MAKINSON & d'APICE

LAWYERS

Constitution

Indigenous Literacy Foundation

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1. NAME OF THE FOUNDATION

The name of the Foundation is Indigenous Literacy Foundation.

2. TYPE OF FOUNDATION

(a) The Foundation is a not-for-profit public company limited by guarantee.

(b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Foundation, undertakes to contribute to the property of the Foundation for:

(i) payment of debts and liabilities of the Foundation;

(ii) payment of the costs, charges and expenses of winding up; and

(iii) any adjustment of the rights of the contributories among Members.

(c) The amount that each Member or past Member is liable to contribute is limited to $10.00.

3. REPLACEABLE RULES

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4. DEFINITIONS AND INTERPRETATION

(a) In this Constitution, unless there is something in the subject or context which is inconsistent:

Act means the *Corporations Act* 2001.

AGM means annual general meeting.

Alternate Director shall mean a Director appointed pursuant to **clause 38**.

Board means the board of Directors.

Bookseller Director means a person elected or nominated to the Board pursuant to **clause 35(d)**.

Chair means the person holding that office under this Constitution and includes any assistant or acting Chair.

Committee means a committee established in accordance with **clause 50**.

Community Director means a person elected or nominated to the Board pursuant to **clause 35(f)**.

Constitution means this constitution as amended or supplemented from time to time.

DGR means a deductible gift recipient as defined by the law from time to time.

Director means any person holding the position of a director of the Foundation (including Alternate Directors) and **Directors** means the directors for the time being of the Foundation or as the context permits such number of them as have authority to act for the Foundation.

Financial Year means the period commencing 1 July (or some later date) and ending 30 June.

Foundation means the Indigenous Literacy Foundation.

Indigenous Director means a person elected or nominated to the Board pursuant to **clause 35(e)**.

Individual Member means a Member as referred to in **clause 9(c)(i)**.

Member means a member of the Foundation pursuant to **clause 7** and **clause 8** (and **Membership** has the corresponding meaning) and includes both Individual Members and Organisational Members.

Member Present means in connection with a meeting of Members, a Member being present in person or by proxy or attorney or by Representative.

Member's Guarantee Amount means the amount of $10.00 referred to in **clause 2(c)**.

Object means the object of the Foundation set out in **clause 5**.

Office means the registered office for the time being of the Foundation.

Officer has the same meaning as given to that term in section 9 of the Act.

Organisational Member means a Member as referred to in **clause 9(c)(ii)**.

Publisher Director means a person elected or nominated to the Board pursuant to **clause 35(c)**.

Register means the register of Members to be kept pursuant to the Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee as set out in the Act.

Representative has the meaning given to it in section 250D of the Act.

Secretary means the person appointed as the secretary of the Foundation and includes any assistant or acting secretary.

(b) In this Constitution, unless there is something in the subject or context which is inconsistent:

(i) the singular includes the plural and vice versa;

(ii) each gender includes the other two genders;

(iii) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;

(iv) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;

(v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;

(vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;

(vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.

(c) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.

(d) Headings do not form part of or affect the construction or interpretation of this Constitution.

5. OBJECTS AND PURPOSES

(a) The Foundation is a public benevolent institution established for the direct relief of poverty, suffering, distress, misfortune and helplessness suffered by Indigenous communities in Australia as a consequence of their illiteracy and lack of access to education. This is achieved by promoting and improving Indigenous literacy in Australia. The Objects of the Foundation include, but are not limited to:

(i) helping address critically low standards of literacy in Indigenous Australia with particular emphasis on remote communities;

(ii) engaging the Australian book industry and other Australian literacy stakeholders to increase awareness of the literacy needs of Indigenous Australia, specifically those in remote communities;

(iii) raising funds for the supply of culturally appropriate books, particularly children's books, to Australian Indigenous communities in remote and, where appropriate, urban areas;

(iv) emphasising the importance of early literacy development through provision of Book Buzz, an early literacy program for home, school and the broader Indigenous community;

(v) fostering community engagement, involvement and ownership of the programs offered by the Foundation; and

(vi) anything ancillary to the Objects set out in **clauses 5(a)(i)** to **5(a)(v)**.

(b) The Foundation can only exercise the powers in section 124(1) of the Act to:

(i) carry out the Objects; and

(ii) do all things incidental or convenient in relation to the exercise of power under **clause 5(b)(i)**.

