

Constitution

PUBLIC EDUCATION FOUNDATION LTD

Table of Contents

1.	Interpretation	3
2.	Purposes	4
3.	Application of income and property to purposes	5
4.	Gift Fund	5
5.	Qualification	5
6.	Fees	5
7.	Cessation Of Membership	5
8.	Register of Members	6
9.	Address of Members	6
10.	General meetings	7
11.	Notice of general meeting	7
12.	Quorum	7
13.	Adjournment in absence of quorum	7
14.	Chairperson	
15.	General conduct of meeting	7
16.	Adjournment	8
17.	Voting	8
18.	When a poll may be demanded	8
19.	Taking a poll	9
20.	Voting rights	9
21.	Proxies	9
22.	Validity of vote	9
23.	Number and qualifications of Directors	10
24.	Appointment of Directors	10
25.	Term of appointment	10
26.	Remuneration of Directors	10
27.	Alternate Directors	11
28.	Termination of office by Director	11
29.	Procedures relating to Directors' meetings	12
30.	Quorum of meetings	12
31.	Meetings by telephone or other means of communication	12
32.	Votes at meetings	12
33.	Chairperson	

34.	Powers of meetings	13
35.	Committees	13
36.	Validity of acts	13
37.	Material personal interests	14
38.	Resolution in writing	15
39.	General powers of the Board	15
40.	Power to borrow, guarantee and give security	16
41.	Power to appoint patrons, friends and supporters	16
42.	Seal	16
43.	Service of notices	16
44.	When notice taken to be served	17
45.	Member not known at registered address	17
46.	Calculation of period of notice	17
47.	Limited Liability	17
48.	Members' liability on winding up	17
49.	Winding Up	18
50.	Amalgamation	18
51.	Indemnity of officers, insurance and access	18
52.	Approval to Amendment of Constitution	20

Constitution of the Public Education Foundation Ltd

Preliminary

The name of the Company is the Public Education Foundation Ltd.

The Company is a public company limited by guarantee.

The replaceable rules in the *Corporations Act 2001* (Cth) do not apply to the Company.

Interpretation

1. Interpretation

Definitions

In this Constitution unless the context requires otherwise:

Board means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

Chairperson means, for the purposes of general meetings, the person determined or appointed in accordance with Rule 14 and, for all other purposes, the person appointed in accordance with Rule 34.

Committee means a Committee to which the Board has delegated powers under Rule 36.

Company means the Public Education Foundation Ltd.

Constitution means this Constitution as amended.

Director means a person appointed to the office of Director of the Company in accordance with this Constitution and where appropriate includes an alternate Director.

Law means the *Corporations Act 2001* (Cth).

Member means a member of the Company in accordance with the Law.

Members present means Members present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney.

Office means the registered office of the Company.

person and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals.

Register means the register of Members of the Company.

registered address means the address of which the Member notifies the Company as a place at which the Member is willing to accept service of notices.

Rules means these Rules, as amended.

Secretary means a person appointed as, or to perform the duties of, a Secretary of the Company.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

writing and **written** includes printing, typing, lithography, facsimile, email and other modes of reproducing words in a visible form.

Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A gender includes all genders.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (f) A reference to **dollars** and **\$** is to Australian currency.

Purposes

2. Purposes

The purposes for which the company is incorporated are:

- (a) to provide scholarships for students and teachers in public schools
 - (b) to provide funding for enhanced educational opportunities, outside of the normal core provision of public education, for public education students, but especially for students with a particular education need;
 - (c) to conduct educational programmes and provide educational opportunities supplementary to the core services of public education for the benefit of students with a particular educational need and to fund programs of professional development for teachers and parents of students having particular educational need;
 - (d) to raise funds for the support of public educational programs additional to the core provision of public education and to conduct business on its own account through such activities as from time to time authorised by the Board;
 - (e) to undertake research in the field of education and publish results
 - (f) to do all such acts, matters and things including the funding of scholarships, training and the like whether in Australia or elsewhere and to enter into and make such agreements as are incidental or conducive to the attainment of any purposes of the Company whether as agent or otherwise.
-

3. Application of income and property to purposes

The income and property of the Company must be applied solely towards the promotion of the purposes of the Company set out in Rule 2 and no part of it is to be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of distribution of profit to any Member except as bona fide compensation for services rendered to, or expenses incurred on behalf of, the Company.

4. Gift Fund

The Company must maintain a gift fund that complies with section 30-130 of the Tax Act.

