

CONSUMER AFFAIRS VICTORIA

Associations Incorporation Reform Act 2012

CONSTITUTION OF FOUNDATION LEARNING CENTRE INC

Associations Incorporation Reform Regulations 2012

Part 3

Constitution ratified : July 2023 Previous constitution : March 2023

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Constitution of Foundation Learning Centre Inc

Note

The persons who from time to time are members of the Association are an incorporated association by the name given in rule 1 of these Rules.

Under section 46 of the **Associations Incorporation Reform Act 2012**, these Rules are taken to constitute the terms of a contract between the Association and its members.

PART 1 - PRELIMINARY

1 Name

The name of the incorporated association is "Foundation Learning Centre Inc" (**Association**).

Note

Under section 23 of the Act, the name of the association and its registration number must appear on all its business documents.

2 Purposes

- (1) The Association is a Victorian incorporated association that is established to be, and to continue as, a Charity.
- (2) The purposes of the Association are to provide benevolent relief to disadvantaged people because of poverty and limited income, distress, physical or intellectual disability, disadvantage caused by limited English literacy and numeracy or restricted access to appropriate educational facilities or services, including by, but not limited to, providing early learning, pre-school, primary, secondary, tertiary or vocational educational services and programs, such as operating a registered school.

3 Financial year

The financial year of the Association is each period of 12 months ending on 31st December.

4 Definitions

In these Rules—

absolute majority, of the Board, means a majority of the Board members currently holding office and entitled to vote at the time (as distinct from a majority of Board members present at a Board of Management meeting);

ACNC means the Australian Charities and Not-for-profits Commission;

ACNC Legislation means the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth)*;

Act means the *Associations Incorporation Reform Act 2012 (Vic)*;

AEA 2013 means the *Australian Education Act 2013 (Cth)*;

AER 2013 means the Australian Education Regulations 2013 (Cth);

Association means the association named in rule 1;

Board or Board of Management means the persons acting collectively having management of the business of the Association;

Board meeting means a meeting of the Board of Management held in accordance with these Rules;

Board member means a member of the Board of Management elected or appointed under Division 3 of Part 5;

Chairperson, of a general meeting or committee meeting, means the person chairing the meeting as required under rule 46;

Charity means a charity registered under the ACNC legislation;

disciplinary appeal meeting means a meeting of the members of the Association convened under rule 23(3);

disciplinary meeting means a meeting of the Board of Management convened for the purposes of rule 22;

disciplinary subcommittee means the subcommittee appointed under rule 20;

ETRR 2017 means the *Education and Training Reform Regulations 2017* (Vic);

financial year means the 12 month period specified in rule 3;

Foundation College means the registered school, Foundation College, established by the Board and governed in accordance with the Terms of Reference;

general meeting means a general meeting of the members of the Association convened in accordance with Part 4 and includes an annual general meeting, a special general meeting and a disciplinary appeal meeting;

Government Funding means money provided for the conduct of Foundation College under an agreement or arrangement with the State of Victoria or the Commonwealth of Australia;

Guidelines to the Minimum Standards means the Guidelines to the Minimum Standards and Requirements for School Registration published by the VRQA, as amended from time to time;

ITAA 97 means the *Income Tax Assessment Act 1997* (Cth);

material personal interest means a personal interest, whether direct or indirect, that could reasonably appear to, or is likely to, inappropriately influence the performance of a Board member's duties. For the avoidance of doubt, a material personal interest may be real, perceived or potential and may be financial or non-financial.

member means a member of the Association;

member entitled to vote means a member who under rule 13(2) is entitled to vote at a general meeting;

Prohibited Agreement or Arrangement has the meaning given to that term in the *ETRR 2017*;

School Council means the governing body given delegated responsibility from the Board to oversee the day-to-day management of Foundation College;

special resolution means a resolution that requires not less than three-quarters of the members voting at a general meeting, whether in person or by proxy, to vote in favour of the resolution;

Terms of Reference means the Terms of Reference for Foundation College in Schedule 1 of this Constitution.

the Act means the **Associations Incorporation Reform Act 2012** and includes any regulations made under that Act;

the Registrar means the Registrar of Incorporated Associations.

PART 2 - POWERS OF ASSOCIATION

5 Powers of Association

- (1) Subject to the Act, the Association has power to do all things incidental or conducive to achieve its purposes.
- (2) Without limiting subrule (1), the Association may—
 - (a) acquire, hold and dispose of real or personal property;
 - (b) open and operate accounts with financial institutions;
 - (c) invest its money in any security in which trust monies may lawfully be invested;
 - (d) raise and borrow money on any terms and in any manner as it thinks fit;
 - (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability;
 - (f) appoint agents to transact business on its behalf;
 - (g) enter into any other contract it considers necessary or desirable.
- (3) The Association may only exercise its powers and use its income and assets (including any surplus) for its purposes.

6 Not for profit organisation

- (1) The Association and Foundation College must not be a party to, or allow Foundation College to be a party to, a Prohibited Agreement or Arrangement with the other party or with any other person or entity.
- (2) Government Funding received in respect of Foundation College must be applied solely towards the conduct of Foundation College or otherwise in accordance with the terms and conditions that apply to the Government Funding.
- (3) To the extent that income or property relates to, or is generated in, the conduct of Foundation College, it must be applied by the Association in a manner that will not result in Foundation College ceasing to be operated on a not-for-profit basis for the purposes of the ETRR 2017, the AEA 2013 and AER 2013 and any other legislation or regulatory requirement relevant to the not-for-profit status of Foundation College.
- (4) The Association must not distribute any surplus, income or assets directly or indirectly to its members.

- (5) Subrule (1) does not prevent the Association from paying a member—
- (a) reimbursement for expenses properly incurred by the member; or
 - (b) for goods or services provided by the member—

if this is done in good faith on terms no more favourable than if the member was not a member.

Note

Section 33 of the Act provides that an incorporated association must not secure pecuniary profit for its members. Section 4 of the Act sets out in more detail the circumstances under which an incorporated association is not taken to secure pecuniary profit for its members.

PART 3—MEMBERS, DISCIPLINARY PROCEDURES AND GRIEVANCES

Division 1—Membership

7 Minimum number of members

The Association must have at least 5 members.

8 Who is eligible to be a member

Any person who supports the purposes of the Association, including students, is eligible for membership.

9 Application for membership

- (1) To apply to become a member of the Association, a person must submit a written application to a Board member or such persons authorised by delegation of the Board, stating that the person—
- (a) wishes to become a member of the Association; and
 - (b) supports the purposes of the Association; and
 - (c) agrees to comply with these Rules.
- (2) The application—
- (a) must be signed by the applicant; and
 - (b) must be accompanied by the joining fee.

Note

The joining fee is the fee (if any) determined by the Association under rule 12(3).

10 Consideration of application

- (1) As soon as practicable after an application for membership is received, the Board must decide by resolution whether to accept or reject the application.
- (2) If the Board rejects the application, it must return any money accompanying the application to the applicant.
- (3) No reason need be given for the rejection of an application.