(c) The income and property of the Foundation will only be applied towards the promotion of the Objects.

(d) No income or property of the Foundation will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Foundation. However nothing in this Constitution will prevent payment in good faith to a Member:

(i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Foundation;

(ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Foundation; or

(iii) of reasonable and proper rent for premises leased by any Member to the Foundation.

(e) No payment shall be made to any Director other than the payment:

(i) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and

(ii) for any service rendered to the Foundation by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

MEMBERSHIP

6. MEMBER'S GUARANTEE AMOUNT

All Members agree to assume the liability to pay the Member's Guarantee Amount.

7. INITIAL MEMBER

The initial Member shall be David Robert Gaunt.

8. APPLICATIONS FOR MEMBERSHIP

(a) An application for Membership of the Foundation:

(i) must be made in writing in the form set out in Appendix 1 to this Constitution; and

(ii) must be lodged with the Secretary.

(b) As soon as practicable after receiving an application for Membership, the Secretary must refer the application to the Board which is to determine whether to approve or reject the application.

(c) As soon as practicable after the Board makes that determination the Secretary must:

(i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and

(ii) if the application is approved, enter the applicant's name in the Register and, on the name being so entered, the applicant becomes a Member of the Foundation.

(d) The Board shall not be required to provide its reasons for refusing an application for membership under this **clause 8**.

9. CLASSES OF MEMBERSHIP

(a) There are two (2) classes of Membership in the Foundation, being the following:

(i) Individual Members; and

(ii) Organisational Members.

(b) In addition to those benefits attached to the different classes of Membership as set out in this **clause 9**, the Board will determine from time to time what additional benefits shall attach to each class of Membership.

(c) The eligibility criteria of the respective classes of Membership are as follows:

(i) Individual Member

An individual person will be entitled to be an Individual Member if:

(A) the person agrees with and will work to further the Objects; and

(B) the person's application for Membership is approved by the Board.

(ii) Organisational Member

A body corporate will be entitled to be an Organisational Member if:

(A) the body corporate is interested in furthering the Objects; and

(B) the body corporate's application for Membership is approved by the Board.

10. MEMBERSHIP ENTITLEMENTS

(a) Individual Member

Each Individual Member has one vote.

(b) Organisational Member

Each Organisational Member has one vote and, in accordance with **clause 11**, may appoint a Representative.

11. REPRESENTATIVE

(a) This **clause 11** only applies to Members and applicants for Membership which are Organisational Members.

(b) Where a Member or an applicant for Membership is not an individual person, it must appoint as its Representative a natural person.

(c) The name and address of the Representative will be entered in the Register as the representative of the Organisational Member.

(d) All correspondence and notices from the Foundation will be served on that Representative and any notice served on a Representative will be deemed to be service on the Organisational Member which is represented by that particular Representative.

(e) If the appointment of a Representative by the Organisational Member is made by reference to a position held, the appointment must identify the position.

(f) Despite **clause 12**, an Organisational Member may remove and replace a Representative where the Organisational Member gives written notice to the Board in a form approved by the Board.

(g) A signature by a Representative of an Organisational Member on behalf of that Organisational Member is taken to be the signature of that Organisational Member for the purposes of this Constitution.

(h) Any power or right of an Organisational Member as granted by this Constitution can be exercised by the Representative of that particular Organisational Member.

(i) Organisational Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 30.**

(j) The actions of a Representative bind the Organisational Member which is represented by that particular Representative.

(k) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Foundation as if a Member himself or herself.

12. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

A right, privilege or obligation which a person has by reason of being a Member of the Foundation:

(a) is not capable of being transferred or transmitted to another person; and

(b) terminates on cessation of the person's Membership.

13. CESSATION OF MEMBERSHIP

(a) A Member's Membership will cease:

(i) upon that Member dying;

(ii) on the date that the Secretary receives written notice of resignation from that Member;

(iii) if the Member is expelled pursuant to **clause 14**;

(iv) if, being an Organisational Member:

(A) that Member is dissolved or otherwise ceases to exist;

(B) that Member has:

(1) a receiver;

(2) a receiver and manager;

(3) a liquidator;

(4) an administrator;

(5) an administrator of a deed of company arrangement; or

(6) a trustee of other person administering a compromise or arrangement between the Member and someone else;

appointed to it; or

(v) if the Foundation in general meeting resolves by a resolution with a 75% majority of Members Present, to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Foundation renders it undesirable that that Member continue to be a Member of the Foundation. The Member must be given at least twenty one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.

