

# THE PODMORE FOUNDATION INCORPORATED

ABN 31 250 068 413 Association Number A04663

## CONSTITUTION

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## Part 1 Preliminary

### 1 Definitions

A definition applies except so far as the contrary intention appears (see Legislation Act, s 155). In these rules:

*ABN* means Australian Business Number.

*committee* means the group of members stated in section 14 (1) formed to carry out the business of the Foundation stated in Section 13.

*DGR* means Deductible Gift Recipient endorsed by the Australian Tax Office or listed by name in the tax law.

*Donor* means any person who provides a donation to the Foundation, be it a financial donation or a donation in-kind.

*Financial year* means the year ending on 30 June.

*the Foundation* means *the Podmore Foundation*.

*member* means a member, however described, of the Foundation.

*ordinary committee member* means a member of the committee who is not an office-bearer of the Foundation as mentioned in section 14 (1) (a).

*organisation* means any corporation, association, government entity or identifiable grouping of people organised for a collective purpose.

*Secretary* means the person holding office under these rules as Secretary of the Foundation or, if no such person holds that office, the public officer of the Foundation.

*the Act* means the *Associations Incorporation Act 1991*.

*the regulation* means the *Associations Incorporation Regulation 1991*.

*RMC* means the Royal Military College of Australia, Duntroon.

### 2 Application of Legislation Act 2001

The *Legislation Act 2001* applies to these rules in the same way as it would if they were an instrument made under the Act.

### 3 Objects of the Foundation

The Podmore Foundation was established in 2007 by members of the Class of 1973 from the Royal Military College, Duntroon. With the vision of '*Returning Opportunity*', the two objects of the Foundation are:

- (1) The Podmore Foundation is a non-profit association established and maintained, solely for charitable purposes in Australia and overseas. The Foundation seeks the relief of poverty, the advancement of education and other purposes beneficial to the community by assisting people, especially young people, families, and communities to reach their full potential through gifts,

scholarships, bursaries, prizes, programs, projects or specific grants; as well as managing funds for other charitable activities.

- (2) The Foundation seeks to provide leadership in promoting a spirit of active philanthropy among the public, including serving and retired officers of the Australian, New Zealand and Thai armies.

## **Part 2                      Membership**

### **4                      Membership qualifications**

- (1) Full membership (including voting rights) is open to all persons who:
  - (a) support the objects and purpose of the Foundation;
  - (b) agree to be bound by the rules of the Foundation for the time being in force;
  - (c) provide their contact name and details to the Secretary of the Foundation;  
and
  - (d) make a donation to the Foundation.
  
- (2) A person is qualified to be a member if:
  - (a) the person is a person mentioned in the Act at section 21 (2) (a) or (b) and has not ceased to be a member of the Foundation at any time after incorporation of the Foundation under the Act; or
  - (b) the person:
    - (i) has made a donation to the Foundation, be it financial or in-kind; and
    - (ii) has been approved for membership of the Foundation by the Committee of the Foundation.
  
- (3) Other forms of membership such as Life Membership, Honorary Life Membership may be approved by the Committee.

### **5                      Application and nomination for membership**

- (1) An application by a person for full membership of the Foundation must be lodged by the Secretary of the Foundation on behalf of a donor and brought to the attention of the Committee as soon as practicable.
  
- (2) As soon as is practicable after receiving an application for membership, the Committee must decide whether to approve or to reject the application and decide on the length and/or form of membership.

- (3) If the Committee decides to approve an application for membership, the Secretary must as soon as practicable after that decision:
  - (a) notify the nominee of the Committee's decision; and
  - (b) enter the nominee in the register of members.

## **6 Membership entitlements not transferable**

A right, privilege or obligation that a person has because of being a member of the Foundation:

- (a) cannot be transferred or transmitted to another person except as stated in Section 32 relating to proxy voting; and
- (b) terminates on cessation of the person's membership.

## **7 Cessation of membership**

A person ceases to be a member of the Foundation if the person:

- (a) dies; or
- (b) resigns from membership of the Foundation; or
- (c) is expelled from the Foundation; or
- (d) has their membership term, as decided by the Committee in section 5(2), expire.

## **8 Termination and Resignation of membership**

- (1) A member is not entitled to resign from membership of the Foundation except in accordance with this section.
- (2) A member may resign from membership of the Foundation by first giving notice (of not less than 1 month or, if the Committee has determined a shorter period, that shorter period) in writing to the Secretary of the member's intention to resign and, at the end of the period of notice, the member ceases to be a member.
- (4) If a person ceases to be a member, the Secretary must make an appropriate entry in the register of members recording the date the member ceased to be a member.

