

Bibbulmun Track Foundation Incorporated

Rules 2009

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Western Australia

Bibbulmun Track Foundation Incorporated

Rules 2009

History

- 22 Dec 2009 Approved under the *Associations Incorporation Act 1987* Part IV.
- 26 Oct 2017 Amended by special resolution passed at the Bibbulmun Track Foundation Inc. annual general meeting.
- 28 Oct 2021 Amended by special resolution passed at the Bibbulmun Track Foundation Inc. annual general meeting. Amendments lodged and effective on 26 Nov 2021.
- 27 Oct 2022 Amended by special resolution passed at the Bibbulmun Track Foundation Inc. annual general meeting. Amendments lodged and effective on *date*.

Part 1 — Preliminary matters

1. Name of association and rules

- (1) These are the rules of an association incorporated under the associations law.
- (2) The association is called the Bibbulmun Track Foundation Incorporated.
- (3) These rules are called the *Bibbulmun Track Foundation Rules 2009*.

2. Interpretation

- (1) In these rules, unless the contrary intention appears—
 - “**associations law**” means the *Associations Incorporation Act 2015* (WA) or any Act of Parliament (WA or Cwlth) that replaces it and regulates incorporated associations;
 - “**Board**” means the Foundation’s board of management constituted under Part 6;
 - “**Board member**” means a member of the Board;
 - “**Department**” means the department of the Public Service established under the law of WA that is responsible for the Track from time to time;
 - “**elected Board member**” means a member of the Foundation who is elected by the members of the Foundation to the Board under Part 6;
 - “**Executive Director**” means the Executive Director of the Foundation appointed by the Board;
 - “**Foundation**” means the Bibbulmun Track Foundation Incorporated;
 - “**general meeting**” means an annual general meeting or a special general meeting of members held in accordance with Part 4;
 - “**individual**” means a natural person;

“member” means a member of the Foundation;

“organisation” means a firm or an incorporated body;

“record” means any record of information, no matter whether the record is on paper or some other medium or in a digital or some other form and no matter whether the information is drawings, images, sounds, writings or some other form;

“Track” means—

- (a) the walking track between Kalamunda and Albany called the Bibbulmun Track, no matter which route it takes from time to time; and
- (b) any walking track linked at any time to that track that the Department and the Board agree is part of the Bibbulmun Track;

“Treasurer” means the Treasurer of the Foundation appointed by the Board.

- (2) These rules must be interpreted in accordance with any relevant provision of the *Interpretation Act 1984* (WA) unless the contrary intention appears.
- (3) These rules must be read with the associations law.
- (4) If any of these rules conflict or are inconsistent with the associations law, the associations law prevails.

[Rule 2 amended by special resolution on 26 Oct 2017.]

3. Effect of these rules

To the extent that these rules are consistent with the associations law, they bind the Foundation and its members as if—

- (a) they contained an agreement on the part of each member to be bound by and observe all of them; and
- (b) that agreement were signed or executed by each member.

Part 2 — The Foundation

4. Object

- (1) The Foundation's object is to support the Track by doing the following—
 - (a) working with and helping the Department to improve, maintain, manage and promote the Track;
 - (b) encouraging people to volunteer to help the Foundation;
 - (c) co-ordinating and helping those volunteers;
 - (d) promoting and encouraging people to use the Track;
 - (e) providing, and helping people who provide, services and facilities for people who want to use and who use the Track.
- (2) To help the Foundation achieve its object, it may, for reward, provide education and training in matters to do with the building and maintenance of tracks and trails, used by walkers or others, to people who are not members of or volunteers with the Foundation or who are not associated with the Track.

[Rule 4 amended by special resolution on 28 Oct 2021.]

