alternate Director must be a Representative of a Voting Member as defined in this document.

15.2 Powers of Alternate Director

- (a) Except as expressly provided in this Constitution, an alternate Director is subject in all respects to the terms and conditions applying to the other Directors except for the provisions of this document which relate to the election of Directors, their fees and remuneration and the power to appoint an alternate Director.
- (b) An alternate Director has all of the following entitlements:
 - (i) to perform all the duties of a Director while the Director who appointed the alternate Director is not exercising or performing them;
 - (ii) to receive notice of meetings of the Directors; and
 - (iii) to attend and vote at meetings of the Directors if the Director who appointed the alternate Director is not present.

15.3 Termination of Appointment of Alternate Directors

The appointment of an alternate Director is immediately terminated if any of the following circumstances occurs:

- (a) the Director who appointed the alternate Director ceases for any reason to be a Director;
- (b) the Director who appointed the alternate Director gives notice of termination of the appointment to the Foundation; or

- (c) the Directors resolve to terminate the appointment after giving seven days' notice of intention to remove the alternate Director to the Director who appointed the alternate Director.

16. CHIEF EXECUTIVE OFFICER (CEO)

- (a) The Board may (but is not required to) appoint any person, to the position of CEO, to act as chief executive officer of the Foundation for the period and on the terms (including as to remuneration) the Board see fit.
- (b) The Board may, upon terms and conditions and with any restrictions they see fit, confer on the CEO any of the powers that the Board can exercise.
- (c) The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.
- (d) If the CEO becomes incapable of acting in that capacity the Directors may appoint any other person, not being a Director, to act temporarily as CEO until such time as the position can be permanently filled.
- (e) The CEO is not a Member or Director of the Foundation by virtue only of being appointed to the office of CEO but shall have the right to attend and speak at meetings of the Board.
- (f) The Board may delegate any of the roles and powers of the Board to the CEO:
 - (i) on the terms and subject to any restrictions the Board decides; and
 - (ii) so as to be concurrent with the powers of the Board, and may revoke the delegation at any time.
- (g) Without affecting the generality of clause 16(f) the CEO will:
 - (i) be the executive officer of the Foundation;
 - (ii) act consistently with the Objects of the Foundation as stated in this Constitution;
 - (iii) use his or her best endeavours at all times to enhance the good name of the Foundation;
 - (iv) insofar as the resources available permit, implement the policies of the Board;
 - (v) prepare an annual report for the Board on the work and activities of the Foundation during the preceding 12 months ending prior to the end of the relevant financial year; and
 - (vi) exercise such other functions duties and responsibilities as may be determined from time to time by the Board.
- (h) The appointment of the CEO terminates:

- (i) at the expiration of a fixed term if so defined in a written contract; or
- (ii) if the Board removes the CEO from that office (which, subject to any contract between the Foundation and the CEO, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

17. SECRETARY

- (a) The Directors may:
 - (i) appoint, and terminate the appointment of, one or more persons to be a Secretary; and
 - (ii) determine their terms and conditions of appointment.
- (b) A Secretary shall be responsible to carry out all acts and deeds required by this Constitution, the Act or by law to be carried out by the secretary of the Foundation.

18. BY-LAWS AND RULES

The Board may, by resolution of the Board, make or adopt by-laws and rules with respect to any matter or thing for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Foundation, which by-laws and rules shall be binding on the Members, provided that to the extent of any inconsistency, this Constitution shall prevail over all such by-laws and rules.

19. SEALS AND EXECUTION OF DOCUMENTS

- (a) If the Foundation has one, the Board must provide for the safe custody of the Seal.
- (b) The Foundation may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
 - (i) two Directors;
 - (ii) a Director and the Secretary; or
 - (iii) a Director and some other person appointed by the Directors for the purpose.
- (c) The Foundation may execute a document without the use of a seal if the document is signed by:
 - (i) two Directors;
 - (ii) a Director and a Secretary; or
 - (iii) any other manner permitted by the Act.

20. SURPLUS ASSETS ON WINDING UP OR DISSOLUTION

20.1 Surplus Assets on winding up or dissolution of the Foundation

Upon the winding up or dissolution of the Foundation, any remaining property after satisfaction of all debts and liabilities, will not be paid to or distributed among the Members, but will be given or transferred to some other institution or organisations which satisfies both of the following requirements:

- (a) has objects similar to the objects of the Foundation; and
- (b) whose constituent documents have rules prohibiting the distribution of its assets and income to its members and is an endorsed deductible gift recipient and as determined by the Members at or before the time of winding up or dissolution of the Foundation and, in default of any determination, by the Supreme Court of New South Wales.