## **9 Fee, donations, subscriptions etc**

- (1) There is no entrance fee or subscription fee to join the Foundation.
- (2) Membership does not obligate a member to provide any additional donations during the length of their membership, as determined in Section 5 (2).

## **10 Members' liabilities**

The liability of a member to contribute towards the payment of the debts and liabilities of the Foundation or the costs, charges and expenses of the winding up of the Foundation is limited to the amount (if any) of unpaid annual fees by the member in relation to membership of the Foundation..

## **11 Disciplining of members**

- (1) If the committee is of the opinion that a member -
  - (a) has persistently refused or neglected to comply with a provision of these rules; or
  - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the Foundation;the committee may, by resolution—
  - (c) expel the member from the Foundation; or
  - (d) suspend the member from the rights and privileges of membership of the Foundation that the committee may decide for a specified period.
- (2) A resolution of the committee under subsection (1) is of no effect unless the committee, at a meeting held not earlier than 14 days and not later than 28 days after service on the member of a notice under subsection (3), confirms the resolution in accordance with this section.
- (3) If the committee passes a resolution under subsection (1), the Secretary must, as soon as practicable, serve a written notice on the member—
  - (a) setting out the resolution of the committee and the grounds on which it is based; and
  - (b) stating that the member may address the committee at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice; and
  - (c) stating the date, place and time of that meeting; and
  - (d) informing the member that the member may do either or both of the following:
    - (i) attend and speak at that meeting;
    - (ii) submit to the committee at or before the date of that meeting written representations relating to the resolution.
- (4) Subject to the Act, section 50, at a meeting of the committee mentioned in subsection (2), the committee must—

- (a) give to the member mentioned in subsection (1) an opportunity to make oral representations; and
  - (b) give due consideration to any written representations submitted to the committee by that member at or before the meeting; and
  - (c) by resolution decide whether to confirm or to revoke the resolution of the committee made under subsection (1).
- (5) If the committee confirms a resolution under subsection (4), the Secretary must, within 7 days after that confirmation, by written notice inform the member of that confirmation and of the member's right of appeal under section 12.
- (6) A resolution confirmed by the committee under subsection (4) does not take effect—
- (a) until the end of the period within which the member is entitled to appeal against the resolution if the member does not exercise the right of appeal within that period; or
  - (b) if within that period the member exercises the right of appeal—unless and until the Foundation confirms the resolution in accordance with section 12 (4).

## **12 Right of appeal of disciplined member**

- (1) A member may appeal to the Foundation in general meeting against a resolution of the committee that is confirmed under section 11 (4), within 7 days after notice of the resolution is served on the member, by lodging with the Secretary a notice to that effect.
- (2) On receipt of a notice under subsection (1), the Secretary must notify the committee which must call a general meeting of the Foundation to be held within 21 days after the date when the Secretary received the notice or as soon as possible after that date.
- (3) Subject to the Act, section 50, at a general meeting of the Foundation called under subsection (2)—
- (a) no business other than the question of the appeal may be transacted; and
  - (b) the committee and the member must be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
  - (c) the members present must vote by secret ballot on the question of whether the resolution made under section 11 (4) should be confirmed or revoked.
- (4) If the meeting passes a special resolution in favour of the confirmation of the resolution made under section 11 (4), that resolution is confirmed.



## **15 Election of committee members**

- (1) Nominations of candidates for election as office-bearers of the Foundation or as ordinary committee members—
  - (a) must be made in writing, signed by 2 members of the Foundation and accompanied by the written consent of the candidate (which may be endorsed on the nomination form); and
  - (b) must be given to the Secretary of the Foundation not less than 21 days before the date fixed for the annual general meeting at which the election is to take place.
- (2) If only one person has nominated for a vacancy, the candidate nominated is taken to be elected.
- (3) If insufficient nominations are received to fill all vacancies on the committee, further nominations may be received at the annual general meeting.
- (4) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be vacancies.
- (5) If the number of nominations received is equal to the number of vacancies to be filled, the people nominated are taken to be elected.
- (6) If the number of nominations received exceeds the number of vacancies to be filled, a ballot must be held.
- (7) The ballot for the election of office-bearers and ordinary committee members must be conducted at the annual general meeting in the way the committee may direct.
- (8) A person is not eligible to simultaneously hold more than 1 position on the committee.