5. Property and income

- (1) The Foundation's property and income must be applied solely towards the promotion of the Foundation's object.
- (2) None of the Foundation's property or income is to be paid or otherwise distributed, directly or indirectly, to members, except—
 - (a) in good faith in the promotion of the Foundation's object; or
 - (b) in accordance with rule 5(2A).
- (2A) The Foundation may pay a member out of the Foundation's funds if the payment is made in good faith and—

- (a) is reasonable remuneration for services provided to the Foundation, or for goods supplied to the Foundation, in the ordinary course of business; or
 - (b) is the reimbursement of reasonable expenses properly incurred by the member on behalf of the Foundation; or
 - (c) is interest, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia, on money borrowed by the Foundation from the member; or
 - (d) is reasonable rent for premises leased by the Foundation from the member.
- (3) If the Foundation is wound up or its incorporation is cancelled, its property, after the payment of any debts, must be paid or distributed in accordance with the associations law to one or more persons who will use it to create, improve, maintain, manage or promote the Track or, if the Track no longer exists, public walking trails in Western Australia.

[Rule 5 amended by special resolution on 26 Oct 2017.]

6. Powers

The Foundation has all the powers conferred on incorporated associations by the associations law or any other law.

Part 3 — Membership

7. Who can be a member

Any individual, any family and any organisation may be a member of the Foundation.

[Rule 7 amended by special resolution on 26 Oct 2017.]

8. Classes of member and voting rights

(1) In this rule—

“**adult**” means an individual who has reached the age of 18 years;

“**child**” means an individual who has not reached the age of 18 years.

(2) These are the classes of members of the Foundation and the voting entitlements they have at general meetings—

Class of member	Voting entitlement
Individual	One vote
Individual life	One vote
Household	One vote per adult recorded by the Foundation as being in the household, to a maximum of 2 votes
Organisation	One vote per organisation

(3) The household class of membership is open to 1 or 2 adults with or without an unlimited number of children, all of whom have the same address.

[Rule 8 amended by special resolution on 28 Oct 2021.]

9. Individual members entitled to attend general meetings

Each individual who is a member, or who is in a family or an organisation that is a member, is entitled to be notified of, and to attend and exercise his or her entitlements as such at general meetings.

[Rule 9 amended by special resolution on 26 Oct 2017.]

10. Organisations may appoint representatives for general meetings

- (1) An organisation that is a member may appoint an individual (who need not be a member) to represent it at each, or at a particular, general meeting, as specified in the appointment.
- (2) The appointment must be in writing, specify its terms and be executed by the organisation under its common seal if it has one.
- (3) Subject to the appointment's terms and rule 10(5), a representative appointed by an organisation under this rule has and may exercise the organisation's entitlements at a general meeting.
- (4) A copy of the appointment must be given to the person presiding at any general meeting the representative attends as the organisation's representative.
- (5) If under rule 19 an organisation appoints a proxy for a general meeting, a representative appointed by the organisation under this rule cannot vote at the meeting unless he or she is the proxy.

11. Membership types, fees and periods

Other than in respect of individual life membership, the Board may—

- (a) set 2 or more types of each class of membership, each type being defined by reference to the age or other

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factors applying to the person or persons to whom the type of membership applies;

- (b) set the fees to be paid for each class or type of membership;
- (c) set the period for which each class or type of membership is valid;
- (d) under paragraphs (b) and (c), set different fees for different periods.

[Rule 11 replaced by special resolution on 28 Oct 2021.]

12. When membership commences and ceases

- (1) A person becomes a member when they have—
 - (a) applied to the Foundation to become a member; and
 - (b) given the Foundation such personal information as the Foundation reasonably requires in order to decide the application; and
 - (c) paid the subscription set for the class of membership applied for.
- (2) A person ceases to be a member if—
 - (a) they die; or
 - (b) being a body corporate, they are wound up; or
 - (c) they resign under subrule (3); or
 - (d) their membership is terminated under rule 14; or
 - (e) they do not renew their membership within 2 months after the day on which their membership expires.
- (3) A member may resign as a member by giving the Foundation written notice of their resignation and when it takes effect.
- (4) If a member's period of membership expires and they renew their membership within 2 months after the day on which their membership expired—

r. 12A. Register of members□

- (a) the member is taken not to have ceased to be a member;
and
 - (b) the renewal of their membership is backdated to the day after the day on which their membership expired.
- (5) Despite rule 12A(4), if a member's period of membership expires and they do not renew their membership before the date of a general meeting, they are not entitled to attend or vote at the meeting.