(b) A Member may at any time, pursuant to **clause 13(a)(ii)**, resign as a Member but shall continue to be liable for:

(i) any monies due by the Member to the Foundation;

(ii) any sum for which the Member is liable as a Member of the Foundation under **clause 2(b)**; and

(iii) if applicable, the Member's Guarantee Amount.

14. DISCIPLINING OF MEMBERS

(a) The Board may resolve by a 75% majority to expel any Member or to suspend any Member from Membership of the Foundation if the Member:

(i) has persistently refused or neglected to comply with a provision or provisions of this Constitution; or

(ii) has persistently or wilfully acted in a manner prejudicial to the interests of the Foundation.

(b) A resolution of the Board pursuant to **clause 14(a)** will be of no effect unless the Board confirms the resolution in accordance with this clause at a Board meeting held not earlier than fourteen (14) days and not later than twenty eight (28) days after the service on the Member of notice under **clause 14(c)**.

(c) If the Board resolves under **clause 14(a)** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:

(i) setting out the resolution of the Board and the grounds upon which it is based;

(ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty eight (28) days after service of the notice;

(iii) stating the date, place and time of that Board meeting; and

(iv) informing the Member that the Member may do either or both of the following:

(A) attend and speak at that Board meeting;

(B) submit to the Board at or prior to the date of that Board meeting written representations relating to the resolution.

(d) At a meeting of the Board held in accordance with **clause 14(c)**, the Board must:

(i) give the Member an opportunity to make oral representations;

(ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the Board meeting; and

(iii) resolve by a 75% majority whether to confirm the decision to expel or suspend the Member.

(e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 14(g)**.

(f) A resolution confirmed by the Board under **clause 14(d)** does not take effect:

(i) until the expiration of the period within which the Member is entitled to appeal against the resolution; or

(ii) if the Member exercises the right of appeal, until the Foundation confirms the resolution pursuant to **clause 14(j)**.

(g) A Member may appeal to the Foundation in general meeting against a resolution of the Board, which is confirmed under **clause 14(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 14(e)**.

(h) Upon receipt of a notice of appeal the Secretary must convene a general meeting of the Foundation to be held within thirty five (35) days after the date of receipt of the notice. If possible, the Secretary should include in the notice to the Members of the meeting any written representations of the Board and the Member.

(i) At a general meeting of the Foundation convened under **clause 14(h)**:

(i) no business other than the question of the appeal may be transacted;

(ii) the Board and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and

(iii) the Members Present must vote by ballot on the question of whether the resolution will be confirmed.

(j) Confirmation of the Board's resolution is by the Members passing a special resolution to that effect.

15. RESOLUTION OF DISPUTES BETWEEN MEMBERS

(a) Disputes between Members (in their capacity as Members), including any disputes in relation to the Foundation's fundraising activities, shall be referred to the Board which must take steps to resolve the dispute.

(b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.

(c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the New South Wales Law Society.

(d) The costs of the mediator appointed pursuant to **clause 15(b)** or **clause 15(c)** (as the case may be) shall be shared equally between the Members who are the parties to the dispute.

(e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 15(b)** or **clause 15(c)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

16. REGISTER OF MEMBERS

(a) The Secretary must establish and maintain a Register specifying the name and address of each person who is a Member together with the date on which the person became a Member.

(b) The Register will be kept at the principal place of administration of the Foundation and will be open for inspection, free of charge, by any Member at any reasonable hour.

GENERAL MEETINGS

17. CONVENING OF GENERAL MEETINGS

(a) An AGM shall be held once in every calendar year within five (5) months after the end of the Financial Year.

(b) Any four (4) Directors may, whenever those Directors think fit, convene a general meeting of the Foundation.

(c) Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.

(d) A general meeting of the Foundation may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

18. NOTICE OF GENERAL MEETING

(a) Subject to consent to shorter notice being given in accordance with the Act, at least twenty-one (21) days notice of any general meeting must be given specifying:

(i) the place, day and hour of the meeting;

(ii) the general nature of any business to be transacted at the meeting;

(iii) if a special resolution is to be proposed, the details of and intention to propose it;

(iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and

(v) any other information required by the Act.