## **16 Secretary**

- (1) The Secretary of the Foundation must, as soon as practicable after being appointed as Secretary, notify the Foundation of his or her address.
- (2) The Secretary must keep minutes of -
  - (a) all elections and appointments of office-bearers and ordinary committee members; and
  - (b) the names of members of the committee present at a committee meeting or a general meeting; and
  - (c) all proceedings at committee meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the person presiding at the meeting or by the person presiding at the next succeeding meeting.

## **17 Treasurer**

- (1) The treasurer of the Foundation must—
  - (a) collect and receive all amounts owing to the Foundation and make all payments authorised by the Foundation; and
  - (b) keep correct accounts and books showing the financial affairs of the Foundation with full details of all receipts and expenditure connected with the activities of the Foundation.

## **18 Vacancies**

- (1) For these rules, a vacancy in the office of a member of the committee happens if the member -
  - (a) dies; or
  - (b) ceases to be a member of the Foundation; or
  - (c) resigns the office; or
  - (d) is removed from office under section 19 (Removal of committee members); or
  - (e) suffers from mental or physical incapacity; or
  - (f) is disqualified from office under the Act, section 63 (1); or
  - (g) is absent without the consent of the committee from all meetings of the committee held during a period of 6 months.

## **19 Removal of committee members**

The Foundation in general meeting may by resolution, subject to the Act, section 50, remove any member of the committee from the office of member of the committee before the end of the member's term of office.

## **20 Committee meetings and quorum**

- (1) The committee must meet at least 3 times in each calendar year in any manner, place and time that the committee may decide.
- (2) Additional meetings of the committee may be called by any member of the committee.
- (3) Oral or written notice of a meeting of the committee must be given by the Secretary to each member of the committee at least 48 hours (or any other period that may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subsection (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business may be transacted at the meeting, except business that the committee members present at the meeting unanimously agree to treat as urgent business.
- (5) Any 3 members of the committee constitute a quorum for the transaction of the business of a meeting of the committee.

- (6) No business may be transacted by the committee unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.
- (8) At meetings of the committee -
  - (a) the President or, in the absence of the President, the Vice-President presides; or
  - (b) if the President and the Vice-President are absent – one of the remaining members of the committee may be chosen by the members present to preside.

## **21 Delegation by committee to subcommittee**

- (1) The committee may, in writing, delegate to 1 or more subcommittees (consisting of the member or members of the Foundation that the committee considers appropriate) the exercise of the functions of the committee that are specified in the instrument, other than—
  - (a) this power of delegation; and
  - (b) a function that is a function imposed on the committee by the Act, by any other Territory law, or by resolution of the Foundation in general meeting.
- (2) A function, the exercise of which has been delegated to a subcommittee under this section may, while the delegation remains unrevoked, be exercised from time to time by the subcommittee in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to any conditions or limitations about the exercise of any function, or about time or circumstances, that may be specified in the instrument of delegation.
- (4) Despite any delegation under this section, the committee may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a subcommittee acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the committee.
- (6) The committee may, in writing, revoke wholly or in part any delegation under this section.
- (7) A subcommittee may meet and adjourn as it considers appropriate.

## **22 Voting and decisions**

- (1) Questions arising at a meeting of the committee or of any subcommittee appointed by the committee are decided by a majority of the votes of members of the committee or subcommittee present at the meeting.



- (d) to receive and consider the statement of accounts and the reports that are required to be submitted to members under the Act, section 73 (1).
- (4) An annual general meeting must be specified as such in the notice calling it in accordance with section 26 (Notice).
- (5) An annual general meeting must be conducted in accordance with the provisions of this part.

## **25 General meetings - calling of**

- (1) The committee may, whenever it considers appropriate, call a general meeting of the Foundation.
- (2) The committee must, on the requisition in writing of not less than 5% of the total number of members, call a general meeting of the Foundation.
- (3) A requisition of members for a general meeting—
  - (a) must state the purpose or purposes of the meeting; and
  - (b) must be signed by the members making the requisition; and
  - (c) must be lodged with the Secretary; and
  - (d) may consist of several documents in a similar form, each signed by 1 or more of the members making the requisition.
- (4) If the committee fails to call a general meeting within 1 month after the date when a requisition of members for the meeting is lodged with the Secretary, any 1 or more of the members who made the requisition may call a general meeting to be held not later than 3 months after that date.
- (5) A general meeting called by a member or members mentioned in subsection (4) must be called as nearly as is practicable in the same way as general meetings are called by the committee and any member who thereby incurs expense is entitled to be reimbursed by the Foundation for any reasonable expense so incurred.