11 New membership

- (1) If an application for membership is approved by the Board—
 - (a) the resolution to accept the membership must be recorded in the minutes of the committee meeting; and
 - (b) the Secretary must, as soon as practicable, enter the name and address of the new member, and the date of becoming a member, in the register of members.
- (2) A person becomes a member of the Association and, subject to rule 13(2), is entitled to exercise his or her rights of membership from the date, whichever is the later, on which—
 - (a) the Board approves the person's membership; or
 - (b) the person pays the joining fee.

12 Annual subscription and fee on joining

- (1) Membership fees cover the period 1 January to 31 December in each calendar year.
- (2) At each annual general meeting, the Association must determine—
 - (a) the amount of the annual subscription (if any) for the following financial year; and
 - (b) the date for payment of the annual subscription.
- (3) The Association may determine that any new member who joins after the start of a financial year must, for that financial year, pay a fee equal to—
 - (a) the full annual subscription; or
 - (b) a fixed amount determined from time to time by the Association.
- (4) The rights of a member (including the right to vote) who has not paid the annual subscription by the due date are suspended until the subscription is paid.

13 General rights of members

- (1) A member of the Association who is entitled to vote has the right—
 - (a) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
 - (b) to submit items of business for consideration at a general meeting; and
 - (c) to attend and be heard at general meetings; and
 - (d) to vote at a general meeting; and
 - (e) to have access to the minutes of general meetings and other documents of the Association as provided under rule 75; and
 - (f) to inspect the register of members.
- (2) A member is entitled to vote if—
 - (a) more than 10 business days have passed since he or she became a member of the Association; and

- (b) the member's membership rights are not suspended for any reason.

14 Life Members

- (1) A member can be nominated for life membership in accordance with the Association's policy in this respect.
- (2) Life membership will be granted at the discretion of the Board.
- (3) A life member is exempt from the obligation to pay annual subscription fees and, if determined by the Board, the joining fee.
- (4) Life membership applies only to an individual and does not exempt other family members from the payment of fees for their individual memberships.
- (5) A life member will be subject to all provisions of this Constitution relating to members (including Division 2 of Part 3 of this Constitution), other than rule 12(4).
- (6) The Board may, in its discretion:
 - (a) remove the life membership granted to a member, in which case rule 14(3) will cease to apply in respect of that member and rule 12(4) will apply in respect of that member; or
 - (b) vary the rights of life membership.

15 Rights not transferable

The rights of a member are not transferable and end when membership ceases.

16 Ceasing membership

- (1) The membership of a person ceases on resignation, expulsion or death.
- (2) If a person ceases to be a member of the Association, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

17 Resigning as a member

- (1) A member may resign by notice in writing given to the Association.

Note

Rule 74(3) sets out how notice may be given to the association. It includes by post or by handing the notice to a member of the Board, or such persons authorised by delegation of the Board.

- (2) A member is taken to have resigned if—
 - (a) the member's annual subscription is more than 12 months in arrears; or
 - (b) where no annual subscription is payable—
 - (i) the Secretary has made a written request to the member to confirm that he or she wishes to remain a member; and
 - (ii) the member has not, within 3 months after receiving that request, confirmed in writing that he or she wishes to remain a member.

18 Register of members

- (1) The Secretary must keep and maintain a register of members that includes—
 - (a) for each current member—
 - (i) the member's name;
 - (ii) the address for notice last given by the member;
 - (iii) the date of becoming a member;
 - (iv) any other information determined by the Board and
 - (b) for each former member, the date of ceasing to be a member.
- (2) Any member may, at a reasonable time and free of charge, inspect the register of members.

Note

Under section 59 of the Act, access to the personal information of a person recorded in the register of members may be restricted in certain circumstances. Section 58 of the Act provides that it is an offence to make improper use of information about a person obtained from the Register of Members.

Division 2—Disciplinary action

19 Grounds for taking disciplinary action

The Association may take disciplinary action against a member in accordance with this Division if it is determined that the member—

- (a) has failed to comply with these Rules; or
- (b) refuses to support the purposes of the Association; or
- (c) has engaged in conduct prejudicial to the Association.

20 Disciplinary subcommittee

- (1) If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a member, the Board must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the member.
- (2) The members of the disciplinary subcommittee—
 - (a) may be Board members, members of the Association or anyone else; but
 - (b) must not be biased against, or in favour of, the member concerned.

21 Notice to member

- (1) Before disciplinary action is taken against a member, the Secretary must give written notice to the member—
 - (a) stating that the Association proposes to take disciplinary action against the member; and
 - (b) stating the grounds for the proposed disciplinary action; and

- (c) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the *disciplinary meeting*); and
 - (d) advising the member that he or she may do one or both of the following—
 - (i) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
 - (ii) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
 - (e) setting out the member's appeal rights under rule 23.
- (2) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

22 Decision of subcommittee

- (1) At the disciplinary meeting, the disciplinary subcommittee must—
- (a) give the member an opportunity to be heard; and
 - (b) consider any written statement submitted by the member.
- (2) After complying with subrule (1), the disciplinary subcommittee may—
- (a) take no further action against the member; or
 - (b) subject to subrule (3)—
 - (i) reprimand the member; or
 - (ii) suspend the membership rights of the member for a specified period; or
 - (iii) expel the member from the Association.
- (3) The disciplinary subcommittee may not fine the member.
- (4) The suspension of membership rights or the expulsion of a member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.

23 Appeal rights

- (1) A person whose membership rights have been suspended or who has been expelled from the Association under rule 22 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- (2) The notice must be in writing and given—
- (a) to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
 - (b) to the Secretary not later than 48 hours after the vote.
- (3) If a person has given notice under subrule (2), a disciplinary appeal meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.

- (4) Notice of the disciplinary appeal meeting must be given to each member of the Association who is entitled to vote as soon as practicable and must—
 - (a) specify the date, time and place of the meeting; and
 - (b) state—
 - (i) the name of the person against whom the disciplinary action has been taken; and
 - (ii) the grounds for taking that action; and
 - (iii) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

24 Conduct of disciplinary appeal meeting

- (1) At a disciplinary appeal meeting—
 - (a) no business other than the question of the appeal may be conducted; and
 - (b) the Board must state the grounds for suspending or expelling the member and the reasons for taking that action; and
 - (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- (2) After complying with subrule (1), the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.
- (3) A member may not vote by proxy at the meeting.
- (4) The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.

Division 3—Grievance procedure

25 Application

- (1) The grievance procedure set out in this Division applies to disputes under these Rules between—
 - (a) a member and another member;
 - (b) a member and the Board;
 - (c) a member and the Association.
- (2) A member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

26 Parties must attempt to resolve the dispute

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

27 Appointment of mediator

- (1) If the parties to a dispute are unable to resolve the dispute between themselves within the time required by rule 26, the parties must within 10 days—
 - (a) notify the Board of the dispute; and
 - (b) agree to or request the appointment of a mediator; and
 - (c) attempt in good faith to settle the dispute by mediation.
- (2) The mediator must be—
 - (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement—
 - (i) if the dispute is between a member and another member—a person appointed by the Board; or
 - (ii) if the dispute is between a member and the Board or the Association—a person appointed or employed by the Dispute Settlement Centre of Victoria.
- (3) A mediator appointed by the Board may be a member or former member of the Association but in any case must not be a person who—
 - (a) has a personal interest in the dispute; or
 - (b) is biased in favour of or against any party.