Membership

5. Qualification

- 5.1 A person appointed as a director of the company becomes thereby automatically a member of the company.

6. Fees

- 6.1 Members are not liable to pay entrance, annual subscription or other fees.

7. Cessation Of Membership

- 7.1 A Member may at any time, by giving notice in writing to the Secretary, resign as a Member of the company. The resignation shall be effective from the date of receipt of the notice by the Secretary. That Member's name shall be removed from the register of Members.
- 7.2 If a Member resigns as a Member pursuant to rule 7.1 the Member shall be held to have automatically resigned as a Director and the same effective date of resignation as that referred to in rule 7.1.
- 7.3 If any Member:
- (a) is in breach of the provisions of this Constitution; or
 - (b) is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company,
- the Board may expel the Member from the Company and remove the Member's name from the register of Members.
- 7.4 The Directors must not expel a Member under Rule 7.3 unless at least 7 days' notice has been given to the Member stating the date, time and place at which the question of expulsion is to be considered by the Board and the nature of the alleged misconduct and allowing the Member an opportunity to be heard (personally or by written submission as the Board determines).
-

- 7.5 If the Directors resolve to expel a Member, the Secretary must give notice of this to the Member. The Member then has the right, exercisable by notifying the Secretary within 7 days after receipt of the notice (the "Notice Period"), to have the issue dealt with by the Company in general meeting. In that event, an extraordinary general meeting of the company must be called to consider a resolution that the Member be expelled. If
- (a) a resolution to expel the Member is passed at an extraordinary general meeting by a majority of those present and voting; or
 - (b) the Member does not notify the Secretary on or before the expiration of the Notice Period that it wishes to have the issue dealt with by the company in general meeting,
- the Member shall cease to be a Member and the Member's name will be removed from the register of Members.
- 7.6 A Member's membership of the company shall automatically cease if the Member :
- (a) commits an act of bankruptcy;
 - (b) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (c) is made bankrupt;
 - (d) makes a proposal for a scheme of arrangement or a composition; or
 - (e) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under the Bankruptcy Act 1966 (Cth);
 - (f) the Member, being a Director of the company, ceases to be a Director.

Register

8. Register of Members

The Register must be kept by the Secretary and must contain full names and addresses of the Members and such other particulars as the Board prescribes.

9. Address of Members

Every Member must communicate any change in its address to the Company in writing and any such change of address must be entered in the Register. The latest address in the Register is deemed to be the Member's registered address.

General Meetings

10. General meetings

The Chairperson, the Company Secretary or any 5 Directors may convene a general meeting of the Company whenever it or they think fit.

11. Notice of general meeting

A notice of a general meeting must specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Law. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

12. Quorum

A simple majority of the total number of Members of the Company shall constitute a quorum. No business may be transacted at any meeting, except the election of a Chairperson and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.

13. Adjournment in absence of quorum

If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of meeting, the meeting is dissolved, unless the Board adjourns the meeting to a date, time and place determined by it. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

14. Chairperson

14.1 The Chairperson will chair every general meeting.

14.2 If at any general meeting:

- (a) a Chairperson has not been elected as provided by Rule 34;
 - (b) the Chairperson is not present at the specified time for the holding of the meeting; or
 - (c) the Chairperson is present but is unwilling to chair the meeting,
- the Members present may choose another Member to chair the meeting.

15. General conduct of meeting

15.1 The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chairperson.

- 15.2 At any time the Chairperson considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chairperson may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present.
- 15.3 The Chairperson may require the adoption of any procedures which are in the Chairperson's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.
- 15.4 Any determination by the Chairperson in relation to matters of procedure or any other matter arising directly or indirectly from the business is fixed. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the Chairperson whose decision is final.
- 15.5 A Secretary who is not a Member shall be entitled to be present and to speak at any general meeting. Any other person (whether a member or not) requested by the Directors to attend any general meeting shall be entitled to be present and, at the request of the chair, to speak at that general meeting.

16. Adjournment

During the course of the meeting the Chairperson may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairperson exercises a right of adjournment of a meeting under this Rule, the Chairperson has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairperson exercises that discretion, the Members present in respect of the adjournment may take no vote. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. Voting

Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote, unless a poll is demanded. In the case of an equality of votes, the Chairperson has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairperson may be entitled as a Member or as a proxy or duly appointed representative of a Member. Unless a poll is demanded, a declaration by the Chairperson that a resolution has been passed or lost is conclusive.