## **26 Notice**

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Foundation, the Secretary must, at least 14 days before the date fixed for the holding of the general meeting, advise all members by the most practical manner, a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Foundation, the Secretary must, at least 21 days before the date fixed for the holding of the general meeting, send notice to each member in the way provided in subsection (1) specifying, in addition to

the matter required under that subsection, the intention to propose the resolution as a special resolution.

- (3) No business other than that specified in the notice calling a general meeting may be transacted at the meeting except, for an annual general meeting, business that may be transacted under section 24 (3).
- (4) A member desiring to bring any business before a general meeting may give written notice of that business to the Secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

## **27 General meetings - procedure and quorum**

- (1) No item of business may be transacted at a general meeting unless a quorum of members entitled under these rules to vote is present during the time the meeting is considering that item.
- (2) Five members present in person (who are entitled under these rules to vote at a general meeting) via means agreed under Section 24(2) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within 30 minutes after the appointed time for the start of a general meeting a quorum is not present, the meeting if called on the requisition of members is dissolved and in any other case stands adjourned to the same day in the following week at the same time and (unless another place is specified at the time of adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- (4) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the start of the meeting, the members present (being not less than 3) constitute a quorum.

## **28 Presiding member**

- (1) The president, or in the absence of the president, the vice-president, presides at each general meeting of the Foundation.
- (2) If the president and the vice-president are absent from a general meeting, the members present must elect 1 of their number to preside at the meeting.

## **29 Adjournment**

- (1) The person presiding at a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

- (2) If a general meeting is adjourned for 14 days or more, the Secretary must give written or oral notice of the adjourned meeting to each member of the Foundation stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (3) Except as provided in subsections (1) and (2), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

### **30 Making of decisions**

- (1) A question arising at a general meeting of the Foundation is to be decided on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the person presiding that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Foundation, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (2) At a general meeting of the Foundation, a poll may be demanded by the person presiding or by not less than 3 members present in person or by proxy at the meeting.
- (3) If the poll is demanded at a general meeting, the poll must be taken -
  - (a) immediately if the poll relates to the election of the person to preside at the meeting or to the question of an adjournment; or
  - (b) in any other case—in the way and at the time before the close of the meeting that the person presiding directs, and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.

### **31 Voting**

- (1) Subject to subsection (3), on any question arising at a general meeting of the Foundation a member has 1 vote only.
- (2) All votes must be given personally or by proxy.
- (3) If the votes on a question at a general meeting are equal, the person presiding is entitled to exercise a second or casting vote.
- (4) A member or proxy is not entitled to vote at any general meeting of the Foundation unless all money due and payable by the member or proxy to the Foundation has been paid, other than the amount of the annual subscription payable for the then current year.

### **32 Appointment of proxies**

- (1) Each member is entitled to appoint another member as proxy by notice given to the Secretary no later than 24 hours before the time of the meeting for which the proxy is appointed.
- (2) The notice appointing the proxy must be in the form set out in appendix 2.

## **Part 5 Management of Funds**

### **33 Establishment and purpose of funds**

- (1) The Foundation is to establish and maintain, under a Trust Deed, a public fund to be known as “The Podmore Foundation Charitable Trust (Ancillary Fund)” solely for the purpose of providing money, property or benefits to Deductible Gift Recipients (DGRs) that are charities endorsed by the Commissioner of Taxation for their gift deductible status within the meaning of the Income Tax Assessment Act (Cth) 1997. This fund is to be exclusively for this purpose and is not to be used for any other activities.
- (2) The Foundation is to establish and maintain a separate fund to be known as “The Podmore Foundation (General Account)” to collect membership fees and manage the non-deductible administrative costs associated with the operation of the Foundation.
- (3) In order to achieve the purpose and objects of the Foundation under section 3, the committee may approve other funds or accounts.

### **34 Funds - source**

- (1) The funds of the Foundation must be derived from annual subscriptions of members, donations, legacies and, subject to any resolution passed by the Foundation in general meeting and subject to the Act, section 114, any other sources that the committee decides.
- (2) All money received by the Foundation must be deposited as soon as practicable and without deduction to the credit of the Foundation’s bank account.
- (3) The Foundation must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **35 Funds – management**

- (1) Subject to any resolution passed by the Foundation in general meeting, the funds of the Foundation must be used for the objects of the Foundation in the way that the Committee decides.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any 2 members of the committee or employees

of the Foundation, being members of the committee or employees authorised to do so by the committee.

- (3) The gifts, money and property of any Public Gift Fund must be clearly separate from the funds of the rest of the Foundation and accounted for accordingly.
- (4) The assets and income of the Foundation shall be applied solely in furtherance of the objects set out in section 3 and no portion shall be distributed directly or indirectly to the members of the Foundation except as bona fide compensation for services rendered or expenses incurred on behalf of the Foundation.