28 Mediation process

- (1) The mediator to the dispute, in conducting the mediation, must—
 - (a) give each party every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties throughout the mediation process.
- (2) The mediator must not determine the dispute.

29 Failure to resolve dispute by mediation

If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

PART 3 - GENERAL MEETINGS OF THE ASSOCIATION

30 Annual general meetings

- (1) The Board must convene an annual general meeting of the Association to be held within 5 months after the end of each financial year.
- (2) The Board may determine the date, time and place of the annual general meeting.
- (3) The ordinary business of the annual general meeting is as follows—

- (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then;
 - (b) to receive and consider—
 - (i) the annual report of the Board on the activities of the Association during the preceding financial year; and
 - (ii) the financial statements of the Association for the preceding financial year submitted by the Board in accordance with Part 7 of the Act;
 - (c) to elect the members of the Board;
 - (d) to confirm or vary the amounts (if any) of the annual subscription and joining fee.
- (4) The annual general meeting may also conduct any other business of which notice has been given in accordance with these Rules.

31 Special general meetings

- (1) Any general meeting of the Association, other than an annual general meeting or a disciplinary appeal meeting, is a special general meeting.
- (2) The Board may convene a special general meeting whenever it thinks fit.
- (3) No business other than that set out in the notice under rule 33 may be conducted at the meeting.

Note

General business may be considered at the meeting if it is included as an item for consideration in the notice under rule 33 and the majority of members at the meeting agree.

32 Special general meeting held at request of members

- (1) The Board must convene a special general meeting if a request to do so is made in accordance with subrule (2) by at least 25% of the total number of members.
- (2) A request for a special general meeting must—
 - (a) be in writing; and
 - (b) state the business to be considered at the meeting and any resolutions to be proposed; and
 - (c) include the names and signatures of the members requesting the meeting; and
 - (d) be given to the Secretary.
- (3) If the Board does not convene a special general meeting within one month after the date on which the request is made, the members making the request (or any of them) may convene the special general meeting.
- (4) A special general meeting convened by members under subrule (3)—
 - (a) must be held within 3 months after the date on which the original request was made; and
 - (b) may only consider the business stated in that request.

- (5) The Association must reimburse all reasonable expenses incurred by the members convening a special general meeting under subrule (3).

33 Notice of general meetings

- (1) The Secretary (or, in the case of a special general meeting convened under rule 32(3), the members convening the meeting) must give to each member of the Association—
 - (a) at least 21 days' notice of a general meeting if a special resolution is to be proposed at the meeting; or
 - (b) at least 14 days' notice of a general meeting in any other case.
- (2) The notice must—
 - (a) specify the date, time and place of the meeting; and
 - (b) indicate the general nature of each item of business to be considered at the meeting; and
 - (c) if a special resolution is to be proposed—
 - (i) state in full the proposed resolution; and
 - (ii) state the intention to propose the resolution as a special resolution; and
 - (d) comply with rule 34(5).
- (3) This rule does not apply to a disciplinary appeal meeting.

Note

Rule 23(4) sets out the requirements for notice of a disciplinary appeal meeting.

34 Proxies

- (1) A member may appoint another member as his or her proxy to vote and speak on his or her behalf at a general meeting other than at a disciplinary appeal meeting.
- (2) The appointment of a proxy must be in writing and signed by the member making the appointment.
- (3) The member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the member in any matter as he or she sees fit.
- (4) If the Board has approved a form for the appointment of a proxy, the member may use any other form that clearly identifies the person appointed as the member's proxy and that has been signed by the member.
- (5) Notice of a general meeting given to a member under rule 33 must—
 - (a) state that the member may appoint another member as a proxy for the meeting; and
 - (b) include a copy of any form that the Board has approved for the appointment of a proxy.

- (6) A form appointing a proxy sent by any means at all is of no effect unless it is received by the Chairperson of the Association no later than 24 hours before the commencement of the meeting.

35 Use of technology

- (1) A member not physically present at a general meeting may be permitted to participate in the meeting by the use of technology that allows that member and the members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a member participating in a general meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

36 Quorum at general meetings

- (1) No business may be conducted at a general meeting unless a quorum of members is present.
- (2) The quorum for a general meeting is the presence (physically, by proxy or as allowed under rule 35) 25% of the members entitled to vote.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a general meeting—
 - (a) in the case of a meeting convened by, or at the request of, members under rule 32— the meeting must be dissolved;

Note

If a meeting convened by, or at the request of, members is dissolved under this subrule, the business that was to have been considered at the meeting is taken to have been dealt with. If members wish to have the business reconsidered at another special meeting, the members must make a new request under rule 32.

- (b) in any other case—
 - (i) the meeting must be adjourned to a date not more than 21 days after the adjournment; and
 - (ii) notice of the date, time and place to which the meeting is adjourned must be given at the meeting and confirmed by written notice given to all members as soon as practicable after the meeting.
- (4) If a quorum is not present within 30 minutes after the time to which a general meeting has been adjourned under subrule (3)(b), the members present at the meeting (if not fewer than 20%) may proceed with the business of the meeting as if a quorum were present.

37 Adjournment of general meeting

- (1) The Chairperson of a general meeting at which a quorum is present may, with the consent of a majority of members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- (2) Without limiting subrule (1), a meeting may be adjourned—
 - (a) if there is insufficient time to deal with the business at hand; or
 - (b) to give the members more time to consider an item of business.

Example

The members may wish to have more time to examine the financial statements submitted by the Board at an annual general meeting.

- (3) No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- (4) Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with rule 33.

38 Voting at general meeting

- (1) On any question arising at a general meeting—
 - (a) subject to subrule (3), each member who is entitled to vote has one vote; and
 - (b) members may vote personally or by proxy; and
 - (c) except in the case of a special resolution, the question must be decided on a majority of votes.
- (2) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (3) If the question is whether or not to confirm the minutes of a previous meeting, only members who were present at that meeting may vote.
- (4) This rule does not apply to a vote at a disciplinary appeal meeting conducted under rule 24.

39 Special resolutions

A special resolution is passed if not less than three quarters of the members voting at a general meeting (whether in person or by proxy) vote in favour of the resolution.

Note

In addition to certain matters specified in the Act, a special resolution is required—

- (a) to remove a Board member from office ;
- (b) to alter these Rules, including changing the name or any of the purposes of the Association.

40 Determining whether resolution carried

- (1) Subject to subsection (2), the Chairperson of a general meeting may, on the basis of a show of hands, declare that a resolution has been—
 - (a) carried; or
 - (b) carried unanimously; or
 - (c) carried by a particular majority; or
 - (d) lost—

and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.

