

*Corporations Act 2001*  
**A COMPANY LIMITED BY GUARANTEE**



**Constitution**  
**of**  
**Lacrosse Australia Foundation Limited**  
**ACN 164 172 052**

Includes amendments adopted 17<sup>th</sup> October 2017

Includes amendments adopted 12 November 2019

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# Constitution of Lacrosse Australia Foundation Limited

ACN 164 172 052

## PRELIMINARY

### 1 EXCLUSION OF REPLACEABLE RULES

The replaceable rules contained in the Act do not apply to the Company.

### 2 DEFINITIONS

In this Constitution:

**Act** means the *Corporations Act 2001* (Commonwealth).

**ALA** means the National Governing Body of Lacrosse in Australia being the Australian Lacrosse Association Limited (ACN 124 440 124).

**ALA Full Member Association** means a voting member of the ALA.

**Annual General Meeting** means a General Meeting held pursuant to clause 20(a).

**Annual Financial Report** means any annual financial report pursuant to Part 2M.3 of the Act, if any;

**Applicant** means a Person who wishes to apply for membership of the Company.

**Applicable Persons** has the meaning given in clause 62.

**Application for Membership** means the form, the contents of which may be determined by the Board from time to time, which is to be used by an Applicant.

**Associate Member means** a Member appointed in accordance with clause 6(d) and **Associate Membership** means an entitlement afforded to an Associate Member;

**Audit Committee** has the meaning given in clause 48(c).

**Auditors Report** means any report made by an auditor pursuant to Part 2M.3 of the Act, if any.

**Australian Governance Principles** means the governance principles published by Sport Australia and any amendments, supplementary principles or applicable laws that may be introduced during the existence of the Company.

**Board** means the board of Directors for the time being of the Company.

**By-laws** means such by-laws, procedures, regulations or codes of conduct adopted by the Board from time to time in writing.

**Chairperson** means a chairman or chairwoman who presides over a General Meeting, meeting, committee or Board.

**Code of Conduct** has the meaning given in clause 49(b).

**Company** means Lacrosse Australia Foundation Limited (ACN 164 172 052), which is a Not-for-Profit Organisation.

**Constitution** means the constitution of the Company.

**Directors** means the directors for the time being of the Company.

**Director's Report** means any report prepared by the Directors pursuant to the Act, if any;

**Financial Member** means a Member who has paid by the relevant due date the applicable Membership Fees and all other sums owed by that Member to the Company.

**General Meeting** means any meeting of the Members of the Company.

**Income** means donations, bequests, the proceeds of fundraising programs and grants and other forms of gift.

**Independent Director** means an individual appointed by the Board of Directors

**Initial Capital Contribution** means the amount of \$281,731.33 contributed by the ALA (\$138,322 being \$146,230 less establishment costs of \$7,908) and Australian Lacrosse Foundation Limited (\$143,409.33) on 19th November 2015 that represents funds derived from member levies and similar sources by those two Not-For-Profit Organisations and hence is non-assessable, non-exempt income in accordance with the mutuality principle established by case law.

**Lacrosse** means the sport of lacrosse as governed internationally by the World Lacrosse organisation and in Australia by the ALA.

**Member** means a Person whose name is entered in the Register as a Member of the Company and includes a Stakeholder Member or an Associate Stakeholder Member.

**Member Association(s)** means the State Associations that are the registered and financial members of the ALA.

**Membership** means an entitlement afforded to a Member of the Company.

**Membership Fees** means the fees payable by Members of the Company on an annual basis as determined by the Board from time to time.

**Nomination Committee** has the meaning given in clause 48(b).

**Not-for-Profit Organisation** means an organisation that is not operating for the profit or gain of its individual members.

**Person** includes:

- (a) a natural person; and
- (b) a registered company, corporation or incorporated association.

**Policy** means any policy adopted by the Board from time to time that may or may not be reduced to writing.

**Register** means the Register of Members.

**Related Body Corporate** means a related body corporate as defined in Section 50 of the Act;

**Seal** means the common seal of the Company (if any).

**Secretary** means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries.

**Service Address** means the address nominated by a Member for the purpose of receiving notices from the Company.

**Small Company** shall have the same meaning as that given to the expression "Small Company Limited by Guarantee" under section 45B of the Act.

**Special resolution** means a resolution of which notice has been given in accordance with this Constitution and that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

**Stakeholder Member** means a Member appointed in accordance with clause 6(c) and **Stakeholder Membership** means an entitlement afforded to a Stakeholder Member.