### **36 Management and operation of Public Gift Funds**

- (1) Public Gift Funds for the Foundation are to be managed and operated in accordance with the requirements of the Australian Tax Office to maintain endorsement as Deductible Gift Recipients (DGRs).
- (2) Public Gift Funds for the Foundation must be operated on a not-for-profit basis.
- (3) Public Gift Funds for the Foundation must have an Australian Business Number (ABN).
- (4) Separate bank accounts are to be opened for each Public Gift Fund for the Foundation to deposit gifts and deductible contributions donated to the fund, including interest accruing thereon. The money and property of the Public Gift Fund is to be kept completely separate from the other funds of the Foundation.
- (5) Members of the public and organisations are to be invited to make gifts or deductible contributions to Public Gift Funds for the Foundation. To be tax deductible a gift must be a gift of money or certain type of property, and comply with any relevant gift conditions of the Australian Tax Office.
- (6) Public Gift Funds for the Foundation can receive either gifts or deductible contributions, or both. Amounts that are not provided as gifts or deductible contributions are not to be credited to the Public Gift Fund for the purposes of tax deductibility. If money or property is incorrectly received, it is to be removed from the Public Gift Fund as soon as practical, with the accounts adjusted and noted accordingly.
- (7) Receipts are to be issued in the name of the Public Gift Fund and proper accounting records and procedures are to be kept and used for each fund for the Foundation. Receipts must state the name of the fund to which the gift has been made, the ABN, that it is for a gift and include the date of the gift, the amount of money donated or description of any gifts of property.
- (8) Public Gift Funds for the Foundation will be managed by Trustees appointed from members of the Podmore Foundation Management Committee so that a majority of the Trustees have a degree of responsibility to the general community as a whole.
- (9) The public fund known as “The Podmore Foundation Charitable Trust (Ancillary Fund)” is to be managed and operated in accordance with the following requirements:



### **39 Custody of books**

Subject to the Act, the regulation and these rules, the Secretary must keep in his or her custody or under his or her control all records, books, and other documents relating to the Foundation.

### **40 Inspection of books**

The records, books and other documents of the Foundation must be open to inspection at a place in the Australian Capital Territory, free of charge, by a member of the Foundation at any reasonable hour.

### **41 Service of notice**

- (1) For these rules, a notice may be served by or on behalf of the Foundation on any member either personally or by sending it by post or email to the member at the member's address shown in the register of members.
- (2) If a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document is taken for these rules, unless the contrary is proved, to have been served on the person at the time when the letter would have been delivered in the ordinary course of post.
- (3) An email sent to the member in accordance with the registered email address held by the secretary is to be considered served on the member at the time of dispatch.
- (4) Members are responsible to update changes to the registered contact information within 14 days of a change.

### **42 Surplus property**

- (1) At the first general meeting of the Foundation, the Foundation must pass a special resolution nominating -
  - (a) another organisation for the Act, section 92 (1) (a); or
  - (b) a fund, authority or institution for the Act, section 92 (1) (b);in which it is to vest its surplus property in the event of the dissolution or winding up of the Foundation.
- (2) An organisation nominated under subsection (1) (a) must fulfil the requirements specified in the Act, section 92 (2), and for a Public Gift Fund must also satisfy the requirements of section 43 (2).

### **43 Dissolution**

- (1) In the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members and to which income tax deductible gifts can be made.

- (2) If a Public Gift Fund for the Foundation is wound up or dissolved or if the endorsement (if any) of the Foundation as a deductible gift recipient is revoked, any surplus assets of the fund remaining after the payment of liabilities attributable to it, shall be transferred to another fund, authority or institution which has similar objects and to which income tax deductible gifts can be made.

#### **44 Financial Year**

The financial year for The Podmore Foundation is 1 July to 30 June.

# Appendix 1

*nil*

# Appendix 2

(See s 32 (2))

## Form of appointment of proxy for the Podmore Foundation

I, .....  
(full name)

of .....  
(address)

a financial member of the Podmore Foundation

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

of .....  
(address)

a member of the Podmore Foundation, as my proxy to vote for me on my behalf at the general meeting of the Foundation (annual general meeting or other general meeting, as the case may be) to be held on

..... and at any adjournment of that meeting.

\*My proxy is authorised to vote in favour of/against (delete as appropriate) the resolution (insert details).

.....  
(Signature of member appointing proxy)

Date .....

(\*To be inserted if desired.)

Note A proxy vote may not be given to a person who is not a member of the Foundation.