(b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at, or any resolution passed at, the meeting.

19. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

(a) Subject to the provisions of the Act and this Constitution, the Board may cancel a general meeting of the Foundation:

(i) convened by the Board; or

(ii) which has been convened by a Member or Members pursuant to the Act or pursuant to **clause 17(c)** upon receipt by the Foundation of a written notice withdrawing the requisition signed by that Member or those Members.

(b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.

(c) Where any general meeting is cancelled or postponed or the venue for the same is changed:

(i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue

or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and

(ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

20. QUORUM

(a) No business may be transacted at any general meeting unless a quorum of Members is present in person or by proxy at all times during the meeting.

(b) Twenty (20) Members Present in person or by proxy or by Representative constitute a quorum for all general meetings.

(c) If within fifteen (15) minutes after the time appointed for holding a general meeting a quorum is not present:

(i) the meeting, if convened upon the requisition of Members, shall be dissolved;

(ii) in any other case:

(A) it will stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Board may by notice to the Members appoint; and

(B) if at such adjourned meeting a quorum is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

21. CHAIR

(a) The Chair of the Board elected pursuant to **clause 47** shall be the Chair.

(b) The Chair shall be entitled to preside as chair at every general meeting.

(c) Where a general meeting is held and:

(i) there is no Chair; or

(ii) the Chair is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chair of the meeting,

then the Members present may elect one of their number to be Chair of the meeting.

(d) The Chair of a general meeting shall:

(i) ensure that all items on the agenda are dealt with, and in the sequence set out, unless the Members consent to the order being changed;

(ii) conduct the meetings in a manner designed to facilitate decision making and the transaction of business; and

(iii) superintend and control the proceedings in accordance with the requirements of any relevant law, this Constitution and the conventions of debate.

22. ADJOURNMENTS

(a) The Chair of a general meeting at which a quorum is present:

(i) may adjourn a meeting with the consent of the meeting; and

(ii) must adjourn the meeting if the meeting so directs;

to a time and place as determined.

(b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

(c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

23. DETERMINATION OF QUESTIONS

(a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:

(i) the Chair of the meeting;

(ii) at least two (2) Members Present and entitled to vote on the resolution.

(b) Before a vote on a resolution is taken, the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

(c) A declaration by the Chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Foundation which has been signed by the Chair of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(d) In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to his or her deliberative vote (if any).

24. POLLS

(a) A poll may be demanded:

(i) before a vote on a resolution is taken;

(ii) before the voting results on a show of hands are declared; or

(iii) immediately after the voting results on a show of hands are declared.

(b) If a poll is demanded it must be taken in such manner and at such time and place as the Chair of the meeting directs, subject to **clause 24(e)**.

(c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.

(d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

(e) A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.

(f) The demand for a poll may be withdrawn.

25. VOTING RIGHTS

A Member entitled to vote, both on a show of hands and a poll, and who is present in person or by proxy in the case of an Individual Member, or by Representative or proxy, in the case of an Organisational Member, shall have one (1) vote.

26. VOTING DISQUALIFICATION

No person other than:

(a) a Member;

(b) a proxy of a Member or of a Representative; and

(c) a Representative of an Organisational Member;

shall be entitled to a vote at a general meeting.

27. OBJECTION TO QUALIFICATION TO VOTE

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chair whose decision shall be final and conclusive and a vote allowed by the Chair shall be valid for all purposes.

28. PERSONS OF UNSOUND MIND AND MINORS

(a) An Individual Member of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health or who is a minor may vote whether on a show of hands or on a poll by that Individual Member's committee or by such other person as properly has the management or guardianship of that Individual Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.

(b) Any person having the right of management or guardianship of the person or estate in respect of an Individual Member as referred to in **clause 28(a)** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

29. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

(a) The Chair of a general meeting may invite any person who is not a Member to attend and address a meeting.

(b) Any auditor of the Foundation shall be entitled to attend and address a general meeting.

PROXIES

30. RIGHT TO APPOINT PROXIES

(a) A Member who is entitled to attend and vote at a general meeting of the Foundation may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.

(b) If a Member appoints a proxy the proxy is entitled to vote on a show of hands and on a poll.

31. APPOINTING A PROXY

(a) The instrument appointing a proxy must be in writing signed by the Member or the Member's attorney duly authorised in writing, and must be in the form set out in Annexure B.