**Subscriber** means a person who consents to act as a Member prior to the registration of the Company.

**Vice-Chairperson** means the person who, if required, temporarily steps into the role of Chairperson.

**Voting Member** means a Stakeholder Member who is a Financial Member, at the relevant time.

### 3 INTERPRETATION

- (a) *The Acts Interpretation Act 1901* (Commonwealth) shall apply in the interpretation of this Constitution as if it were an act of the Commonwealth.
- (b) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (c) Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.
- (d) Any reference to any statute or any section, regulation or schedule of any statute or any other legislation is a reference to that statute as amended, consolidated, supplemented or replaced.

- (e) The use of headings is for convenience and does not affect the interpretation of this Constitution.

## **PURPOSE OF COMPANY**

### **4 OBJECTS**

- (a) The objects for which the Company is established are:
- (i) to raise Income for the purpose of building a capital-protected fund which includes the Initial Capital Contribution;
  - (ii) to use the Income and investment earnings from the capital-protected fund to assist and support the work of the ALA for Lacrosse development programs and promotions in Australia approved by ALA and the Company, noting the agreed respective roles as follows:
    - (A) the Company must raise funds for growth and development of Lacrosse in accordance with the ALA's growth program and register referred to in paragraph (B) below;
    - (B) the ALA, as the National Governing Body, must identify, document and provide a register for growth and development opportunities. That register is to have listed in it projects prioritized, sized (ie- funding requested), with desired timing identified, functionally (with any interdependency) described and have its projected benefits outlined. The register is to be created and held by the ALA director responsible for growth in accordance with the work of the ALA's growth advisory council;
    - (C) the Company and ALA shall work together to select the best or most appropriate funding opportunities and/or capabilities from that register;
    - (D) the finalized and mutually agreed selection shall lead to the Company funding that selected project(s) and ALA managing and operating the selected project(s);
    - (E) the ALA shall report to the Company regularly (minimum quarterly) on progress and outlook for any project(s) being managed to completion when a final report will be produced and a post implementation review will be conducted by the Company and ALA to measure results obtained, return-on-investment realization plans and any lessons learnt;
    - (F) each organization (ie the Company and ALA) shall have a single appointed voting representative in finalizing project selection from the register, although any board members of either organization can attend such reviews and decision making meetings – hence for an ALA project to be funded by the Company both voting representatives must agree (acting

and voting in accordance with their respective board's prior resolutions/instructions);

- (G) the target audience for the Company will include (but not be the only source of identifying) some potential donors within the ALA's membership and past players, supporters etc.
  - (iii) as a key priority, to support ALA and Company approved and endorsed (as set out in 4(a)(ii) above) Lacrosse participation development programs and projects with particular emphasis on junior development;
  - (iv) to support the development and ongoing supply of national resource materials for Lacrosse promotions and exposure, including but not restricted to pamphlets, posters, stickers, award certificates, display materials, publications, audio-visuals, internet and social media infrastructure;
  - (v) to support ALA and the Company approved and endorsed programs and resources (as set out in 4(a)(ii) above) for the training and accreditation of personnel in Lacrosse administration, coaching and officiating roles;
  - (vi) to provide material support to representative Australian Lacrosse Teams participating in international competitions; and
  - (vii) to provide material support to assist the ALA with the collection, archiving and publication of historical Lacrosse records and memorabilia.
- (b) The assets and Income of the Company shall be applied solely in furtherance of the above-mentioned objects and no portion shall be distributed directly or indirectly to the Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.
  - (c) The Company shall, where reasonable, at all times use its best endeavours to adhere to the Australian Governance Principles.
  - (d) The Company shall not do or authorise any act that is inconsistent with its objects set out in this clause 4.

## **5 POWERS**

The Company has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Corporations Act.

## **MEMBERSHIP**

## **6 MEMBERS**

- (a) Any Persons whom the Directors admit to Membership of the Company in accordance with the Constitution of the Company will be Members.



- (b) The Company will have two classes of Membership: (i) Stakeholder Members; and (ii) Associate Members.
- (c) To qualify for **Stakeholder Membership**, a Member must be:
  - (i) the ALA; or
  - (ii) an ALA Full Member Association.
- (d) To qualify for **Associate Membership**, a Member must be:
  - (i) an ALA affiliated State Lacrosse association that does not qualify for Stakeholder Membership;
  - (ii) a district Lacrosse association;
  - (iii) a school or tertiary education sports association; or
  - (iv) another Lacrosse organisation or party as agreed with the ALA from time to time.
- (e) Every Applicant must execute and deliver to the Company an Application for Membership together with any payable Membership Fees and must also provide in writing such other information as the Directors may require.
- (f) The Directors must determine the admission or rejection of an Applicant within a reasonable time period and may reject an Applicant's Application for Membership without giving any reason for that rejection.