20.2 Surplus Assets on the Foundation ceasing to be endorsed as a deductible gift recipient

Upon the Foundation ceasing to be endorsed as a deductible gift recipient, then all remaining gifts, deductible contributions and money received as part of such gifts and contributions of the Gift Fund will be given to or transferred to another institution or organisation which satisfies the following requirements:

- (a) has objects similar to the objects of the Foundation; and
- (b) whose constituent documents have rules prohibiting the distribution of its assets and income to its members and is an endorsed deductible gift recipient and as determined by the Members at or before the time of winding up or dissolution of the Foundation and, in default of any determination, by the Supreme Court of New South Wales.

21. INDEMNITY

21.1 Costs and Expenses

Every Officer and past Officer of the Foundation may be indemnified by the Foundation, to the fullest extent permitted by law, against a liability for costs and expenses incurred by that person as an Officer of the Foundation or a subsidiary of the Foundation, including without limitation:

- (a) in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted, or
- (b) in connection with any application in relation to those proceedings in which the Court grants relief to the person under the Act.

21.2 Liabilities to Third Parties

To the extent permitted by the Act, every officer and past officer of the Foundation is indemnified against a liability incurred by that person as an officer to a person other than

the Foundation or a related body corporate, except a liability which arises from conduct that involves a lack of good faith.

21.3 Insurance Premiums

The Foundation may pay the premium on a contract insuring a person who is or has been an officer of the Foundation against:

- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
- (b) other liability incurred by the person as an officer of the Foundation except a liability which arises from conduct that involves a wilful breach of duty in relation to the Foundation or a contravention of sections 182, 183 or 184(2) or (3) of the Act.

22. ACCOUNTS, AUDIT AND RECORDS

22.1 Accounts and records

The Board must cause proper accounting and other records to be kept in accordance with the Act and Charities Legislation and must comply with the requirements of the Act and Charities Legislation in respect of reporting and the provision of accounts to Members.

22.2 Records

- (a) The Board must provide for the safe keeping of the records of the Foundation.
- (b) Members may inspect records of the Foundation permitted by the Act.
- (c) Members may not inspect the records of the Foundation that relate to confidential personal, employment, commercial and legal matters.
- (d) Copies of the constitution and Members resolutions must be freely available to Members.

22.3 Audit

- (a) A registered Foundation auditor must be appointed but only if required by law.
- (b) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with law.
- (c) If required by law, the Board must arrange for the accounts for the last financial year to be audited in accordance with requirements of the Act and Charities Legislation before being submitted to the annual general meeting in accordance with clause 8.13.

22.4 Rights of Inspection

Subject to the Act, the Board shall determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Foundation or any of them are open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Foundation except as provided by law or authorised by resolution of the Board.

22.5 Governance & Risk Committee

- (a) The Board must at its first meeting after the annual general meeting each year appoint a Governance & Risk Committee, consisting of at least 3 Members, who:
 - (i) may or may not be Directors or Members of the Foundation; but
 - (ii) must not be employees of the Foundation.
- (b) The Governance & Risk Committee must:
 - (i) ensure that accurate and up-to-date financial statements are presented to each meeting of the Board;
 - (ii) report to each Board meeting on the financial position of the Foundation; and
 - (iii) ensure that the Board complies with its statutory financial and legal obligations.
- (c) Nothing in clause 22.5(a) limits the duties and liability of each Director of the Board.
- (d) The Board may by resolution establish other standing or ad hoc committees with such membership and terms of reference as it thinks appropriate.
- (e) Board committees may include members who are not Board Directors or Members of the Foundation.
- (f) The quorum for committee meetings is the presence in person of a majority of committee members at the time, unless the Board resolves otherwise.
- (g) The meeting procedures of the Board contained in clause 14 apply to committee meetings (including the Audit Committee) with such modifications as are necessary.

23. FURTHER OBLIGATIONS UNDER AUSTRALIAN CHARITIES LEGISLATION

The Foundation must comply and the Board must procure that the Foundation complies with all requirements (whether financial or otherwise) that apply to the Foundation under the *Charities Legislation* and all related legislation as commenced and amended from time to time.

24. GIFT FUND REQUIREMENTS

24.1 Foundation May Maintain a Gift Fund

The Foundation may maintain a Gift Fund in accordance with this clause 24 for so long as it seeks or has obtained endorsement as a DGR from the Australian Taxation Office, or the Foundation is named as a DGR in ITAA 97.

24.2 Rules Applying to the Gift Fund

The following rules apply to any Gift Fund established and maintained by the Foundation:

- (a) The Gift Fund must have a name.
- (b) The Foundation must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.
- (c) The Foundation must maintain a separate bank account for the Gift Fund.
- (d) The following must be credited to the Gift Fund:
 - (i) All gifts of money or property to the Foundation for the Principal Purpose.
 - (ii) All money or property received by the Foundation because of those gifts.
- (e) No other money or property may be credited to the Gift Fund.
- (f) The Foundation must use any gifts, money or property of the kind referred to in clause 24.2(d) only for the Principal Purpose.
- (g) The public will be invited to contribute to the Gift Fund.
- (h) The Gift Fund is controlled and administered by the Board of Directors which only include persons or institutions which have a degree of responsibility to the community as a whole, unless delegated pursuant to the provisions contained in this Constitution.