- (2) If a poll (where votes are cast in writing) is demanded by three or more members on any question—
 - (a) the poll must be taken at the meeting in the manner determined by the Chairperson of the meeting; and
 - (b) the Chairperson must declare the result of the resolution on the basis of the poll.
- (3) A poll demanded on the election of the Chairperson or on a question of an adjournment must be taken immediately.
- (4) A poll demanded on any other question must be taken before the close of the meeting at a time determined by the Chairperson.

41 Minutes of general meeting

- (1) The Board must ensure that minutes are taken and kept of each general meeting.
- (2) The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- (3) In addition, the minutes of each annual general meeting must include—
 - (a) the names of the members attending the meeting; and
 - (b) proxy forms given to the Chairperson of the meeting under rule 34(6); and
 - (c) the financial statements submitted to the members in accordance with rule 30(3)(b)(ii); and
 - (d) the certificate signed by two Board members certifying that the financial statements give a true and fair view of the financial position and performance of the Association; and
 - (e) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.

PART 4 - PART 5—BOARD OF MANAGEMENT

Division 1—Powers of Board of Management

42 Role and powers

- (1) The business of the Association must be managed by or under the direction of a Board of Management.
- (2) The Board may exercise all the powers of the Association except those powers that these Rules or the Act require to be exercised by general meetings of the members of the Association.
- (3) The Board may—
 - (a) appoint and remove staff;
 - (b) establish subcommittees consisting of members with terms of reference it considers appropriate, including, but not limited to, respective subcommittees to govern the

Association's activities related to Foundation College, early learning, pre-school, primary, secondary, tertiary or vocational education.

43 Delegation

- (1) The Board may delegate to a member of the Board, a subcommittee or staff, any of its powers and functions other than—
 - (a) this power of delegation; or
 - (b) a duty imposed on the Board by the Act or any other law.
- (2) The delegation must be in writing and may be subject to the conditions and limitations the Board considers appropriate.
- (3) The Board may, in writing, revoke a delegation wholly or in part subject to rule 43(8).
- (4) The Board may not revoke the delegation of the governance, financial and management responsibility of Foundation College to the School Council, unless the latter fails to comply (and is unable or unwilling to rectify its non-compliance) with:
 - (a) The Guidelines to the Minimum Standards; or
 - (b) Ministerial Order No. 1359 Implementing the Child Safe Standards – Managing the Risk of Child Abuse in Schools and School Boarding Premises; or
 - (c) The ACNC Governance Standards.

Division 2—Composition of Board and duties of members

44 Composition of Board

The Board consists of—

- (a) a President; and
- (b) a Vice-President; and
- (c) a Secretary; and
- (d) a Treasurer; and
- (e) not less than 3 (three) but no more than 7 (seven) ordinary members (if any) elected under rule 54.

45 General Duties

- (1) As soon as practicable after being elected or appointed to the Board, each Board member must become familiar with these Rules and the Act.
- (2) The Board is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Board comply with these Rules.
- (3) Board members must exercise their powers and discharge their duties with reasonable care and diligence.
- (4) Board members must exercise their powers and discharge their duties—

in good faith in the best interests of the Association; and

- (a) for a proper purpose.
- (5) Board members and former Board members must not make improper use of—
- (a) their position; or
 - (b) information acquired by virtue of holding their position—

so as to gain an advantage for themselves or any other person or to cause detriment to the Association.

Note

See also Division 3 of Part 6 of the Act which sets out the general duties of the office holders of an incorporated association.

- (6) In addition to any duties imposed by these Rules, a Board member must perform any other duties imposed from time to time by resolution at a general meeting.

46 President and Vice-President

- (1) Subject to subrule (2), the President or, in the President's absence, the Vice-President is the Chairperson for any general meetings and for any Board meetings.
- (2) If the President and the Vice-President are both absent, or are unable to preside, the Chairperson of the meeting must be—
 - (a) in the case of a general meeting—a member elected by the other members present; or
 - (b) in the case of a Board meeting—a Board member elected by the other Board members present.

47 Secretary

- (1) The Secretary must perform any duty or function required under the Act to be performed by the secretary of an incorporated association.

Example

Under the Act, the secretary of an incorporated association is responsible for lodging documents of the association with the Registrar.

Note

The secretary of the incorporated association may, but does not automatically, assume the role of public officer for the incorporated association. The incorporated association will appoint a person with appropriate qualifications, skills and authority to the role of public officer.

- (2) The Secretary must—
 - (a) maintain the register of members in accordance with rule 18; and
 - (b) keep custody of the common seal (if any) of the Association and, except for the financial records referred to in rule 70(3), all books, documents and securities of the Association in accordance with rules 72 and 75; and
 - (c) subject to the Act and these Rules, provide members with access to the register of members, the minutes of general meetings and other books and documents; and

- (d) perform any other duty or function imposed on the Secretary by these Rules.
- (3) The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.

48 Treasurer

- (1) The Treasurer must—
 - (a) receive all moneys paid to or received by the Association and issue receipts for those moneys in the name of the Association; and
 - (b) ensure that all moneys received are paid into the account of the Association within 5 working days after receipt; and
 - (c) make any payments authorised by the Board (or its delegate) or by a general meeting of the Association from the Association's funds; and
 - (d) ensure payments are authorised by at least 2 Board members or in accordance with any delegation of authority approved by the Board.
- (2) The Treasurer must—
 - (a) ensure that the financial records of the Association are kept in accordance with the Act; and
 - (b) coordinate the preparation of the financial statements of the Association and their certification by the Board prior to their submission to the annual general meeting of the Association.
- (3) The Treasurer must ensure that at least one other Board member has access to the accounts and financial records of the Association.
- (4) The management of the finances of Foundation College is provided for under the Terms of Reference.
- (5) Rules 48(1) and (2) do not apply to monies received by Foundation College for the purpose of Foundation College. The School Council is responsible for the management of Foundation College funds pursuant to the Terms of Reference.

Division 3—Election of Board members and tenure of office

49 Who is eligible to be a Board member

A member is eligible to be elected or appointed as a Board member if the member—

- (a) is 18 years or over;
- (b) is entitled to vote at a general meeting;
- (c) is not disqualified from being a responsible person under the ACNC Legislation; and
- (d) is a fit and proper person within the meaning of Guidelines to the Minimum Standards.

50 Positions to be declared vacant

- (1) This rule applies to— (a)

- (a) any annual general meeting of the Association, after the annual report and financial statements of the Association have been received.
- (2) The Chairperson of the meeting must declare the number of vacant positions on the Board of Management vacant and hold elections for those positions in accordance with rules 51 to 54.

51 Nominations

- (1) Prior to the election of each position, the Chairperson of the meeting must call for nominations to fill that position.
- (2) Nominations must be delivered to the Secretary not less than 7 (seven) days before the date fixed for the Annual General Meeting
- (3) An eligible member of the Association may—
 - (a) nominate himself or herself; or
 - (b) with the member's consent, be nominated by another member.