[Rule 12 replaced by special resolution on 26 Oct 2017.]

12A. Register of members

The Executive Director must keep a register of members and of the classes of members in accordance with the associations law.

[Rule 12A inserted by special resolution on 26 Oct 2017.]

13. Notices to members

- (1) To give a member notice of any matter, the Foundation must give the member a written notice.
- (2) A written notice to members may be separate from or included in a newsletter or other material sent to the member.
- (3) A written notice is taken to have been given to a member if it was sent to the postal address, email address, fax number or mobile telephone number of the member that is in the register of members.
- (4) Publishing a matter on the Foundation's website does not amount to giving members notice of the matter.

14. Suspending and terminating members

- (1) If the Board is satisfied a member has acted in a way that is prejudicial to the Foundation's object or interests, it may —

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- (a) suspend the member's membership for a period set by the Board, but not more than 12 months; or
 - (b) terminate the member's membership.
- (2) The Board must not act under rule 14(1) unless it has given the member a reasonable opportunity to be heard by the Board.
- (3) A member whose membership is terminated under this rule cannot be a member again unless —
 - (a) 3 years have passed since but not including the date of the termination; or
 - (b) the Board approves.
- (4) A member whose membership is suspended or terminated, or who is refused approval under rule 14(3)(b), by the Board, may appeal to a general meeting.
- (5) At the general meeting —
 - (a) the member has a right to be heard; and
 - (b) the member is entitled to vote, despite the suspension or termination of his or her membership; and
 - (c) the meeting may confirm, vary or cancel the Board's decision.
- (6) Voting by the Board, or at a general meeting, on a question arising under this rule must be by secret ballot.

Part 4 — General meetings

15. Annual general meeting

The Foundation's annual general meeting must be held in accordance with the associations law.

16. Calling a special general meeting

A special general meeting must be held if the Executive Director receives a written request to hold one from—

- (a) the chair of the Board; or
- (b) at least 5 Board members; or
- (c) at least 10% of the Foundation's members,

and the request states the matters to be on the agenda for the meeting.

17. Notice of general meetings

- (1) Members must be given notice of a general meeting at least 7 days before the date of the meeting.
- (2) The notice must state—
 - (a) whether the meeting is an annual general meeting or a special meeting; and
 - (b) the time and place of the meeting; and
 - (c) the agenda for the meeting.

18. Agenda

- (1) The agenda for an annual general meeting must include—
 - (a) any matter that is required by the associations law to be considered at annual general meetings; and
 - (b) the giving and consideration of the reports of the Board, the Executive Director and the Treasurer for the previous financial year; and

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- (c) any other matter that the Executive Director thinks should be included; and
 - (d) any matter that a member has asked the Executive Director to include.
- (2) The agenda for a special general meeting must include each matter that the request for the meeting, made under rule 16, asks to be on the agenda.
- (3) A general meeting must consider each matter on the meeting's agenda.
- (4) A general meeting may consider any matter that is not on the meeting's agenda but cannot make a decision on it.

19. Proxies

- (1) A member may appoint an individual, whether or not a member, to be the appointer's proxy at a general meeting.
- (2) To be a valid appointment of a proxy, the appointment must —
- (a) be in writing; and
 - (b) state the appointee's name; and
 - (c) specify the general meeting at which the appointee is to be the proxy; and
 - (d) be signed by the appointer or, if the appointer is an organisation, be executed by the organisation under its common seal if it has one; and
 - (e) be sent by the appointer directly to the Foundation; and
 - (f) be received by the Foundation at least 24 hours before the time stated for the general meeting in the notice of the meeting.
- (3) The appointment of a proxy ceases to have effect if the appointer subsequently —
- (a) cancels the appointment; or
 - (b) appoints another proxy.