24.3 Winding Up of Gift Fund

Despite clause 24.2 if the Gift Fund or the Foundation is wound up or ceases to be a DGR for any reason, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made, provided that the transferee is a charity:

- (a) with charitable purpose(s) similar to, and inclusive of, the purpose(s) of the Foundation; and
- (b) which also prohibits the distribution of any surplus assets to its members to at least the same extent as the Foundation.

For the avoidance of doubt, if a Gift Fund operated by the Foundation is wound up but the Foundation remains a DGR and operates any other gift fund in accordance with this

clause 24, any surplus assets of the Gift Fund that is being wound up may be transferred to any other gift fund operated by the Foundation.

24.4 Definitions

In this clause 24 the following definitions apply:

- (a) **DGR** means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.
- (b) **Gift Fund** means a fund that is maintained for the Principal Purpose.
- (c) **ITAA 97** means Income Tax Assessment Act 1997 (Cth).
- (d) **Principal Purpose** means the purposes of the Foundation as reflected in the objects of the Foundation specified in clause 3 or any of those purposes.

24.5 Financial Year

The financial year of the Foundation is from 1 January to 31 December.

24.6 Payments

- (a) All payments by the Foundation must be:
 - (i) specifically authorised by the signatories approved by the Board, and
 - (ii) in the case of cheques – signed by, at least 2 persons nominated by the Board in writing.
- (b) The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 24.6(a).

25. NOTICES

25.1 Method of sending notices

In addition to the method for giving notices permitted by statute, a notice or communication by the Foundation, an officer of the Foundation or a Member in connection with this Constitution may be given to the address by the methods set out in the first column of the following table. The notification is effective on the date set out in the second column.

Method of notification	Date deemed receipt of notification
By personal delivery	Date of delivery
By sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee	One day after it is posted

By sending by fax to the recipient's fax number	Date of an error free fax transmission report from the sender's fax machine.
By email sent to the recipient's email address	Date on which the recipient receives the email in readable form

25.2 Notices to legal representatives

A notice may be given by the Foundation to the legal representative of a Member by sending it through the post in a prepaid letter addressed to them by name or by their title as representatives of the relevant member or at the address (if any) within the Commonwealth of Australia supplied for the purpose by the persons claiming to be entitled or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the death, lunacy, liquidation or bankruptcy had not occurred.

25.3 Notices to foreign residents

Subject to clause 25.2 notices and other documents for members outside the Commonwealth of Australia shall be forwarded to those members by airmail or by facsimile or by email at the address or facsimile number or email address outside the Commonwealth of Australia supplied to the Foundation by them.

25.4 Notices of general meetings

Notice of every general meeting shall be given in any manner authorised to:

- (a) every member; and
- (b) the Auditor (if any) for the time being of the Foundation.

25.5 Signature on notices

The signature to any notice to be given by or on behalf of the Foundation may be written, printed or stamped.

26. GENERAL

26.1 Exercise of power

Except as specifically contemplated by this Constitution, the Foundation may exercise any power, take any action or engage in any conduct or procedure which under the Act a public Foundation limited by guarantee has the power to do.

26.2 Amendment of Constitution

This Constitution may be amended or repealed by Special Resolution in accordance with the Act.

26.3 Copy of Constitution

The Foundation must send a copy of this Constitution to a member of the Foundation within seven days if the member asks the Foundation in writing for a copy and pays the fee (up to the amount prescribed by the Act) required by the Foundation as approved by the Board.

27. DISPUTE RESOLUTION

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution and in relation to charitable fundraising]between a member or director and:
 - (i) one or more members
 - (ii) one or more directors, or
 - (iii) the Foundation.
- (b) A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure concerning a Member until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under clause 27(c) they must within 10 days:
 - (i) tell the directors about the dispute in writing
 - (ii) agree or request that a mediator be appointed, and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (e) The mediator must:
 - (i) be chosen by agreement of those involved, or
 - (ii) where those involved do not agree:
 - (A) for disputes between members, a person chosen by the directors, or
 - (B) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Foundation has its registered office.
- (f) A mediator chosen by the directors under clause 23(e)(ii)(A):
 - (i) may be a member or former member of the Foundation

- (ii) must not have a personal interest in the dispute, and
 - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
- (i) allow those involved a reasonable chance to be heard;
 - (ii) allow those involved a reasonable chance to review any written statements; and
 - (iii) ensure that those involved are given natural justice, and
 - (iv) not make a decision on the dispute.
- (g) This clause shall not prohibit a member from seeking urgent interlocutory relief from the Courts if that member, director or Foundation will incur irreparable harm if not permitted to do so .