Upon acceptance or rejection of an Application for Membership pursuant to clause 6(f), the Secretary must send written notice of the acceptance or rejection to the Applicant as soon as practicable, and in the case of rejection, must refund any Membership Fees paid by the Applicant in connection with their Application for Membership.

## 7 REGISTER OF MEMBERS

- (a) The Secretary will maintain a Register at the registered office of the Company.
- (b) When an Applicant has been accepted for Membership, the Secretary will cause the Applicant's name to be entered in the Register, thereupon conferring Membership.

## 8 SERVICE ADDRESS

- (a) The Service Address of a Member in the Register will be the address nominated by the Member for the purpose of receiving notices from the Company.
- (b) The Company shall use its best endeavours to use the Service Address nominated by each Member for the purpose of delivering notices.

- (c) Each Member must notify the Secretary within fourteen (14) days of any change of name or Service Address of the Member and each such change shall be recorded in the Register.

## **9 RIGHTS AND OBLIGATIONS OF MEMBERS**

- (a) The rights of any Member will not be transferable.
- (b) The rights attaching to any particular class of Membership may be varied or cancelled (unless otherwise provided by this Constitution or under the Act) with:
  - (i) the written consent of Members with at least 75% of the votes in that class; or
  - (ii) by special resolution passed at a separate meeting of the class of Members whose rights are being varied or cancelled (such meeting to be conducted in accordance with the procedure for General Meetings under this Constitution), who, for the avoidance of doubt, are entitled to vote on such a resolution regardless as to whether such Members ordinarily have voting rights in the Company under this Constitution.
- (c) Members must complete the Membership Agreement and pay the Membership Fees on an annual basis at such times as the Directors may from time to time determine.
- (d) If any fees or levies payable by a Member remain unpaid for a period of 2 calendar months after notice of such default is given to the Member by the Company, the Directors by resolution may suspend all the privileges of Membership (including the right to vote) of that Member, provided that the Directors may reinstate the privileges of Membership of that Member on payment of all arrears if the Directors think fit to do so.

## **10 LIABILITY OF MEMBERS**

The liability of a Stakeholder Member is limited to the extent of the Stakeholder Member's guarantee as set out in clause 80. This liability shall continue for the duration of the membership of a Stakeholder Member and for a period of twelve (12) months following the cessation of Membership of a Stakeholder Member.

## **11 CESSATION OF MEMBERSHIP**

Membership of the Company will terminate upon:

- (a) the Secretary receiving from a Member a letter of resignation as a Member;
- (b) a Member being expelled or suspended in accordance with this Constitution;
- (c) if the Member is a body corporate, upon dissolution or it otherwise ceasing to exist; or
- (d) if the Member is an individual, if the Member dies or is declared by a practising medical practitioner qualified to make such a declaration to be of unsound

mind or his or her person or estate is liable to be dealt with in any way under the laws relating to mental health.

## **12 CONSEQUENCES OF LOSS OF MEMBERSHIP**

A Member whose Membership is terminated will be liable for:

- (a) all moneys due by that Member to the Company; and
- (b) the sum for which the Member is liable under clause 80 of this Constitution, if applicable.

## **13 PROHIBITION ON CLAIMS ON COMPANY**

A Member whose Membership is terminated will not make any claim, monetary or otherwise, on the Company, its funds or property except as a creditor thereof.

## **14 PROHIBITION ON REPRESENTATION AS A MEMBER**

Any Person who for any reason ceases to be a Member shall no longer represent themselves in any manner as being a Member.

# **MEETINGS OF MEMBERS**

## **15 CONVENING GENERAL MEETINGS**

- (a) By ordinary resolution, the Board may convene a General Meeting.
- (b) The Directors must convene a General Meeting on the request of Members in accordance with section 249D of the Act.
- (c) The Members may convene a General Meeting in accordance with sections 249E and 249F of the Act.

## **16 CONTENTS OF NOTICE OF GENERAL MEETINGS**

A notice of a General Meeting shall specify:

- (a) the place, the day and the time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the agenda and motions of the business to be transacted at the meeting; and
- (c) such other information as is required by section 249L of the Act.

## **17 MEETING AT SEVERAL VENUES**

The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

## **18 PERIOD OF NOTICE OF GENERAL MEETING**

Subject to the provisions of the Act relating to agreements for shorter notice, at least twenty one (21) days' notice must be given of a General Meeting.