- (4) A proxy, whether or not a member, must be treated as if he or she were a separate member for all purposes in the general meeting, including for the purposes of establishing a quorum.

20. Quorum

The quorum for a general meeting is 6 members.

21. Procedure

- (1) At a general meeting, the chair of the Board presides but—
 - (a) if the chair is not at the meeting or is unable for any reason to preside for any part of the meeting, the deputy chair of the Board presides; and
 - (b) if the deputy chair is not at the meeting or is unable for any reason to preside for any part of the meeting, a Board member decided by the meeting presides.
- (2) Voting at a general meeting must be by a show of hands or, if the meeting decides to hold a secret ballot or is required by rule 14(6) to hold a secret ballot, by secret ballot.
- (3) A resolution passed by a majority of members, and members' proxies, present at a general meeting is the resolution of the Foundation.
- (4) If there is a tie of votes on a motion at a general meeting, the motion lapses.
- (5) The person presiding at a general meeting must ensure an accurate record is made of the proceedings at the meeting.
- (6) Except as set out in the rest of this rule, the procedure at a general meeting must be decided by the presiding member.

Part 5 — Staff

22. Executive Director and Treasurer, appointment of

- (1) The Board may appoint a person as the Executive Director of the Foundation on any terms agreed between the Board and the appointee.
- (2) The Board may appoint a person as the Treasurer of the Foundation on any terms agreed between the Board and the appointee.
- (3) The Board may appoint one person as both Executive Director and Treasurer.
- (4) Appointments made under this rule may be made from among any staff employed under rule 25 or from among the members or otherwise.
- (5) Subject to any contract of employment between the Foundation and the person appointed, the Board may cancel the appointment of the Executive Director or the Treasurer.

23. Executive Director, duties of

- (1) The Executive Director is responsible for the day to day management of the affairs of the Foundation and is subject to the control of, and must report to, the Board.
- (2) The Executive Director's duties include those conferred on the Executive Director by these rules.

24. Treasurer, duties of

- (1) The Treasurer is responsible for the financial affairs of the Foundation and is subject to the control of, and must report to, the Board.
- (2) The Treasurer's duties include those conferred on the Treasurer by these rules.

25. Foundation may employ staff

The Foundation may employ people to conduct the affairs of the Foundation on any terms agreed between the Foundation and each employee.

Part 6 — Board of management

Division 1 — General matters

25A. The Board's functions

- (1) The function of the Foundation's board of management is to manage the Foundation's affairs.
- (2) Subject to the associations law, these rules and any resolution passed at a general meeting, the Board has power to do all things necessary or convenient to be done for the proper management the Foundation's affairs.
- (3) The Board must take all reasonable steps to ensure the Foundation complies with the law and these rules.

[Rule 25A inserted by special resolution on 26 Oct 2017.]

26. Board members

- (1) The Foundation's board of management consists of—
 - (a) at least 4 but not more than 7 members of the Foundation elected under Part 6 Division 2; and
 - (b) not more than 2 employees of the Department appointed from time to time by the Department's chief executive officer.
- (2) To appoint an employee of the Department as a Board member, the Department's chief executive officer must give the Foundation written notice of the appointment.
- (3) The Board may perform its functions even if no employee of the Department is appointed as a Board member.

27. Chair and deputy chair

- (1) The Board must elect one of the elected Board members as the chair of the Board.

- (2) The Board must elect one of the elected Board members as the deputy chair of the Board.
- (3) The chair of the Board holds office until—
 - (a) they resign as chair; or
 - (b) they cease to be a member of the Board under rule 29; or
 - (c) another chair is elected by the Board,whichever happens first.
- (4) Rule 27(3), with necessary changes, applies to the deputy chair of the Board.
- (5) An elected Board member may be re-elected as chair or deputy chair of the Board.