(b) The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:

(i) the name and address of the Member;

(ii) the name of the Foundation;

(iii) the proxy's name or the name of the office of the proxy; and

(iv) the meetings at which the instrument of proxy may be used.

(c) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.

(d) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 31(b)**.

(e) An instrument of proxy may be revoked at any time by notice in writing to the Foundation.

32. LODGMENT OF PROXIES

(a) An instrument appointing:

(i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or

(ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

(b) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.

(c) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Foundation.

33. VALIDITY OF PROXIES

(a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

(i) the death or unsoundness of mind of the Member;

(ii) the bankruptcy or liquidation of the Member;

(iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Foundation has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least forty eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

(b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

34. RIGHTS OF PROXIES AND ATTORNEYS

(a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.

(b) Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.

(c) A proxy will not be revoked by the Member attending and taking part in any general meeting but if the Member votes on a resolution either on a show of hands or on a poll the person acting as proxy for the Member shall not be entitled to vote in that capacity in respect of the resolution.

(d) The Chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chair that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity he may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

35. NUMBER AND APPOINTMENT OF DIRECTORS

(a) The Board of Directors shall consist of not less than six (6) and not more than ten (10) Directors and shall be constituted by:

(i) a minimum of two (2) and a maximum of three (3) Publisher Directors;

(ii) a minimum of two (2) and a maximum of three (3) Bookseller Directors;

(iii) a maximum of two (2) Indigenous Directors; and

(iv) a maximum of two (2) Community Directors.

(b) (i) The initial Directors shall be:

(A) Suzanne Ruth Wilson;

(B) David Robert Gaunt; and

(C) Kristin Elizabeth Gill.

(ii) Notwithstanding anything else contained herein, the Board shall ensure that three (3) additional Directors are appointed within six (6) months after the registration of the Foundation.

(c) Publisher Directors

(i) Persons who are or have been extensively involved in the book publishing industry in Australia will be eligible to be nominated by the Board as Publisher Directors.

(ii) If practicable in the opinion of the Board, the Board will invite the Australian Publishers Association Limited ABN 81 003 985 313 to nominate one candidate, who satisfies the criteria set out in **clause 35(c)(i)**, as a Publisher Director for the Board to consider.

(d) Bookseller Directors

(i) Persons who are or have been extensively involved in the book selling industry in Australia will be eligible to be nominated by the Board as Bookseller Directors.

(ii) If practicable in the opinion of the Board, the Board will invite the Australian Booksellers Association ABN 56 365 379 358 to nominate one candidate, who satisfies the criteria set out in **clause 35(d)(i)**, as a Bookseller Director for the Board to consider.

(e) Indigenous Directors

Persons who are Indigenous persons and have an interest in promoting the Objects will be eligible to be nominated by the Board as Indigenous Directors.

(f) Community Directors

Persons who are involved in the community generally and who have an interest in promoting the Objects will be eligible to be nominated by the Board as Community Directors.

(g) Notwithstanding anything else herein contained, the chief executive officer of the Foundation or any other employee of the Foundation is not eligible to be a Director.

(h) A Director must be an Individual Member.

36. ELECTION OF DIRECTORS

(a) All Directors shall be appointed by the Board.

(b) Nomination of candidates for election as a Director:

(i) must be made in writing, signed by one other Director and be accompanied by written consent of the candidate (which may be endorsed on the form of the nomination); and

(ii) must be delivered to the Secretary of the Foundation at least seven (7) days before the date fixed for the holding of the Board meeting at which the election is fixed to take place.

(c) Each candidate is entitled to submit a brief resume and statement to accompany the nomination.

(d) Voting for the election of candidates as Directors is to be held at a Board meeting. A resolution voted in favour of by a majority of Directors is required for the successful election of a candidate as a Director.

37. TERM OF OFFICE

(a) Directors shall serve their terms as set out in this **clause 37**.

(b) Subject to **clause 37(c)**:

(i) Directors will hold office for an initial term of either three (3) years or two (2) years, as determined by the Board at the time of the election of that Director;

(ii) at the end of the Director's initial term, that Director may be re-appointed to office for a further term of two (2) years;

(iii) terms will commence at the expiry of the Board meeting at which the Director was elected or at which their appointment took effect;

(iv) terms will expire at the expiry of the Board meeting held approximately two or three years (whichever is applicable pursuant to **clause 37(b)(i)** or **clause 37(b)(ii)**) after the Board meeting at which the Director was elected or at which their appointment took effect; and

(v) upon the expiry of the further two (2) year term, a Director is not eligible to be re-elected for any further terms until the Board meeting that is held approximately twelve (12) months after the Board meeting at which the Director retired.