## **19 PERSONS ENTITLED TO NOTICE OF GENERAL MEETING**

- (a) Notice of every General Meeting shall be given in the manner authorized by clause 67 to:
  - (i) every Member eligible to attend and vote at the meeting and to every Director; and
  - (ii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of General Meetings.

## **20 GENERAL MEETINGS**

- (a) Subject to the Act, a General Meeting shall be held at least once in every calendar year and within the period of five (5) months after the end of the financial year at such time and place as may be determined by the Directors.
- (b) The business of the Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:
  - (i) the consideration of the Annual Financial Report, Directors' Report and Auditor's Report;
  - (ii) the appointment of the auditor if required;
  - (iii) the fixing of the auditor's remuneration if the Company has appointed an auditor.

## **21 CHAIR OF GENERAL MEETINGS**

- (a) The Chairperson of a General Meeting is such person appointed as Chairperson pursuant to clause 36.
- (b) Where a General Meeting is held and the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting the:
  - (i) Vice-Chairperson, as appointed pursuant to clause 36 will act as Chairperson of the meeting (or part of it); or
  - (ii) if the Vice Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting, the Members present shall elect one of their number to be Chairperson of the meeting (or part of it).
- (c) The Chairperson is authorised to:

- (i) control the general conduct of the meeting and determine the procedures to be adopted;
- (ii) may require that those in attendance adopt a procedure which in the Chairperson's opinion is necessary for orderly debate, discussion or voting;
- (iii) where permitted to do so under the Act, terminate discussion or debate on any matter when in the opinion of the Chairperson it is necessary for the proper conduct of the meeting; and
- (iv) ensure true and correct records are produced of the meeting.

## **22 QUORUM FOR GENERAL MEETINGS**

- (a) No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the General Meeting proceeds to business.
- (b) A quorum is constituted by three (3) Persons entitled to attend and vote at the meeting in accordance with this Constitution.
- (c) A Person that is entitled to attend and vote at the meeting in accordance with this Constitution and who is represented by a proxy or, if they are a body corporate, by a person representing that body corporate, shall be deemed to be a Member for the purposes of determining whether a quorum is present.

## **23 ADJOURNMENT OF GENERAL MEETINGS IF NO QUORUM PRESENT**

If a quorum is not present within half an hour from the time appointed for the General Meeting:

- (a) where the meeting was convened upon the request of Members - the meeting shall be dissolved; or
- (b) in any other case:
  - (i) the meeting stands adjourned to such day, and at such time and place, as the Chairperson determines or, if no determination is made, to the same day in the next week at the same time and place; and
  - (ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, then the meeting shall be dissolved.

## **24 ADJOURNMENT OF GENERAL MEETINGS IF QUORUM PRESENT**

- (a) The Chairperson shall adjourn a General Meeting from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the Chairperson to do so. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (b) When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (c) Except as provided by clause 24(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **25 VOTING AT GENERAL MEETINGS**

- (a) At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a secret ballot is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded:
  - (i) by the Chairperson;
  - (ii) by at least two (2) Members (present in person or by proxy or representative) entitled to vote on the resolution; or
  - (iii) by a Member or Members (present in person or by proxy or representative) with at least 25% of the votes that may be cast on the resolution on a poll.
- (b) If a secret ballot is duly demanded in accordance with clause 25(a) it shall be taken in such manner and, subject to clause 25(c), either at once or after an interval or adjournment or otherwise as the Chairperson directs, and the result of the secret ballot shall be the resolution of the meeting at which the secret ballot was demanded.
- (c) A secret ballot demanded on the election of a Chairperson or on a question of adjournment shall be taken immediately.

## **26 VOTING DEADLOCK**

In the case of an equality of votes, whether on a show of hands or on a secret ballot, the Chairperson of the General Meeting shall only have a deliberative vote but not a casting vote as the Chairperson, and in the event of a deadlock the resolution will be considered not to have passed.

## **27 VOTING ENTITLEMENT**

Subject to any rights or restrictions for the time being attached to any Member:

- (a) at meetings of the Company's Members or classes of Members each Member entitled to vote may vote in person or by proxy, or attorney or, in the case of a body corporate, by representative; and
- (b) each Member who is entitled to vote in accordance with clause 27(a) has one vote, whether by show of hands, on a poll or on a secret ballot.