28. Terms of office of elected Board members

- (1) Each elected Board member is a Board member for 2 years, or any lesser term that was specified in the notice seeking nominations for the member's election.
- (2) Any member of the Foundation may be re-elected as a Board member.

Division 2 — Vacancies and elections

29. When vacancies occur

- (1) An elected Board member ceases to be a Board member if—
 - (a) they cease to be a member of the Foundation; or
 - (b) their term of office expires; or
 - (c) rule 29(3) applies to them,whichever happens first.
- (2) An employee of the Department appointed as a Board member ceases to be a Board member if—
 - (a) they cease to be an employee of the Department; or

- (b) the term (if any) of their appointment expires; or
- (c) the Department's chief executive officer cancels their appointment; or
- (d) rule 29(3) applies to them,

whichever happens first.

- (3) A Board member ceases to be a Board member if the member—
 - (a) resigns by giving the Executive Director written notice of the resignation and when it takes effect; or
 - (b) in the opinion of the rest of the Board, is incapable of performing the duties required of Board members; or
 - (c) is a person who, under the associations law, must not be or act as a member of the Board; or
 - (d) is imprisoned for an offence; or
 - (e) is absent, without sending the Board an apology before each meeting, from more than 3 Board meetings in a financial year of which the member has had notice; or
 - (f) dies.

[Rule 29 amended by special resolution on 26 Oct 2017.]

30. Filling vacancies

- (1) If under rule 29 an elected Board member ceases to be a member of the Board—
 - (a) the vacancy remains until a member is elected in accordance with this Division to fill the vacancy; but
 - (b) the Board may co-opt a member of the Foundation as a member of the Board for 6 months or until the vacancy is filled, whichever is the shorter period.
- (2) If under rule 29 an employee of the Department appointed as a Board member ceases to be a Board member, the vacancy continues until the Department's chief executive officer

appoints another employee of the Department to fill the vacancy.

31. Electing Board members

- (1) The Executive Director is responsible for conducting elections of members to be Board members and is not subject to the Board's direction in relation to an election.
- (2) As soon as practicable after a vacancy occurs on the Board from among the elected Board members, the Executive Director must, by a written notice given to the Foundation's members—
 - (a) notify them of the existence of the vacancy; and
 - (b) seek nominations of members to be candidates for election to the Board; and
 - (c) state the time, which must be at least 2 weeks after the date of the written notice, when nominations close.
- (3) The notice seeking nominations must state the term of office, not more than 2 years, of the member who is elected.
- (4) In deciding the term of office to be stated under rule 31(3), the Executive Director must try to ensure that the terms of office of elected Board members expire at regular intervals and not all simultaneously.
- (5) Only a member of the Foundation may nominate to be a candidate to be elected to the Board.
- (6) A member's nomination must be in writing, be signed by the member and be given to the Foundation before the close of nominations.
- (7) A member who has nominated may withdraw the nomination at any time before the election by giving the Foundation written notice.
- (8) If at the close of nominations there are no candidates, another election may be held to fill each unfilled vacancy.

- (9) If at the close of nominations, the number of candidates equals or is less than the number of notified vacancies on the Board—
 - (a) each candidate is elected to the Board unopposed; and
 - (b) another election may be held to fill each unfilled vacancy.
- (10) If the number of nominations is more than the number of notified vacancies on the Board, a poll of the Foundation's members must be held to elect members to fill them.

[Rule 31 amended by special resolution on 26 Oct 2017.]

32. Polls to elect Board members

- (1) This rule applies if under rule 31 a poll is needed to elect a Board member.
- (2) The Executive Director is responsible for any poll and is not subject to the Board's direction in relation to a poll.
- (3) Any poll must be conducted either—
 - (a) by a postal ballot; or
 - (b) at a general meeting,as the Executive Director decides.
- (4) A poll conducted at a general meeting must be by a secret ballot.
- (5) If a poll is held to elect 1 Board member, the candidate who receives the higher or highest number of votes in the poll is elected.
- (6) If a poll is held to elect 2 or more Board members, the candidates elected are—
 - (a) the candidate who receives the highest number of votes in the poll; and
 - (b) the candidate who receives the next highest number of votes in the poll; and

- (c) the candidate who receives the next highest number of votes in the poll,

and so on up to the number of Board members to be elected in the election.