52 Election of Board members

- (1) The annual general meeting must by resolution decide the number of ordinary members of the Board (if any) it wishes to hold office for the next year.
- (2) A single election may be held to fill all vacant Board positions.
- (3) If the number of members nominated for the position of ordinary Board member is less than or equal to the number to be elected, the Chairperson of the meeting must declare each of those members to be elected to the position.
- (4) If the number of members nominated exceeds the number to be elected, a ballot must be held in accordance with rule 54.
- (5) Election of Board Executive (President, Vice President, Treasurer & Secretary) shall be undertaken in accordance with rule 58(3) of this constitution.

53 Co-opted Board positions and Representative Board positions

- (1) Co-opted Board positions
 - (a) The Board may, at its discretion, choose to offer co-opted and representative positions to those who have a particular expertise or interest.
 - (b) The maximum number of co-opted position shall be 4 (four)
 - (c) A person co-opted to the Board may serve for up to 12 (twelve) months until the next Annual General Meeting.
 - (d) Co-opted Board members do not have the right to vote at Board meetings.
- (2) Representative Board position
 - (a) The Board may, at its discretion, choose to offer representative positions to staff and students of the Association.
 - (b) The maximum number of Representatives at any time shall be

Staff 1 (one)

Students 2 (two)

- (c) Representative Board member may serve for up to 12 (twelve) months until the next Annual General Meeting
- (d) Representative members do not have the right to vote at Board meetings.

54 Ballot

- (1) If a ballot is required for the election for a position, the Chairperson of the meeting must appoint a member to act as returning officer to conduct the ballot.
- (2) The returning officer must not be a member nominated for the position.
- (3) Before the ballot is taken, each candidate may make a short speech in support of his or her election.
- (4) The election must be by secret ballot.
- (5) The returning officer must give a blank piece of paper to—
 - (a) each member present in person; and
 - (b) each proxy appointed by a member.

Example

If a member has been appointed the proxy of 5 other members, the member must be given 6 ballot papers— one for the member and one each for the other members.

- (6) If the ballot is for a single position, the voter must write on the ballot paper the name of the candidate for whom they wish to vote.
- (7) If the ballot is for more than one position—
 - (a) the voter must write on the ballot paper the name of each candidate for whom they wish to vote;
 - (b) the voter must not write the names of more candidates than the number to be elected.
- (8) Ballot papers that do not comply with subrule (7)(b) are not to be counted.
- (9) Each ballot paper on which the name of a candidate has been written counts as one vote for that candidate.
- (10) The returning officer must declare elected the candidate or, in the case of an election for more than one position, the candidates who received the most votes.
- (11) If the returning officer is unable to declare the result of an election under subrule (10) because 2 or more candidates received the same number of votes, the returning officer must—
 - (a) conduct a further election for the position in accordance with subrules (4) to (10) to decide which of those candidates is to be elected; or
 - (b) with the agreement of those candidates, decide by lot which of them is to be elected.

Examples

The choice of candidate may be decided by the toss of a coin, drawing straws or drawing a name out of a hat.

55 Term of office

- (1) Subject to subrule (3) and rule 56, a Board member holds office for a period of three years from the date of appointment.
- (2) A Board member may be re-elected for further three-year periods.
- (3) The Board should ensure that at least one third of their number retires each year and if eligible those retiring may stand for re-election
- (4) A general meeting of the Association may—
 - (a) by special resolution remove a Board member from office; and
 - (b) elect an eligible member of the Association to fill the vacant position in accordance with this Division.
- (5) A member who is the subject of a proposed special resolution under subrule (4)(a) may make representations in writing to the Secretary or President of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.
- (6) The Secretary or the President may give a copy of the representations to each member of the Association or, if they are not so given, the member may require that they be read out at the meeting at which the special resolution is to be proposed.

56 Vacation of office

- (1) A Board member may resign from the Board by written notice addressed to the Board.
- (2) A person ceases to be a Board member if he or she—
 - (a) ceases to be a member of the Association; or
 - (b) otherwise ceases to be a Board member by operation of section 78 of the Act.
- (3) A person ceases to be a Board member on the vote of the Board if he or she fails to attend 3 consecutive Board meetings (other than special or urgent Board meetings) without leave of absence under rule 67.

Note

A Board member may not hold the office of secretary if they do not reside in Australia.

57 Filling casual vacancies

- (1) The Board may appoint an eligible member of the Association to fill a position on the Board that—
 - (a) has become vacant under rule 56; or
 - (b) was not filled by election at the last annual general meeting.
- (2) If the position of Secretary becomes vacant, the Board must appoint a member to the position within 14 days after the vacancy arises.
- (3) Rule 55 applies to any Board member appointed by the Board under subrule (1) or (2).

- (4) The Board may continue to act despite any vacancy in its membership.

Division 4—Meetings of Board

58 Meetings of Board

- (1) The Board must meet at least 5 times in each year at the dates, times and places determined by the Board.¹
- (2) The date, time and place of the first Board meeting must be determined by the members of the Board as soon as practicable after the annual general meeting of the Association at which the members of the Board were elected.
- (3) At the first meeting of the Board following an Annual General Meeting
 - (a) the Board shall elect Board members to the positions that comprise the Executive:
 - President
 - Vice President
 - Secretary
 - Treasurer
 - (b) Executive members are eligible for re-election by the Board to the named offices
 - (c) Executive members may be removed from office by a majority vote of two-thirds of the full Board.
- (4) Special Board meetings may be convened by the President or by any 4 members of the Board.

59 Notice of meetings

- (1) Notice of each Board meeting must be given to each Board member no later than 7 days before the date of the meeting.
- (2) Notice may be given of one or more Board meeting
- (3) The notice must state the date, time and place of the meeting.
- (4) If a special Board meeting is convened, the notice must include the general nature of the business to be conducted.
- (5) The only business that may be conducted at the meeting is the business for which the meeting is convened.

60 Urgent meetings

- (1) In cases of urgency, a meeting can be held without notice being given in accordance with rule 59 provided that as much notice as practicable is given to each Board member by the quickest means practicable.
- (2) Any resolution made at the meeting must be passed by an absolute majority of the Board.

- (3) The only business that may be conducted at an urgent meeting is the business for which the meeting is convened.

61 Procedure and order of business

- (1) The procedure to be followed at a meeting of a Board must be determined from time to time by the Board.
- (2) The order of business may be determined by the members present at the meeting.

62 Use of technology

- (1) A Board member who is not physically present at a Board meeting may participate in the meeting by the use of technology that allows that Board member and the Board members present at the meeting to clearly and simultaneously communicate with each other.
- (2) For the purposes of this Part, a Board member participating in a Board meeting as permitted under subrule (1) is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

63 Quorum

- (1) No business may be conducted at a Board meeting unless a quorum is present.
- (2) The quorum for a Board meeting is the presence (in person or as allowed under rule 62) of a majority of the Board members holding office.
- (3) If a quorum is not present within 30 minutes after the notified commencement time of a Board meeting—
 - (a) in the case of a special meeting—the meeting lapses;
 - (b) in any other case—the meeting must be adjourned to a date no later than 14 days after the adjournment and notice of the time, date and place to which the meeting is adjourned must be given in accordance with rule 59.