18. When a poll may be demanded

A poll may be demanded by a Member in accordance with the Law (and not otherwise) or by the Chairperson. Unless the Chairperson otherwise determines, no

poll may be demanded on the adjournment of a meeting. The demand for a poll may be withdrawn.

19. Taking a poll

- 19.1 If a poll is demanded as provided in Rule 18, it is to be taken in the manner and at the time and place as the Chairperson directs, and the result of the poll is the meeting's resolution of the motion on which the poll was demanded. Any challenge to the admission or rejection of a vote may only be made at the meeting and may be determined by the Chairperson, whose decision is final.
- 19.2 A demand for a poll does not prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

Votes of Members

20. Voting rights

Each Member has the right to one vote both on a show of hands and a poll. A Member may vote in person or by proxy.

21. Proxies

- 21.1 A Member who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Law but not otherwise. A proxy appointed to attend and vote in accordance with the Law may exercise the rights of the Member on the basis of and subject to the restrictions provided in the Law but not otherwise.
- 21.2 A form of appointment of a proxy is valid if it is in accordance with the Law or in any form that the Board may prescribe or accept.
- 21.3 The Secretary must, if requested, send a valid form of proxy to a Member.
- 21.4 The Secretary on the authority of the Board may complete any appointment of a proxy under Rule 21.2 that is incomplete insofar as the name of the proxy has been omitted by the insertion of the name of any Director as the person in whose favour the proxy is given.

22. Validity of vote

- 22.1 The validity of any resolution is not affected by the failure of any proxy to vote in accordance with instructions (if any) of the appointing Member.
- 22.2 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or mental incapacity of the appointing Member or revocation of the instrument of proxy, provided no notice in writing of the death,
-

mental incapacity or revocation has been received at the Office before the meeting or any adjourned meeting.

- 22.3 A proxy is not revoked by the appointing Member attending and taking part in the meeting, unless the appointing Member actually votes at the meeting on the resolution for which the proxy is proposed to be used.

Directors

23. Number and qualifications of Directors

- 23.1 The number of Directors (not including alternate Directors) must be not less than 5 nor exceed 9.
- 23.2 Directors will upon appointment automatically be appointed as a Member of the Company.
- 23.3 The Board shall establish a committee for the purpose of determining the selection criteria for the appointment of persons as Directors ("the Selection Committee").

24. Appointment of Directors

- 24.1 The Selection Committee shall recommend to the Board persons to be appointed as Directors.
- 24.2 Prior to recommendation to the Board the Selection Committee shall seek approval from the Chairperson as to the appointment of the persons recommended by the Selection Committee as Directors of the Board.
- 24.3 Subject to approval having first been obtained in accordance with rule 24.2, the Board may by resolution appoint any person recommended by the Selection Committee to the office of Director, including a person to replace any Director who resigns, dies or becomes mentally incapacitated.

25. Term of appointment

Directors are appointed for an initial three (3) year term and are eligible for reappointment for one consecutive term of a further three (3) years. Notwithstanding the foregoing, the Board may, by special resolution of not less than seventy five percent of the Directors of the Board, appoint a person who has previously held office for two consecutive terms of three (3) years, for additional terms, each being not greater than three (3) years, if in the opinion of the Board the unique expertise of such person is required by the Board.

26. Remuneration of Directors

No Director may be appointed to any salaried office of the Company or any office of the Company paid by fees. Nothing in this Rule prohibits the payment by the Company to a Director of:

- (a) out-of-pocket expenses incurred by a Director in the performance of any duty as a Director where the amount payable does not exceed an amount approved by the Board; or
- (b) any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board.

Alternate Directors

27. Alternate Directors

The Board may make such rules as it deems appropriate in relation to the appointment of alternate Directors.

Termination of Office of Director

28. Termination of office by Director

28.1 The office of a Director is terminated:

- (a) on the Director being absent from meetings of the Board during a period of three consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (b) on the Director resigning office by notice in writing to the Company;
- (c) on the Director being removed from office under the Law;
- (d) on the Director being prohibited from being a Director by reason of the operation of the Law; or
- (e) on the expiration of the term of office of that Director under Rule 25.

28.2 If any Director:

- (a) is in breach of the provisions of this Constitution; or
- (b) is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a Director or prejudicial to the interests of the Company,

the Board may expel the Director from the Company and remove the Director's name from the register of Directors.

28.3 The Board must not expel a Director under Rule 28.2 unless at least 7 days' notice has been given to the Director stating the date, time and place at which the question of expulsion is to be considered by the Board and the nature of the alleged misconduct and allowing the member an opportunity to be heard (personally or by written submission as the Board determines).