## **28 OBJECTIONS TO VOTES**

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

- (b) Any such objection shall be referred to the Chairperson of the General Meeting, whose decision is final.
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

## **MEMBERS' REPRESENTATIVES**

### **29 PROXIES**

A Member of the Company who is entitled to attend and cast a vote at a General Meeting may appoint a person as the Member's proxy to attend and vote for the Member at that meeting.

### **30 APPOINTMENT OF A PROXY**

- (a) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or executed in accordance with the Act or under the hand of an officer or attorney duly authorised.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.
- (c) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a secret ballot.

### **31 FORM OF PROXY**

An instrument appointing a proxy shall be in a form that is similar as the circumstances allow to the form shown in Schedule A hereof.

### **32 VALIDITY OF PROXY APPOINTMENT**

An instrument appointing a proxy shall not be treated as valid unless an original or certified copy of the instrument, and the power of attorney or other authority under which the instrument is signed, if applicable, , is or are deposited, not less than forty eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

### **33 VALIDITY OF PROXY VOTE**

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the death, unsoundness of mind or revocation before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## DIRECTORS

### 34 APPOINTMENT, NUMBER AND ELIGIBILITY OF DIRECTORS

- (a) The number of Directors shall be not less than three (3) and not more than five (5), comprising up to four (4) Directors who will be elected by the Voting Members in accordance with clause 34(c) and up to one (1) Director who may be appointed by the elected Directors in accordance with clause 34(d).
- (b) The initial Directors are the people who have agreed to act as Directors as at the date of adoption of this Constitution.
- (c) Subject to clause 34(a), the Voting Members may elect a Director by a resolution passed in a General Meeting as follows:
  - (i) each of such Directors must be appointed by a separate resolution, unless the Voting Members present have first passed a resolution that the appointments may be voted on together and no votes were cast against that resolution; and
  - (ii) to be eligible to be a Director appointed pursuant to this clause 34(c), an individual must:
    - (A) be nominated by at least one Member or representative of a Member entitled to vote (unless the person was previously elected as a Director at a General Meeting and has been a director since that meeting);
    - (B) give the Company their signed consent to act as a Director of the Company;
    - (C) not be ineligible to be a Director under the Act; and
    - (D) not be:
      - (I) an employee of the Company; or
      - (II) a person who holds office as a director or member of the board or central committee of a Voting Member.
- (d) Subject to clause 34(a), the elected Directors may appoint up to one (1) independent Director who:
  - (i) may have specific skills in commerce, finance, marketing, law or business generally, or such other skills that compliment the Board composition;
  - (ii) need not have experience in or exposure to Lacrosse;
  - (iii) must give the Company their signed consent to act as a Director of the Company;
  - (iv) must not be ineligible to be a Director under the Act; and



- (v) must not be:
  - (A) an employee of the Company; or
  - (B) a person who holds office as a director or member of the board or central committee of a Voting Member..
- (e) Any Director that is ineligible or becomes ineligible must give notice to the Board of their ineligibility and vacate from their position as a Director within thirty (30) days.

### **35 ALTERING THE NUMBER OF DIRECTORS**

The Company may from time to time by special resolution passed at a General Meeting fix the number of Directors or increase or reduce the number of Directors.

### **36 APPOINTMENT OF CHAIRPERSON AND VICE CHAIRPERSON**

The Chairperson and Vice Chairperson shall be appointed by the Directors and the Directors must determine the period for which such Chairperson and Vice Chairperson are to hold office.

### **37 QUALIFICATION OF DIRECTORS AS MEMBERS**

It shall not be necessary for a Director to be a Member of the Company by way of qualification and a Director who is not a Member of the Company shall be entitled to receive notices of and attend and speak at meetings of the Company's Members.

### **38 TENURE OF DIRECTORS**

- (a) At each Annual General Meeting:
  - (i) any Director appointed by the Directors to fill a casual vacancy; and
  - (ii) at least one-third of the remaining Directors must retire.
- (b) The Directors who must retire at each Annual General Meeting will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (c) Other than Directors appointed by the Directors to fill a casual vacancy, a Director's term of office starts at the end of the Annual General Meeting at which they are elected and ends at the end of the Annual General Meeting at which they retire.
- (d) Each Director must retire at least once every three years.
- (e) A Director who retires under this clause may nominate for election or re-election.

### **39 CASUAL VACANCY**

The Directors may appoint a person as a Director to fill a casual vacancy if that person:

- (a) gives the Company their signed consent to act as a Director; and
- (b) is not ineligible to be a Director under clauses 34(c)(ii)(C) and 34(c)(ii)(D).