64 Voting

- (1) On any question arising at a Board meeting, each Board member present at the meeting has one vote.
- (2) A motion is carried if a majority of Board members present at the meeting vote in favour of the motion.
- (3) Subrule (2) does not apply to any motion or question which is required by these Rules to be passed by an absolute majority of the Board.
- (4) If votes are divided equally on a question, the Chairperson of the meeting has a second or casting vote.
- (5) Voting by proxy is not permitted.

65 Conflict of interest

- (1) A Board member who has a material personal interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest to the Board.

- (2) The member—
 - (a) must not be present while the matter is being considered at the meeting; and
 - (b) must not vote on the matter.

Note

Under section 81(3) of the Act, if there are insufficient committee members to form a quorum because a member who has a material personal interest is disqualified from voting on a matter, a general meeting may be called to deal with the matter.

- (3) This rule does not apply to a material personal interest—
 - (a) that exists only because the member belongs to a class of persons for whose benefit the Association is established; or
 - (b) that the member has in common with all, or a substantial proportion of, the members of the Association.

66 Minutes of meeting

- (1) The Board must ensure that minutes are taken and kept of each Board meeting.
- (2) The minutes must record the following—
 - (a) the names of the members in attendance at the meeting;
 - (b) the business considered at the meeting;
 - (c) any resolution on which a vote is taken and the result of the vote;
 - (d) any material personal interest disclosed under rule 65.

67 Leave of absence

- (1) The Board may grant a Board member leave of absence from Board meetings for a period not exceeding 3 months.
- (2) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Board member to seek the leave in advance.

PART 4A—SUBCOMMITTEES AND SCHOOL COUNCIL

67A Establishment of subcommittees

- (1) The Board may establish one or more subcommittees composed of such persons as it thinks fit for such purposes as the Board sees fit.
- (2) The Board may, in writing, delegate to one or more subcommittees the exercise of specified functions of the Board, other than –
 - (a) this power of delegation; and
 - (b) any function imposed on the Board by the Act, by any other applicable law, or by resolution of the Association in a General Meeting.
- (3) Any act done by a subcommittee acting in the exercise of a delegation under this section has the same effect as it would have if it had been done by the Board.

- (4) Subject to rule 43(4), the Board may, in writing, revoke wholly or in part any delegation under this section.

67B School Council

- (1) There must be a School Council, which will be a subcommittee of the Board.
- (2) The School Council must be constituted in accordance with and comply with the Terms of Reference (as amended by special resolution of the School Council from time to time).
- (3) The Board delegates the governance, financial and management responsibility of Foundation College to the School Council.
- (4) Subject to rule 43(4), the Board must not exercise any of the powers delegated to the School Council.

PART 5 - FINANCIAL MATTERS

68 Source of funds

The funds of the Association may be derived from joining fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

69 Management of funds

- (1) The Association must open an account (or accounts) with a financial institution from which all expenditure of the Association is made and into which all of the Association's revenue is deposited.
- (2) Subject to any restrictions imposed by a general meeting of the Association and any Board delegations, the Board may approve expenditure on behalf of the Association.
- (3) The Board (or its delegate) may authorise the Treasurer (or another appointed person) to expend funds on behalf of the Association (including by electronic funds transfer) up to a specified limit without requiring approval from the Board for each item on which the funds are expended.
- (4) All transactions, drafts, bills of exchange, promissory notes and other negotiable instruments must be authorised in accordance with rule 49 above.
- (5) All funds of the Association must be deposited into the financial account of the Association no later than 5 working days after receipt.
- (6) With the approval of the Board (or its delegate), the Treasurer may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.
- (7) All funds received for the operation of the Foundation College (including Government Funding, donations and school fees) must only be used for the conduct of Foundation College. and must be maintained in a separate account with a financial institution in accordance with the Terms of Reference.

70 Financial records

- (1) The Association must keep financial records that—
 - (a) correctly record and explain its transactions, financial position and performance; and
 - (b) enable financial statements to be prepared as required by the Act.
- (2) The Association must retain the financial records for 7 years after the transactions covered by the records are completed.
- (3) The Treasurer must keep in his or her custody, or under his or her control—
 - (a) the financial records for the current financial year; and
 - (b) any other financial records as authorised by the Board.

71 Financial statements

- (1) For each financial year, the Board must ensure that the requirements under the Act relating to the financial statements of the Association are met.
- (2) Without limiting subrule (1), those requirements include—
 - (a) the preparation of the financial statements;
 - (b) if required, the review or auditing of the financial statements;
 - (c) the certification of the financial statements by the Board;
 - (d) the submission of the financial statements to the annual general meeting of the Association;
 - (e) the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

71A Periodic appointment of auditors

The auditors of the Association must be changed at least every [5] years². Nothing in this rule 71A prevents the auditors of the Association being removed or replaced more frequently, subject always to compliance with any applicable laws.

PART 6 - GENERAL MATTERS

72 Common seal

- (1) The Association may have a common seal.
- (2) If the Association has a common seal—
 - (a) the name of the Association must appear in legible characters on the common seal;
 - (b) a document may only be sealed with the common seal by the authority of the Board and the sealing must be witnessed by the signatures of two Board members;
 - (c) the common seal must be kept in the custody of the Secretary.

² **BM Note:** FLC to confirm whether this rule should be "finalised" (that is, square brackets and highlight removed).

73 Registered address

The registered address of the Association is—

- (a) the address determined from time to time by resolution of the Board; or
- (b) if the Board has not determined an address to be the registered address—the postal address of the Secretary.

74 Notice requirements

- (1) Any notice required to be given to a member or a Board member under these Rules may be given—
 - (a) by handing the notice to the member personally; or
 - (b) by sending it by post to the member at the address recorded for the member on the register of members; or
 - (c) by email or facsimile transmission.
- (2) Subrule (1) does not apply to notice given under rule 60.
- (3) Any notice required to be given to the Association or the Board may be given—
 - (a) by handing the notice to a member of the Board; or
 - (b) by sending the notice by post to the registered address; or
 - (c) by leaving the notice at the registered address; or
 - (d) if the Board determines that it is appropriate in the circumstances—
 - (i) by email to the email address of the Association or the Secretary; or
 - (ii) by facsimile transmission to the facsimile number of the Association.

75 Custody and inspection of books and records

- (1) Members may on request inspect free of charge—
 - (a) the register of members;
 - (b) the minutes of general meetings;
 - (c) subject to subrule (2), the financial records, books, securities and any other relevant document of the Association, including minutes of Board meetings.

Note

See note following rule 18 for details of access to the register of members.

- (2) The Board may refuse to permit a member to inspect records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.
- (3) The Board must on request make copies of these rules available to members and applicants for membership free of charge.