- (7) If 2 or more candidates receive the same number of votes so that rule 32(5) or (6) cannot be applied, the Executive Director must draw lots to decide which candidate is elected.

[Rule 32 amended by special resolution on 26 Oct 2017.]

Division 3 — Board meetings and powers

33. Board meetings, notice and quorum

- (1) The Board must meet at least 6 times each financial year.
- (2) The Board must decide when and where it meets.
- (3) The Executive Director must give each Board member notice of a Board meeting at least 7 days before the date of the meeting.
- (4) Notice of a Board meeting may be given orally or in writing and by any means of communication available.

34. Quorum

- (1) The quorum for a Board meeting is—
 - (a) if there are 4 Board members, at least 2 of them;
 - (b) if there are 5 or 6 Board members, at least 3 of them;
 - (c) if there are 7 or 8 Board members, at least 4 of them;
 - (d) if there are 9 Board members, at least 5 of them.
- (2) Even if not physically present at a Board meeting, a Board member is taken to be present if the member can hear and be heard by all other Board members at the meeting using communication technology.

35. Board meetings, procedure

- (1) At a Board meeting the chair of the Board presides but—
 - (a) if the chair is unable to be the chair for any reason for any part of the meeting or is not at the meeting, the deputy chair presides; and
 - (b) if the deputy chair is unable to preside for any reason for any part of a meeting or is not at the meeting, a Board member decided by the meeting presides.
- (2) At a Board meeting voting must be by a show of hands or, if a Board member asks for a secret ballot, by secret ballot.
- (3) A resolution passed by a majority of the Board members present at a Board meeting is the resolution of the Board.
- (4) Each Board member present at a Board meeting has one vote.
- (5) If there is a tie of votes at a Board meeting, the person presiding has a second vote.
- (6) The person presiding at a Board meeting must ensure an accurate record is made of the proceedings at the meeting.
- (7) Except as set out in the rest of this rule, the Board must decide the procedure to be followed at its meetings.

36. Committees of the Board

- (1) The Board may establish a committee of the Board.
- (2) A committee of the Board may include people who are not Board members but must include at least one Board member.
- (3) The Board may change the composition of or abolish any committee it has established.
- (4) A committee of the Board must act in accordance with any directions given to it by the Board.

37. Delegation by the Board

- (1) The Board may delegate its power to decide any matter for the Foundation (other than this power to delegate) to—
 - (a) the Executive Director; or
 - (b) the Treasurer; or
 - (c) a committee of the Board.
- (2) A delegation may relate to a specific matter or be in general terms.
- (3) A delegation may be on any condition the Board decides.
- (4) A delegation by the Board must be written and be signed by 2 Board members.
- (5) The Board may decide a matter even if it has delegated the power to decide it.
- (6) A delegate's decision is taken to be the Board's decision.
- (7) The Board may vary or cancel a delegation at any time.

Part 7 — Financial matters

38. Financial year

The Foundation's financial year begins on 1 July in each year.

39. Accounting method

- (1) The cash method of accounting must be used for the Foundation's accounts unless the Board decides the accrual method of accounting is to be used instead.
- (2) If the Board decides the accrual method of accounting is to be used, rule 40 must be read with any changes necessary to be consistent with that method.

40. Control of finances

- (1) The Treasurer must ensure this rule is obeyed.
- (2) Every operating account of the Foundation must be at an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwlth) section 5).
- (3) The signatories to an account of the Foundation must be the Treasurer and at least 2 members approved by the Board.
- (4) A record must be made of all of the Foundation's receipts and payments.
- (5) All money received by the Foundation must be deposited in an operating account of the Foundation.
- (6) The Foundation's money that is not likely to be needed as a reasonable amount of working capital must—
 - (a) be kept or invested in an account of the Foundation at an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwlth) section 5); or
 - (b) be invested in accordance with rule 40A; or

- (c) be dealt with partly under paragraph (a) and partly under paragraph (b),

as decided by the Board.