### **40 ACTING DURING VACANCY OF DIRECTORS**

If the number of Directors is reduced to fewer than three or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

### **41 DEFECTS IN APPOINTMENT OF DIRECTORS**

All acts done by any meeting of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a Member of the committee, or to act as Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a Member of the committee.

### **42 REMOVAL OF A DIRECTOR**

The Members may at any time and from time to time, in accordance with the provisions of s 203D of the Act remove any Director provided that the total number of Directors shall not at any time fall below the minimum fixed by this Constitution.

### **43 LOSS OF OFFICE**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) dies or becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from office by notice in writing to the Company;
- (c) is absent without the consent of the Directors from all meetings of the Directors held during a period of six (6) months;
- (d) without the consent of the Company in General Meeting holds any other office of profit under the Company;
- (e) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest as required by clause 50; or
- (f) is convicted of a criminal offence which may be punishable by imprisonment.

#### **44 REMUNERATION OF DIRECTORS**

No remuneration shall be payable to Directors.

#### **45 REIMBURSEMENT OF EXPENSES**

A Director shall be entitled to receive:

- (a) reimbursement of out-of-pocket expenses incurred in carrying out the duties of a Director where the payment does not exceed the amount previously approved by the Board;
- (b) payment for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms; or
- (c) payment as an employee of the Company where the terms of employment have been approved by resolution of the Board.

#### **46 POWERS OF DIRECTORS**

- (a) Subject to the Act and to any other provision of this Constitution, the business of the Company shall be managed by the Directors, who may pay any expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in a General Meeting.
- (b) All cheques, promissory notes, bank drafts, bills of exchange, electronic transfer and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be in such manner as the Directors determine.

#### **47 APPOINTMENT OF COMPANY ATTORNEY**

- (a) The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

#### **48 DELEGATION OF POWERS**

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such of their number or any employees, officers or consultants as they think fit.

- (b) The Directors shall form a committee that will have responsibility for receiving any nominations for vacant offices of the Company and for submitting any nominations it considers appropriate for vacant offices of the Company from time to time (**Nomination Committee**).
- (c) The Directors shall form a committee that will have responsibility for auditing the administration of the Company's affairs and reporting to the Directors (**Audit Committee**).
- (d) Any delegation of the Directors' powers:
  - (i) should be in writing;
  - (ii) must specify the power delegated, any restrictions on, and conditions attaching to the exercise of those powers, and any period applicable to the exercise of those powers;
  - (iii) may be either general or limited in any way provided for in the terms of the delegation;
  - (iv) need not be to a specific person but may be to an office or officeholder or their agent; and
  - (v) may include the power to delegate.
- (e) If exercising a delegated power requires that the delegate form their own opinion, belief or state of mind then that power may be exercised by the delegate in their discretion.
- (f) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- (g) The members of such a committee may elect one (1) of their number as Chairperson of their meetings.
- (h) Where such a meeting is held and:
  - (i) a Chairperson has not been elected as provided by clause 48(g); or
  - (ii) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,

the members present shall elect one (1) of their number to be Chairperson of the meeting or part of it.
- (i) A committee may meet and adjourn as it thinks proper.
- (j) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

- (k) In the case of an equality of votes, the Chairperson shall not have a casting vote in addition to any vote the Chairperson may have in the capacity as a committee member.

#### **49 DUTIES OF DIRECTORS**

- (a) A Director shall act consistently with the statutory duties of directors as provided in the Act and with the common law duties imposed on Directors.
- (b) The Board may, if it thinks it appropriate:
  - (i) adopt a code prescribing conduct for Directors (**Code of Conduct**); and
  - (ii) periodically review the Code of Conduct in light of the general principles of good corporate governance.

#### **50 MATERIAL PERSONAL INTERESTS**

- (a) Every Director shall observe the provisions of section 191 of the Act relating to the disclosure of the interest of Directors in contracts or proposed contracts with the Company or of any office or property held by Directors which might create duties or interests in conflict with their duties or interests as Directors. It shall be permissible for a Director to give the other Directors a standing notice about a material personal interest provided such standing notice is given in accordance with section 192 of the Act.
- (b) If a Director has a material personal interest which requires disclosure under the Act, the disclosure must be made before the Directors vote on any resolution which deals directly or indirectly with the material personal interest.
- (c) Where a Director has disclosed his material personal interest in a matter:
  - (i) the Director at any meeting of Directors at which such matter is to be considered shall not be entitled to be present while the matter is being considered at the meeting nor to vote on any matter pertaining to the matter unless:
    - (A) those Directors who do not have a material personal interest in the matter have passed a resolution that:
      - (I) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
      - (II) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
    - (B) the interested Director has obtained a declaration or order made by the Australian Securities and Investments Commission or its successor which entitles the Director to be present and to vote;

- (ii) if the matter is approved by the Directors, that matter may proceed, notwithstanding the Director's conflict;
  - (iii) the Director shall not be liable to account to the Company for any profit realised by any such transaction; and
  - (iv) any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested cannot be avoided by the Company on the grounds of the interest of the Director in the contract or arrangement.
- (d) Provided the Director observes the provisions of sections 191 and 195 of the Act, no Director shall be disqualified by his office from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise.