(4) Subject to subrule (2), a member may make a copy of any of the other records of the Association referred to in this rule and the Association may charge a reasonable fee for provision of a copy of such a record.

(5) For purposes of this rule—

relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Association and includes the following—

(a) its membership records;

(b) its financial statements;

(c) its financial records;

(d) records and documents relating to transactions, dealings, business or property of the Association.

76 Closure of Foundation College, winding up, deregistration and cancellation

(1) The Association may be wound up voluntarily by special resolution.

(2) In the event of the winding up or the cancellation of the incorporation of the Association, the assets of the Association must be disposed of in accordance with the provisions of the Act.

(3) In the event of the winding up or cancellation of the incorporation of the Association or the closure of Foundation College, whichever occurs first, the surplus assets of Foundation College (being assets that relate to, or are generated in, the conduct of Foundation College including Government Funding, student fees and other fundraising monies or bequests and money received by Foundation College because of those Foundation College funds) must:

(a) not be paid or distributed to a member in their capacity as a member; and

(b) be used to provide education services to children of compulsory school-age; or

(c) be given or transferred to a Charity or Charities which:

(i) provide educational services to children of compulsory school-age; or

(ii) have charitable purposes similar to the purposes in rule 2; and

(iii) prohibits the distribution of profit or gain to their members in their capacity as members.

(4) If the Association is a Deductible Gift Recipient and is wound up, or it ceases to be endorsed as a Deductible Gift Recipient, any DGR gifts remaining after satisfying the Association's liabilities and expenses and complying with rule 76(3) must be transferred to a Charity or Charities which:

(a) has a similar purpose to the purposes in rule 2; and

(b) is endorsed as a Deductible Gift Recipient.

(5) If on the winding up or cancellation of incorporation of the Association, there is a surplus of non- Foundation College assets after complying with rules 76(3) and 76(4), then the surplus assets:

- (a) must not be paid or distributed to the members in their capacity as members, and
 - (b) must be given or transferred to a Charity or Charities which has a similar purpose to the purpose in rule 2.
- (6) Notwithstanding sub-rules (1) - (5), if the Association proposes to wind up or cancel its incorporation, it must first assess whether the registered school, Foundation College, is viable and can continue to operate. If Foundation College is viable, the Association must use its best endeavours to assist Foundation College to continue to operate.

77 Alteration of Rules

- (1) These Rules may only be altered by special resolution of a general meeting of the Association.
- (2) A resolution to alter these Rules will have no effect if it would cause the Association to no longer be a Charity or cease to meet the requirements for registration as the proprietor of a Victorian school.

Note

An alteration of these Rules does not take effect unless or until it is approved by the Registrar. If these Rules (other than rule 1, 2 or 3) are altered, the Association is taken to have adopted its own rules, not the model rules.

Schedule 1 Terms of Reference - Foundation College School Council

1. Introduction

Foundation Learning Centre Inc (**the Association**) is a not-for-profit Victorian incorporated association registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) with a 'Public Benevolent Institution' subtype. The Association is governed by a Board (**the Board**). The Board established a school, Foundation College, and has delegated the governance and day-to-day management responsibility for Foundation College to the Foundation College School Council (**the School Council**).

These Terms of Reference are prepared in accordance with the *Education and Training and Reform Act 2006* (Vic) (**ETR Act**), the *Associations Incorporation Reform Act 2012* (Vic) (**the Act**), the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth) (together, **the ACNC Legislation**), the *Education and Training Reform Regulations 2017* (**ETRR 2017**), and the Victorian Registration and Qualifications Authority's Guidelines to the Minimum Standards and Requirements for School Registration (**the Guidelines to the Minimum Standards**).

2. Purpose of Foundation College

The purpose of Foundation College is to provide benevolent relief to young people in need through the provision of educational programs (**School Purpose**). Foundation College provides for students that are experiencing complex personal and educational barriers and are at risk of or have disengaged from education.

3. Purpose of School Council

The purpose of the School Council is to make decisions in relation to the operations of Foundation College which:

- (a) are in the best interests of Foundation College (when considered in isolation and apart from the Association's best interests);
- (b) are independent, without undue interference by the Board; and
- (c) are in accordance with all applicable school legislation and regulations.

4. Role of the Board

The operation of the Board is outlined in the Association's rules. The Board's role is to ensure that the Association can perform effectively, achieve its strategic direction and deliver on its operational obligations, including by ensuring that the School Council complies with all applicable legal requirements for the operation of Foundation College.

The Board:

- (a) determines the vision, mission and values of the Association;
- (b) is the legal employer of all Foundation College staff;
- (c) collaborates with the School Council on the development of future plans and strategic priorities for Foundation College;
- (d) receives and considers regular reports from the School Council; and
- (e) promotes continuous improvement and considers feedback from all stakeholders.

5. Delegation of powers to the School Council

- (a) The Board may in writing and subject to the conditions and limitations the Board considers appropriate, delegate to the School Council, any of its powers and functions other than:
 - (i) its power of delegation; or
 - (ii) a duty imposed on the Board by the Act or any other law.
- (b) Subject to Term 5(c), the Board may, in writing, revoke a delegation wholly or in part.
- (c) The Board may not revoke the delegation of the governance, financial and management responsibility of Foundation College to the School Council, unless the School Council fails to comply (and is unable or unwilling to rectify its non-compliance) with:
 - (i) the Guidelines to the Minimum Standards; or
 - (ii) Ministerial Order No. 1359; or
 - (iii) the ACNC Governance Standards.
- (d) The Board has delegated the day-to-day governance, financial and management responsibility for Foundation College to the School Council.
- (e) To ensure the School Council operates effectively, the School Council will have the authority to seek information from management, any employee of the Association as well as external parties in response to inquiries or in obtaining outside legal or other independent professional advice.

6. Role of the School Council:

The School Council must:

- (a) ensure that the overall direction of Foundation College is consistent with the Foundation College philosophy and principles;
- (b) develop and approve Foundation College policies and procedures that are consistent with the Guidelines to the Minimum Standards and ensure that these policies and procedures are followed. This includes, (but is not limited to) policies and procedures in relation to:
 - (i) Student Learning outcomes;
 - (ii) Teaching and Learning;
 - (iii) Student Welfare policy and procedures.
 - (iv) Attendance policy and procedure;
 - (v) Behavioural Management procedures;
 - (vi) Child Safe policy and procedures; and,
 - (vii) Student Supervision procedure.