- (7) All payments by or on behalf of the Foundation must have the Treasurer's prior approval.
- (8) The Treasurer must not approve any single payment that exceeds an amount set from time to time by the Board.
- (9) Any cheque, order for the payment of money, bill of exchange, promissory note or other negotiable instrument issued by the Foundation must be signed by at least 2 of the persons who are signatories to the accounts under rule 40(3).
- (10) At each Board meeting, the Treasurer must give the Board—
 - (a) a statement of the receipts and payments; and
 - (b) a statement of the property and liabilities,of the Foundation and a written report on the Foundation's financial position at the end of the period to which the statements relate.
- (11) Rule 40(10) does not prevent the Board from requiring the Treasurer to provide a Board meeting with either or both—
 - (a) a full statement of the receipts and payments; and
 - (b) a full statement of the property and liabilities,of the Foundation.

[Rule 40 amended by special resolution on 27 Oct 2022.]

40A. Investments

- (1) Any decision by the Foundation as to whether to invest any of its money, as to where and how the money is invested, and as to any such investment once made, may be made only by the Board.

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- (2) The Foundation may invest its money in only such of the following types of investment as the Board decides—
 - (a) real property;
 - (b) bonds issued by the Commonwealth of Australia or an Australian state or territory;
 - (c) income-producing securities listed at the time of their purchase on the all ordinaries index of the Australian Securities Exchange Ltd (ASX);
 - (d) unlisted income-producing securities issued by a responsible entity in respect of a fund, where the securities are recommended in writing by a financial adviser who is registered by the Australian Securities and Investments Commission.
- (3) Rule 40 and this rule do not limit the Foundation’s power under the *Associations Incorporation Act 2015* section 14(1)(a) in relation to real property.
- (4) Notwithstanding the *Associations Incorporation Act 2015* section 14(1)(c)(i), the *Trustees Act 1962* section 17(a) does not apply to the Foundation.

[Rule 40A inserted by special resolution on 27 Oct 2022.]

41. Volunteers’ expenses

The Treasurer can approve a payment by the Foundation to one of its volunteers only if satisfied —

- (a) the payment would reimburse an expense incurred by the volunteer in circumstances where it was not practicable for the volunteer to ask the Foundation to incur the expense directly; and
- (b) the Foundation would have incurred the expense directly if it had been asked to do so.

42. Audit

The Foundation's financial report and financial statements for each financial year must be audited in accordance with the associations law.

[Rule 42 replaced by special resolution on 26 Oct 2017.]

Part 8 — Administrative matters

43. Common seal

- (1) The Foundation's common seal must include the Foundation's name in legible letters and be approved by the Board.
- (2) The common seal may only be used with the Board's approval.
- (3) Any use of the common seal on a document must be in the presence of at least 2 Board members who must verify their presence in writing on the document.
- (4) Unless the Board appoints another person to do so, the Executive Director—
 - (a) has the custody of the common seal; and
 - (b) must keep it in safe custody; and
 - (c) must ensure a record is made of each use of it.

[Rule 43 amended by special resolution on 26 Oct 2017.]

44. Foundation records, custody of and access to

- (1) In this rule—

“Foundation record” includes any record that is required to be made by these rules and any record the Foundation is required to make by law;

“responsible person” for a Foundation record, means the Executive Director or a person appointed by the Board instead of the Executive Director.
- (1A) This rule is subject to the associations law in relation to—
 - (a) the Foundation's register of members; and
 - (b) the Foundation's record of its office holders.
- (2) The responsible person for a Foundation record must keep it in safe custody and control access to it.