## **MEETINGS OF DIRECTORS**

### **51 FREQUENCY OF BOARD MEETINGS**

The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

### **52 CONVENING BOARD MEETINGS**

The Board may at any time, and a Secretary shall on the requisition of a Director, convene a meeting of the Directors.

### **53 NOTICE OF BOARD MEETINGS**

Reasonable notice in the circumstances must be given of all Board meetings unless all Directors consent to waive the requirement for notice of a Board meeting.

### **54 QUORUM FOR BOARD MEETINGS**

- (a) Unless the Directors determine otherwise, the quorum for a meeting of Directors is three (3) Directors provided that each such person is entitled under the Act to vote on a motion that may be moved at that meeting.
- (b) The quorum must be present at all times during a meeting of Directors.

### **55 CHAIR OF BOARD MEETINGS**

- (a) The Chairperson or, if the Chairperson is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting, the Vice Chairperson appointed by the Directors pursuant to clause 360 will act as Chairperson of a meeting of the Directors.
- (b) Where a meeting of the Directors is held and a Chairperson or Vice Chairperson is unwilling or not present to act as Chairperson for all or part of the meeting in accordance with clause 55(a), the Directors present shall elect one of their number to be Chairperson of such meeting or part of it.

## **56 VOTING AT BOARD MEETINGS**

- (a) Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.
- (b) Unless provided otherwise, each Director is entitled to cast one (1) vote on each matter for determination.

## **57 VOTING DEADLOCK**

In the case of a deadlock in the voting on a particular motion, the Chairperson of the meeting shall not have a casting vote— hence that motion would be lost.

## **58 VIRTUAL MEETINGS OF DIRECTORS**

- (a) A meeting of Directors may be called or held using any technology consented to by all the Directors. A consent of a Director for the purposes of this Clause 58 may be a standing one. A Director may only withdraw his consent within a reasonable time before the meeting of Directors.
- (b) For the purposes of this Constitution, the contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to meetings of the Directors shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:
  - (i) all the Directors for the time being entitled to receive notice of the meeting of Directors (including any alternate for any Director) shall be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution; and
  - (ii) each of the Directors taking part in the meeting by an instantaneous communication device must be able to hear each other of the Directors taking part at the commencement of the meeting.
- (c) A Director may not leave a meeting held by an instantaneous communication device by disconnecting his instantaneous communication device unless he has previously expressly notified the Chairperson of the meeting of his intention to leave the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his leaving the meeting.
- (d) A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceeding and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.

- (e) For the purpose of this clause 58 "instantaneous communication device" shall include telephone, computer or any other audio and/or visual device which permits instantaneous communication.

## **59 PASSING RESOLUTIONS WITHOUT MEETINGS**

If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.

## **60 DEEMED RESOLUTION**

For the purposes of Clause 59, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate document.

## **OTHER OFFICERS**

### **61 SECRETARY**

- (a) A Secretary holds office on such terms and conditions, as the Directors determine.
- (b) The Directors may suspend or remove the Secretary from that office.

## **INSURANCE AND INDEMNITY OF APPLICABLE PERSONS**

### **62 APPLICABLE PERSONS**

The provisions of Clauses 63, 64, 65 and 66 shall apply to persons (**Applicable Persons**), being:

- (a) every person who is or has been an officer of the Company;
- (b) every person who is or has been an officer of a Related Body Corporate of the Company;
- (c) if the Directors determine, an employee or former employee of the Company or a Related Body Corporate of the Company; and
- (d) if the Directors determine and to the extent permitted under the Act, an auditor or former auditor of the Company or a Related Body Corporate of the Company.



## **63 INSURANCE**

- (a) To the extent permitted under the Act, the Company may pay, or agree to pay, a premium in respect of a contract insuring any one or more Applicable Persons against any liability incurred by the Applicable Person provided that the liability does not arise out of conduct involving:
  - (i) a wilful breach of duty in relation to the Company or a Related Body Corporate of the Company; or
  - (ii) a contravention of sections 182 or 183 of the Act.