(c) The Board which commences holding office on the date the Foundation is registered shall hold office until the following dates:

(i) a proportion of the Directors, to be determined pursuant to **clause 37(d)**, shall retire (and be eligible for re-election or reappointment for a further term of two (2) years) at the Board meeting held approximately two (2) years after the registration of the Foundation; and

(ii) the proportion of the Directors who did not retire pursuant to **clause 37(c)(i)** shall retire (and be eligible for re-election or reappointment for a further term of two (2) years) at the Board meeting held approximately three (3) years after the registration of the Foundation.

(d) The decision as to which Directors shall retire pursuant to **clause 37(c)(i)** and which shall retire pursuant to **clause 37(c)(ii)** shall be determined by agreement at the first Board meeting following registration of the Foundation, but if agreement is not reached, then it shall be determined by lot at that meeting.

38. ALTERNATE DIRECTORS

(a) Any Director, with the prior approval of the Board, may appoint an Alternate Director to exercise some or all of the Director's powers for a specified period.

(b) The Alternate Director is entitled to receive notices of all Board meetings and may also attend and vote at those meetings if the Director who appointed the Alternate Director is not present at any such meeting.

(c) The Alternate Director may exercise any powers that the Director making the appointment may exercise, and if the Alternate Director does so exercise a power, it will be taken to be an exercise of power by the Director who appointed the Alternate Director.

(d) The Alternate Director may be terminated from the office of Director at any time, even if the period of initial appointment has not yet expired by either:

(i) the Director who initially appointed that Alternate Director; or

(ii) the Board having passed a resolution terminating the appointment.

(e) If the Director who appointed the Alternate Director vacates his or her office for any reason, the office of the Alternate Director is automatically terminated.

(f) Any appointment or termination of an Alternate Director must:

(i) be effected by a notice signed by the Director making the appointment or termination (or by the Secretary on behalf of the Board where the Board has terminated the appointment); and

(ii) be served on the Foundation; and

(iii) set out the terms (if any) of the appointment or termination.

39. VACANCY ON BOARD

The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed (if any) in accordance with **clause 35(a)**, the Board may act:

(a) for the purpose of increasing the number of Directors to the minimum in accordance with **clause 35(a)**; or

(b) in the event that the minimum number of Directors required to constitute the Board are unable to be appointed, for the purpose of appointing casual Directors to fill any vacant position; or

(c) for the purpose of convening a general meeting; or

(d) in emergencies;

but for no other purpose.

40. VACATION OF OFFICE

(a) Any Director may retire from office on giving written notice to the Foundation at the Office of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Foundation).

(b) The office of a Director shall become vacant if the Director:

(i) dies;

(ii) becomes bankrupt or makes any arrangement or composition with creditors generally;

(iii) becomes prohibited from being a director of a company by reason of any order made under the Act;

(iv) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;

(v) resigns by notice in writing to the Foundation;

(vi) is absent without permission of the Board from more than three (3) consecutive meetings of the Board; or

(vii) no longer satisfies the eligibility criteria under **clause 35**, pursuant to which the Director was appointed.

POWERS AND DUTIES OF DIRECTORS

41. POWERS OF DIRECTORS

The control, management and conduct of the Foundation shall be vested in the Board who shall exercise all such powers of the Foundation as are not by the Act or by this Constitution required to be exercised in any other manner.

42. NEGOTIABLE INSTRUMENTS

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Foundation must be signed, drawn, accepted, endorsed or otherwise executed as the case may be in accordance with the policy as determined by the Board from time to time.

43. CONFERMENT OF POWERS

(a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.

(b) Powers conferred under this **clause 43** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

44. CONTRACTS

(a) The Foundation may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions that apply to such contracts or arrangements.

(b) A Director must disclose an interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.

(c) A Director who has an interest in a contract or arrangement made by the Foundation and has disclosed this interest to the Board subject to compliance with section 195 and related provisions of the Act still may:

(i) vote on the matter;

(ii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;

(iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

(iv) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

(d) The Foundation shall not make any payment for services rendered by a Director in a professional or technical capacity, except where the provision of such services and the amount payable have prior approval of the Board and where the amount does not exceed an amount that is commercially reasonable for those services.