- 28.4 If the Directors resolve to expel a Director, the Secretary must give notice of this to the Member. The Director then has the right, exercisable by notifying the Secretary within 7 days after receipt of the notice (the "Notice Period"), to have the issue dealt with by the Company in general meeting. In that event, an extraordinary general meeting of the company must be called to consider a resolution that the Director be expelled. If
- (a) a resolution to expel the Director is passed at an extraordinary general meeting by a majority of those present and voting; or
 - (b) the Director does not notify the Secretary on or before the expiration of the Notice Period that the Director wishes to have the issue dealt with by the company in general meeting, the Director shall cease to be a Director and the Director's name will be removed from the register of Directors and the Australian Securities and Investment Commission notified.

Proceedings of Directors

29. Procedures relating to Directors' meetings

The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit. The Board may at any time, and the Secretary must, on the request of any two Directors, convene a meeting of the Board. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by the Directors.

30. Quorum of meetings

Until otherwise determined by the Board, a quorum for meetings of the Board is 5 Directors.

31. Meetings by telephone or other means of communication

The Board may meet either in person or by telephone or by using any other technology consented to by all the Directors. A consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting. A meeting conducted by telephone or other means of communication is taken to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

32. Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes. In the case of an equality of votes, the Chairperson has a second or casting vote.

33. Chairperson

- 33.1 After the inaugural three year term the Board must elect one of its numbers as Chairperson.
- 33.2 The Chairperson is appointed for a 2 year term and is eligible for reappointment.
- 33.3 If the Chairperson is not present at the time specified for holding any meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

34. Powers of meetings

A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

35. Committees

- 35.1 The Board may delegate any of its powers to Committees consisting of a Director or Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board.
- 35.2 The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under Rule 36.1.
- 35.3 No power delegated to any Committee under this Rule may be sub-delegated unless authorised by the terms of the delegation.

36. Validity of acts

- 36.1 All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee.
 - 36.2 If the number of Directors is reduced below the number fixed under this Constitution the continuing Directors may act only for the purpose of increasing the number of Directors to the number fixed under this Constitution or of calling a general meeting of the Company. In any case the continuing Directors must act to increase the number of Directors as soon as is practicable.
-

37. Material personal interests

- (a) A Director is not disqualified by the Director's office from contracting with the Company or any related body corporate of the Company in any capacity by reason of holding of the office of Director.
 - (b) In relation to a contract or arrangement in which a Director has a material personal interest:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
 - (c) Subject to paragraph (d), a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.
 - (d) A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
 - (i) if all of the following conditions are met:
 - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
 - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
 - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Law and that standing notice is still effective in relation to the interest; or
 - (iii) as otherwise permitted under the Law.
 - (e) Notices of material personal interest given by Directors must:
 - (i) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
 - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of his/her interest in the matter; and
 - (iii) be recorded in the minutes of the Directors' meeting at which the notice is given.
-

- (f) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
 - (i) if the material personal interest is a matter that is not required to be disclosed under this Clause or under the Law; or
 - (ii) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
 - (A) identifies the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the Company; and
 - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
 - (iii) as otherwise permitted under the Law.
- (g) Nothing in this Clause affects the duty of a Director:
 - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict; or
 - (ii) to comply with the Law.

38. Resolution in writing

A resolution in writing signed by all the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) is a valid resolution of the Board. The resolution may consist of several documents in the same form, each signed by one or more of the Directors. For the purposes of this Rule the references to **Directors** include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director.

Powers of the Board

39. General powers of the Board

The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the

Company and are not by this Constitution or by Law required to be exercised or done by the Company in general meeting.

40. Power to borrow, guarantee and give security

Without limiting the generality of Rule 40, the Board may from time to time, on behalf of the Company, borrow such amounts as it considers necessary for the purposes of the Company at such rate of interest and upon such terms as it considers proper and may execute mortgages, loan agreements or other securities in respect of such moneys and charge any property of the Company and may execute, create and issue such mortgages, loan agreements or securities as it considers appropriate.

41. Power to appoint patrons, friends and supporters

41.1 The Board may from time to time appoint any person as a patron, friend or supporter (or such description as the Board determines) of the Company on such terms as the Board sees fit and any such category of persons may (but not need be) Members of the Company. The Board may make by-laws that prescribe, vary or cancel the qualifications, rights, privileges and obligations of any category of persons appointed.