- (2A) A person who is not a member is not entitled to inspect or obtain a copy of any Foundation record except with the prior consent of the Board.
- (3) No member is entitled to remove or to possession of any Foundation record.
- (4) Every member is entitled—
- (a) to inspect any Foundation record at no charge; and
 - (b) if he or she pays the reasonable costs of copying, to a copy of any Foundation record,
- for a purpose directly connected with the Foundation’s affairs or related to the administration of the associations law.
- (5) A person who wants to inspect a Foundation record must ask the Board and state what the person wants to inspect and why.
- (6) A person who wants a copy of a Foundation record must ask the Board and state what the person wants a copy of and why.
- (7) The Board may ask a person who makes a request under rule 44(5) or 44(6) to state the reasons for it in a statutory declaration.
- (8) If the Board is satisfied the person’s request is for a purpose directly connected with the Foundation’s affairs or related to the administration of the associations law, it must—
- (a) if the request is to inspect a record, comply with the request;
 - (b) if the request is for a copy of a record, comply with the request if the reasonable costs of copying, set by the Board, are paid or if the Board waives the costs.
- (9) A member who obtains information in a Foundation record must not use or disclose the information except for a purpose directly

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connected with the Foundation's affairs or related to the administration of the associations law.

[Rule 44 amended by special resolution on 26 Oct 2017.]

Part 9 — Miscellaneous matters

45. Patron

The Board may appoint a person to be the patron of the Foundation and may cancel any such appointment.

46. Public officer

- (1) The public officer of the Foundation is the Board member appointed as such by the Board.
- (2) The Board may at any time cancel the appointment of the public officer.
- (3) In the absence of an appointment made by the Board or if the appointee is no longer a Board member, the Executive Director is the public officer of the Board.

[Rule 46 amended by special resolution on 26 Oct 2017.]

47. Disputes, resolution of

- (1) In this rule—
“**dispute**” means a dispute that relates to these rules or to the management of the Foundation or to any act or omission by or on behalf of the Foundation and that arises between—
 - (a) 2 or more members; or
 - (b) one or more members and the Foundation.
- (2) If the Foundation is a party to a dispute, it is to be represented at any meeting held under this rule by the Executive Director, or by an elected Board member appointed by the Board.
- (3) Within 14 days after the date on which a dispute comes to the attention of the parties to it, the parties must meet, discuss and try to settle it.

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- (4) If the parties do not resolve the dispute in the 14 days, they must meet in the presence of a mediator at least once within 10 days after the 14 days end.
- (5) The mediator must be—
 - (a) a person the parties agree is to be the mediator; or
 - (b) if the parties cannot agree—
 - (i) if the dispute is between 2 or more members, a person appointed by the Board; or
 - (ii) in any other case, a person who is a mediator appointed to, or employed by, a not for profit organisation.
- (6) A person who is a member and not a party to the dispute may be the mediator.
- (7) At one or more meetings in the presence of a mediator, the parties, in good faith, must try to settle the dispute.
- (8) At any meeting of the parties in the presence of a mediator, the mediator cannot determine or decide the dispute but must—
 - (a) give the parties every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure natural justice is accorded to the parties.
- (9) The proceedings at any meeting of the parties in the presence of a mediator are confidential and without prejudice to the parties.
- (10) If the parties to a dispute do not settle it using the process in this rule, they may take action under the law to have the dispute resolved.

48. Amending these rules

To replace, substitute wholly or partly, add to or vary these rules, the Foundation must act in accordance with the associations law.

49. Model Rules apply if necessary

- (1) In this rule—
“**Model Rules**” means any model rules for incorporated associations prescribed under the associations law from time to time.
- (2) If these rules do not provide for a matter that the Model Rules do provide for, or if these rules do not provide for such a matter sufficiently, the Model Rules apply to the extent that these rules do not provide for the matter or do not do so sufficiently.
- (3) Subject to rule 2(4), if a Model Rule that applies by virtue of rule 49(2) conflicts or is inconsistent with these rules, these rules prevail.

[Rule 49 inserted by special resolution on 26 Oct 2017.]

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