(e) A Director's failure to make disclosure under this **clause 44** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

(f) A general notice given to the Board by a Director that the Director is an Officer, a Member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Foundation and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

45. MEETINGS OF DIRECTORS

(a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit provided that they shall meet together not less than four (4) times each calendar year.

(b) A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of Board by giving at least twenty four (24) hours notice of the meeting to all Directors except a Director who the person convening the meeting reasonably believes to be outside Australia.

(c) Notice of a meeting of Board need not be in writing.

(d) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.

(e) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

46. QUORUM

(a)

(i) A majority of Directors entitled to attend a meeting of the Board; and

(ii) at least one Publisher Director and one Bookseller Director (who may form part of the majority referred to in **clause 46(a)(i)**);

who are personally present (or in conference in accordance with **clause 45**) form a quorum and a quorum must be present at all times during the meeting. A Director who is disqualified from voting on a matter pursuant to **clause 44** shall be counted in the quorum despite that disqualification.

(b) For the purposes of determining a majority of Directors as referred to in **clause 46(a)**:

(i) if the number of Directors on the Board at that time is an odd number, a majority shall be equal to one half of the number of Directors rounded down to the nearest integer and then increased by one; or

(ii) if the number of Directors on the Board at that time is an even number, a majority shall be equal to one half of the number of Directors increased by one.

47. CHAIR

(a) The Board shall elect the Chair.

(b) The Chair shall hold office for two (2) or three (3) years from the date of his appointment as Chair (being equivalent to the term of his directorship), unless the Chair ceases holding office as a Director prior to the expiry of the two (2) or three (3) year term, whichever is applicable, in which event the Chair will cease to hold office as Chair at the time he ceases to hold office as Director.

(c) The Board may remove a Chair from their office as Chair during a term and elect another Director to that vacant office. Any replacement Chair shall only hold office as Chair until:

(i) the expiry of the term of the Chair being replaced; or

(ii) removed by the Board;

whichever occurs first.

(d) The Chair shall, if present, preside as Chair of every meeting of the Board.

(e) If a meeting of the Board is held and the Chair is not present within ten (10) minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be Chair of the meeting.

(f) The Chair may be re-elected as Chair for so long as he or she is a Director elected pursuant to **clause 36**.

48. VOTING

(a) Except as otherwise provided in this Constitution, a resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.

(b) Each Director shall have one vote.

(c) In case of an equality of votes at a meeting of the Board, the Chair has a casting vote in addition to a deliberative vote.

49. RESOLUTIONS BY DIRECTORS

(a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.

(b) A facsimile transmission which is received by the Foundation and which purports to have been signed by a Director shall for the purposes of **clause 49(a)** be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Foundation in legible form.

(c) An email transmission which is received by the Foundation and which purports to have been sent by a Director shall for the purposes of **clause 49(a)** be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Foundation.

50. COMMITTEE OF DIRECTORS

(a) The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.

(b) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.

(c) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.

(d) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

51. VALIDATION OF ACTS OF DIRECTORS

All acts done:

(a) at any meeting of the Board; or

(b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

MINUTES

52. MINUTES

(a) The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:

(i) the names of the Directors present at each meeting of the Directors and of Directors present at each meeting of any Committee of the Board;

(ii) all orders, resolutions and proceedings of general meetings and of meetings of Directors and of Committees of the Board;

(iii) such matters as are required by the Act to be recorded in the record books of the Foundation including, without limitation, all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.

(b) Such minutes shall be signed by the Chair of the meeting, or the Chair of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded, and of the regularity of such matters and things, and that the same took place at a meeting duly convened and held.

SECRETARY

53. APPOINTMENT AND TENURE

(a) There must be at least one (1) Secretary appointed by the Board for a term and on conditions determined by the Board.

(b) The Board may remove any Secretary so appointed.

EXECUTION OF DOCUMENTS

54. EXECUTION OF DOCUMENTS

(a) Without limiting the manner in which the Foundation may execute any contract, including as permitted under section 126 of the Act, the Foundation may execute any agreement, deed or other document by:

(i) two (2) Directors signing the same; or

(ii) one (1) Director and one Secretary signing the same.

(b) Nothing in this Constitution requires the Foundation to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Foundation.