- (c) develop and approve policies, procedures, measures and practices in accordance with Ministerial Order No. 1359 including;
 - (i) the implementation of minimum standards for a child safe environment; and
 - (ii) responding to allegations of child abuse committed against a child enrolled in the school –in accordance with the Reportable Conduct Scheme under the *Child Wellbeing and Safety Act 2005* (Vic) and mandatory reporting supervisions under the *Children Youth and Families Act 2005* (Vic).
- (d) develop a strategic plan for Foundation College (in collaboration with the Board), monitor Foundation College’s progress against the strategic plan and provide reports to the Board on progress;
- (e) prepare and approve an annual budget for Foundation College (in collaboration with the Board), appraise, review and oversee expenditure against that budget and provide monthly financial reports to the Board;
- (f) ensure that Foundation College infrastructure is developed and maintained;
- (g) ensure that Foundation College funds are used solely for the School Purpose;
- (h) ensure that Foundation College complies with all legal requirements for a school operating as part of a registered charity, including the ACNC Governance Standards, the ETR Act, the ETRR 2017 and the Guidelines to the Minimum Standards;
- (i) ensure that Foundation College is appropriately managed for the benefit of all stakeholders; and
- (j) ensure that all accountability requirements of State and Commonwealth Government recurrent school funding are met

7. Relationship with the Association

- (a) The School Council must enter into a memorandum of understanding with the Board of the Association setting out the terms and conditions on which any resources (including without limitation goods, service, human resources and facilities) will be shared.
- (b) The memorandum of understanding must ensure that all resources are shared on arms-length commercial terms or terms that are more favourable to Foundation College.
- (c) All arrangements and allocations of costs under the memorandum of understanding must be formally documented and approved by the School Council annually in advance.

8. Eligibility to be a member of the School Council

- (a) Any person can serve on the School Council provided they:
 - (i) support the School Purpose and the Association’s Purpose;
 - (ii) are fit and proper persons within the meaning of the ETRR 2017; and
 - (iii) are not ineligible to be:

(A) a director by the *Corporations Act 2001* (Cth) (**the Corporations Act**); or

(B) a responsible person under the ACNC legislation.

9. Composition of School Council

- (a) The School Council must comprise at least three members and up to seven, including:
 - (i) at least one and not more than two members of the Board; and
 - (ii) at least one individual who is not a member of the Board and has expertise in education and/or financial management of schools.
- (b) A majority of the School Council at all times must not be members of the Board.
- (c) The Principal of Foundation College cannot be a School Council member. The Principal may attend and speak, but not vote at School Council meetings.
- (d) Other individuals (including consultants, employees and parents) may attend and speak (but not vote) at School Council meetings by invitation of the School Council.

10. Appointment

- (a) The Board may from time to time by resolution appoint a person to be a School Council member.
- (b) The Board shall have power at any time and from time to time to:
 - (i) appoint a new School Council member to fill any casual vacancy; and
 - (ii) appoint additional School Council members.

11. Term of Office

- (a) The term of office of a School Council member appointed by resolution of the Board:
 - (i) is the period specified in the resolution, and if there is no period specified, then a term of two years;
 - (ii) commences on the date of appointment; and
 - (iii) expires at the end of the period specified in the resolution or if there is no period specified then at the conclusion of the second Annual General Meeting of the Association following the appointment.
- (b) The term of office of a School Council Member appointed by the Board to fill a casual vacancy pursuant to Term 10(b)(i):
 - (i) commences on the date of appointment; and
 - (ii) expires at the conclusion of the first Annual General Meeting of the Association following the appointment.

12. Office Bearers

- (a) The School Council must appoint the following office bearers from amongst the School Council members annually for a term of one year:
 - (i) Chair;
 - (ii) Secretary; and
 - (iii) Treasurer.
- (b) Both the Chair and the Treasurer must not be Association Board members concurrently. The School Council Treasurer must not be the Treasurer of the Association.
- (b) The description, number and duties of the office bearers may be determined by the School Council from time to time.
- (c) The School Council may remove or suspend a person from any office bearer position by resolution passed at a School Council meeting.

13. Principal

- (a) The School Council is responsible for appointing a Principal.
- (b) The School Council will manage the performance of the Principal.
- (c) The appointment may be for the period, at the remuneration and on the conditions that the School Council thinks fit.
- (d) The School Council may remove the Principal at any time, with or without cause, subject to any contract between the Association and the Principal.

14. Casual Vacancy

A person stops being a School Council member, and a casual vacancy is created, if they:

- (a) resign;
- (b) die;
- (c) are absent without the consent of the School Council and without leave of absence, from:
 - (i) three consecutive School Council meetings; or
 - (ii) at least four School Council meetings over 12 months.
- (d) become subject to a Court order to receive treatment or have their finances managed by another person due to the School Council member being of unsound mind or having a mental illness;
- (e) become ineligible to be a Director by the Corporations Act;
- (f) become ineligible to be a responsible person under the ACNC Legislation;
- (g) are no longer a fit and proper person within the meaning of the ETRR 2017; or

- (h) are removed by unanimous resolution of the Board for breach of Foundation College’s policies or procedures, its governance charter or these Terms of Reference.

15. Meetings of the School Council

- (a) Meetings shall be structured with the use of an agenda and supporting papers. Agenda and briefing papers shall be documented and circulated in sufficient time to allow School Council members to review the information before the meeting.
- (b) The School Council shall convene at least six times a year at such times and places as is deemed fit, and whenever a meeting is requested by the Board.
- (c) A minimum of 48 hours’ notice must be provided to each School Council member notifying them of the time and place of School Council meetings.
- (d) A quorum for a School Council meeting is at least two School Council members, of whom a majority must not be Board members.
- (e) The Association’s staff may attend School Council meetings at the invitation of the School Council for the sole purpose of providing administrative support to the School Council.

16. Decisions of the School Council

- (a) Questions arising for determination by the School Council must be decided by a majority of votes cast.
- (b) In the case of an equality of votes cast on a motion, the Chair will have a second or ‘casting’ vote.

17. Reporting Responsibility

- (a) The Chair of the School Council must provide a written report to the Board at each Board meeting.
- (b) The Secretary must keep minutes of all School Council meetings and circulate those minutes to the Board and School Council members within one month after each School Council meeting.

18. Finances

- (a) The School Council must ensure that Foundation College operates as a not-for-profit school within the meaning of the ETRR 2017.
- (b) All Foundation College funds (including Commonwealth and State government funding, student fees and other fundraising monies or bequests) must be used solely for the School Purpose.
- (c) The School Council is responsible to determine how all Foundation College funds will be used.
- (d) Separate financial accounts must be established and maintained for Foundation College funds, including a separate bank account.
- (e) Foundation College’s financial accounts must be audited at the end of each calendar year by a financial auditor and approved by the School Council for inclusion in Foundation College’s Annual Report and reporting to the VRQA.

- (f) Foundation College's financial accounts must be audited at the end of each financial year by a financial auditor and be presented separately in the Association's Annual Report.

19. Dispute resolution

All disputes are to be managed in accordance with Division 3 Part 3 – Grievance Procedure of the Association's Rules.

20. Review of the Terms of Reference

A report of the School Council's activities consistent with these terms of reference will be presented to the Board at the end of each calendar year.

21. Amendment

- (a) These Terms of Reference may only be amended by a motion supported by 75% of the School Council members presenting and voting.
- (b) A resolution to amend these Terms of Reference will have no effect if it would cause Foundation College to no longer meet the requirements of the ETR Act, the ETRR 2017 or the Guidelines to the Minimum Standards.