28. DEFINITIONS AND INTERPRETATION

28.1 Definitions

In this Constitution, except where the context requires otherwise:

- (a) **ACNC Act** means the *Australian Charities and Not for Profits Commission Act 2012 (Commonwealth)*.
- (b) **Act** means the *Corporations Act 2001 (Commonwealth)*.
- (c) **Adoption Date** means the date that this Constitution was adopted.
- (d) **AGM** means an annual general meeting of the Members of the Foundation and, where the content requires, means the specific annual general meeting in the context.
- (e) **Board** means the board of Directors of the Foundation, unless the context demands otherwise.
- (f) **CEO** means the chief executive, referred to in clause 16.
- (g) **Chair** means the Chair of the Board, elected from time to time in accordance with this Constitution.
- (h) **Charities Legislation** means the *Australian Charities and Not for Profits Commission Act 2012 (Commonwealth)* and all laws, regulations, rules and compulsory guidelines which apply to the Foundation as a charity in Australia, as amended or replaced from time to time.
- (i) **Foundation** means the Newington Foundation .
- (j) **Director** means a person elected or appointed in accordance with this Constitution to perform the duties of a director of the Foundation.

- (k) **Elected Directors** means the Directors elected by and from amongst the Members, in accordance with this Constitution.
- (l) **Guarantee** means the amount of the Member's guarantee as specified in clause 2(c).
- (m) **Independent Directors** means the Directors appointed to the Board, rather than being elected by and from amongst the Members, in accordance with this Constitution (see clause 11.5(a)).
- (n) **Member** means the organisations that, at the relevant time, are ordinary Members of the Foundation admitted in accordance with this Constitution.
- (o) **Officer** has the meaning given in section 9 of the Act.
- (p) **Ordinary Resolution** means any resolution passed by a simple majority of persons entitled to vote.
- (q) **Register** means the register of Members kept by the Foundation under the Corporations Act 2001.
- (r) **Replaceable Rules** means the Replaceable Rules contained in the Act.
- (s) **Representative** means, in relation to a Member, the representative of the Member appointed under clause 10.
- (t) **Seal** means, if the Foundation has one, the common seal of the Foundation, if any.
- (u) **Secretary** means a person appointed to perform the duties of a secretary of the Foundation.
- (v) **Special Resolution** means a resolution that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

28.2 References to Law and the Constitution

- (a) A word or phrase used in the Act that is given a special meaning for the purposes of the relevant part of the Act, unless this Constitution specifically states otherwise, has the same meaning in this Constitution.
- (b) A reference to:
 - (i) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation, or
 - (ii) this Constitution, where amended, means this Constitution as so amended.

28.3 Interpretation

In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- (a) The singular denotes the plural and vice versa.
- (b) Any gender denotes the other genders.
- (c) A person denotes an individual and a body corporate.
- (d) Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (e) Headings and any table of contents must be ignored in the interpretation of this Constitution.
- (f) Unless the context otherwise requires a reference to a time of day means that time of day in the state or territory in which the registered office of the Foundation is situated.
- (g) For the purposes of determining the length of a period (but not its commencement) a reference to:
 - (i) a day means a period of time commencing at midnight and ending 24 hours later
 - (ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.
- (h) Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.
- (i) A provision of this Constitution, except that specifying the time for deposit of proxies with the Foundation, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.
- (j) A reference to a business day means a day during which banks are open for general banking business in New South Wales.
- (k) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under the statute.

- (l) Where a reference is made to a document or agreement or a provision of a document or agreement, such reference shall be deemed to refer to that document, agreement or provision as amended, supplemented, replaced or novated.
- (m) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (n) This Constitution shall be construed according to the laws of New South Wales.

Schedule 1 – Proxy Form

The Newington Foundation
ACN 645 428 600
FORM OF APPOINTMENT OF PROXY

I,,
 (full name of member)

of.....
 (address)

being a member of the above Foundation.

hereby appoint.....
 (full name of proxy)

of
 (Insert address)

as proxy of the appointing member

Annual General Meeting

at the Special General Meeting of the Foundation to be held on
 the..... day of..... / 20.....
 and at any adjournment of that meeting.

My proxy is authorized to vote (please tick selected option):

- in favour of
- against
- abstain
- as they see fit

for the following resolutions [insert]

.....
 Signature authorised signatory of member appointing proxy Date

NOTES: In accordance with clause 9.4 of the Constitution; this proxy must be provided to the Foundation no later than by 5pm on the last business day before the time for holding the meeting or adjourned meeting.

Please send all proxy forms to: [insert contact details].