ACCOUNTS AND INSPECTION OF RECORDS

55. ACCOUNTS AND INSPECTION

(a) The Board shall cause proper financial records to be kept and must distribute copies of the financial reports of the Foundation and a Directors' report in accordance with the requirements of the Act.

(b) The Board must also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Foundation or any of them will be open to the inspection of Members.

NOTICES

56. SERVICE OF NOTICES

(a) A notice may be given by the Foundation to any Member by:

(i) serving it on the Member personally;

(ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Foundation for the giving of notices;

(iii) facsimile to the facsimile number supplied by the Member to the Foundation for the giving of notices; or

(iv) sending it to the electronic address supplied by the Member to the Foundation for the giving of notices.

(b) Any Member who has not left at or sent to the Office his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.

(c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.

(d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.

(e) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Foundation to that effect shall be conclusive evidence of service.

57. NOTICES OF GENERAL MEETING

Subject to **clause 56(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:

(a) every Member; and

(b) the auditor for the time being of the Foundation.

WINDING UP

58. WINDING UP

58.1 Winding Up

(a) If any surplus remains following the winding up of the Foundation, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which has:

(i) objects which are similar to the Objects;

(ii) a constitution which requires its income and property to be applied in promoting its objects;

(iii) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Foundation by **clause 5(d)**; and

(iv) which is endorsed as a DGR.

(b) The identity of the corporation or institution is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

58.2 Revocation of DGR Endorsement

In the event that the Foundation ever has its endorsement as a DGR revoked, the Foundation must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another DGR, such DGR to be determined by the Members and failing such determination being made, by application to the Supreme Court for determination.

INDEMNITY

59. INDEMNITY

To the extent permitted by law every Officer (and former Officer) of the Foundation shall be indemnified out of the funds of the Foundation against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Foundation under this clause unless:

(a) it is in respect of a liability to another person (other than the Foundation or a related body corporate to the Foundation) where the liability to the other person does not arise out of conduct involving a lack of good faith; or

(b) it is in respect of a liability for costs and expenses incurred:

(i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or

(ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

60. PAYMENT OF INDEMNITY POLICY PREMIUM

(a) To the extent permitted by law the Foundation may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Foundation against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

(i) a liability arising out of conduct involving a wilful breach of duty in relation to the Foundation; or

(ii) a contravention of sections 182 or 183 of the Act.

(b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

(c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Foundation shall not be required to indemnify the Officer under **clause 59** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

61. INDEMNITY TO CONTINUE

The indemnity granted by the Foundation contained in **clauses 59** and **60** shall continue in full force and effect notwithstanding the deletion or modification of those clauses, in respect of acts and omissions occurring prior to the date of the deletion or modification.

I the person whose signature appears hereunder hereby agree to the foregoing Constitution:

Name and address of Member	Signature of Member	Signature and address of witness
David Robert Gaunt 15 Mars Street Gladesville NSW 2111		9 Sebastopol St Enmore NSW 2042 Nina Murphy

ANNEXURE A

APPLICATION FOR MEMBERSHIP OF COMPANY

INDIGENOUS LITERACY FOUNDATION
(incorporated under the *Corporations Act 2001*)

I, _____ *(full name of the applicant including ACN if applicable)* of _____ *(address)* hereby apply to become a Member of the abovenamed incorporated Foundation. In the event of my admission as a Member, I agree to be bound by the Constitution of the Foundation for the time being in force.

_____
Signature of applicant

Date: _____

OR

EXECUTED for and on behalf of)
COMPANY in accordance with section 127)
of the *Corporations Act* 2001 by its duly)
authorised officers:)

_____ _____
Signature of Director Signature of Director/Secretary

_____ _____
Print Name Print Name

ANNEXURE B

FORM OF APPOINTMENT OF PROXY

INDIGENOUS LITERACY FOUNDATION
(incorporated under the *Corporations Act 2001*)

PROXY FORM

(1) Your details
(Please print your name and address)

Name:		
Address:		
City:	State:	Postcode:
Telephone:		

(2) Appoints

Name: _____

(Please print name of proxy)

or failing the person so named, or if no person is named, the **Chair of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chair sees fit at the Annual General Meeting of Indigenous Literacy Foundation be held on [insert date] commencing at [insert time] and at any adjournment thereof.

(3) Directions

(4) Signature

(5) Date