41.2 Unless otherwise determined by the Board, there will be 1 category of people created as at the date of incorporation of the Company, being The Foundation for Public Education in NSW, the rights, privileges and obligations of people in this category to be determined by the Board. Unless otherwise determined by the Board, the members of the Foundation will not be Members of the Company.

Seal

42. Seal

The Company may have a common seal and a duplicate common seal. If the Company has a common seal, the seal may be used only as determined by the Board.

Notices

43. Service of notices

A notice may be given by the Company to any Member personally, by leaving it at the Member's registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's registered address or, in any other case, by other electronic means determined by the Board. If the notice is signed, the signature may be original or printed.

44. When notice taken to be served

Any notice sent by post is taken to have been served at the expiration of two business days after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's registered address is taken to have been served when delivered. Any notice served on a Member by facsimile transmission is taken to have been served on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.

45. Member not known at registered address

Where a Member does not have a registered address or where the Company has a reason in good faith to believe that a Member is not known at the Member's registered address, all future notices are taken to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is taken to be duly served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

46. Calculation of period of notice

Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be counted in the number of days or other period.

Liability of Members

47. Limited Liability

The liability of the Members of the Company is limited.

48. Members' liability on winding up

Each member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up while he or she is a Member or within one year after he or she ceases to be a member for payment of the debts and liabilities of the Company (contracted before he or she ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required not exceeding \$20.00.

Winding up

49. Winding Up

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever (including any property in the fund established under Rule 4), the property must not be paid to or distributed amongst the Members but must be given or transferred to some other organisation or organisations:

- (a) having purposes similar to the purposes of the Company set out in Rule 2;
- (b) which by its constitution is required to apply its profits (if any) or other income in promoting its purposes and is prohibited from paying any dividend to its members; and
- (c) eligible for tax deductibility of donations under subdivision 30-B, section 30-100 of the Tax Act,

such organisation or organisations to be determined by the Members at or before the time of dissolution or in default thereof by application to the Supreme Court of New South Wales for determination.

50. Amalgamation

Whether it furthers the purposes of the Company to amalgamate with any one or more other organisations having similar purposes to the purposes of the Company, the other organisation or organisations must:

- (a) have rules prohibiting the distribution of its or their assets and income to members; and
- (b) be eligible for tax deductibility of donations under subdivision 30-B, section 30-100 of the Tax Act.

Indemnity

51. Indemnity of officers, insurance and access

51.1 The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.

51.2 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.

51.3 Where the Board considers it appropriate, the Company may:

- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business
-

of the Company or in or arising out of the discharge of the duties of the officer; and

- (b) bind itself in any contract or deed with any officer of the Company to make the payments.

51.4 Where the Board considers it appropriate, the Company may:

- (a) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
- (b) bind itself in any contract with a Director or former Director to give the access.

51.5 In this Rule:

- (a) **officer** means:
 - (i) a Director, Secretary, executive officer or employee; or
 - (ii) a person appointed as a trustee by, or acting as a trustee at the request of the Company,and includes a former officer.
 - (b) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment or nomination of an officer by the Company.
 - (c) **to the relevant extent** means:
 - (i) to the extent the Company is not precluded by law from so doing;
 - (ii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
 - (iii) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
 - (c) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.
-

Amendment to Constitution

52. Approval of Board of Directors required

This Constitution must not be amended without the approval of a majority of the Board of Directors and any amendment purported to be made without majority approval will be ineffective.

Amendments

1. **31 January 2011** - the following sections were amended to reflect the company's change of name from 'The Foundation for Public Education in NSW Limited' to the 'Public Education Foundation Ltd': Title Page; heading on page 4; Preliminary; and Clause 1 Interpretation –definition of company.
2. **16 February 2011** – it should be noted that the Board of Directors passed the following motion on 16 February 2011 which is not an amendment to the Constitution but effects the operation of the Constitution: "Notwithstanding the provisions in Clause 30 of the Constitution, at any meeting at which fundraising matters are discussed, a quorum shall be five Directors and cannot at anytime be reduced to less than three Directors."
3. **28 February 2018** – it should be noted that the Board of Directors passed the following motion on 28 February 2018 to amend the wording of Clause 25. Term of appointment:

Directors are appointed for an initial three (3) year term and are eligible for reappointment for one consecutive term of a further three (3) years. Notwithstanding the foregoing, the Board may, by special resolution of not less than seventy five percent of the Directors of the Board, appoint a person who has previously held office for two consecutive terms of three (3) years, for **additional terms, each** being not greater than three (3) years, if in the opinion of the board the **unique individual** expertise of such person is required by the Board.