## **64 INDEMNITY**

- (a) The Company does not exempt an Applicable Person from a liability to the Company incurred in their capacity as an Applicable Person.
- (b) To the extent permitted by the Act, the Company indemnifies any Applicable Person against non-legal costs incurred as an Applicable Person except:
  - (i) for a liability owed to the Company or a Related Body Corporate of the Company;
  - (ii) for a liability for a pecuniary penalty order under section 1317G or compensation order under section 1317H or section 1317HA of the Act; or
  - (iii) for a liability owed to a third party arising out of conduct involving a lack of good faith.
- (c) To the extent permitted by the Act, the Company indemnifies any Applicable Person against legal costs incurred in defending an action for a liability incurred as an Applicable Person except:
  - (i) in defending or resisting proceedings in which the Applicable Person is found to have a liability for which they could not be indemnified under Clause 64(2);
  - (ii) in defending or resisting criminal proceedings in which the Applicable Person is found guilty;
  - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission (and any of its successors) or a liquidator for a court order if the grounds for making the order are found by a court to have been established; or
  - (iv) in connection with proceedings for relief to the Applicable Person under the Act in which the Court denies relief.
- (d) Where the costs and expenses incurred by an Applicable Person under Clauses 64(a), 64(b) or 64(c) are recovered by the Company under an insurance policy taken out or paid for by the Company pursuant to Clause 63, the extent of the indemnification of an Applicable Person shall be reduced accordingly.

## **65 LOAN TO AN APPLICABLE PERSON**

- (a) To the extent permitted by the Act, the Directors may give an advance to an Applicable Person to assist with the payment of costs and expenses of the Applicable Person which may be incurred under Clause 64, where, in the opinion of the Directors, the costs and expenses are likely to become an amount for which the Company may become liable.
- (b) If, upon a determination of the proceedings, the costs and expenses for which the advance was given are not the liability of the Company, the loan or advance given to the Applicable Person shall be recoverable according to the terms of the loan or advance.

## **66 DEFINITION OF "PROCEEDINGS"**

In Clauses 64 and 65, the term "proceedings" means any proceedings and any appeal in relation to any proceedings, whether civil or criminal, being proceedings in which it is alleged that the Applicable Person has done or omitted to do some act, matter or thing in his capacity under which the person has become an Applicable Person (including proceedings alleging that the Applicable Person was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a Related Body Corporate).

## **ADMINISTRATION**

## **67 NOTICES**

- (a) A notice may be given by the Company to any Member either:
  - (i) by serving it on him or her personally; or
  - (ii) by sending it by post to him or her at his or her address as shown in the Register or to the Service Address supplied by him or her to the Company for the giving of notices to him or her.
- (b) Where a notice is sent by:
  - (i) post, service of the notice shall be deemed to be effective by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a Member, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post;
  - (ii) by facsimile transmission, service of the notice shall be deemed to be effected within twenty four (24) hours of the transmission, unless the Company receives notification that the transmission was not successful; or
  - (iii) by electronic transmission, service of the notice shall be deemed to be effected within twenty four (24) hours of the transmission, unless the Company receives notification that the transmission was not successful.

## **68 MINUTES**

The Directors will cause minutes of:

- (a) all proceedings and resolutions of meetings of the Company's Members;
- (b) all proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors;
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting, to be duly entered into the books kept for that purpose in accordance with the Act.

## **69 EVIDENTIARY STANDING OF MINUTES**

A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

## **70 INSPECTION OF MINUTE BOOKS**

Books containing the minutes of the Company's Members and resolutions passed by Members without a meeting will be open for inspection by any Member free of charge.

## **71 INSPECTION OF ACCOUNTING RECORDS AND OTHER DOCUMENTS**

Subject to the Act, the Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members, and a Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

## **72 EXECUTION OF DOCUMENTS**

- (a) The Company may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words "Common Seal" are engraved.
- (b) If the Company has a Seal the Directors shall provide for the safe custody of the Seal.
- (c) The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.
- (d) The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
  - (i) two Directors;
  - (ii) one Director and one Secretary; or
  - (iii) one Director and another person appointed by the Directors for that purpose.

The signature of such persons may be affixed to the document by manual, autographic or mechanical means.

- (e) The Company may execute a document without using a seal if the document is signed by:
  - (i) two Directors; or
  - (ii) one Director and one Secretary; or
  - (iii) one Director and another person appointed by the Directors for that purpose.

The signature of such persons may be affixed to the document by manual, autographic or mechanical means.

- (f) A facsimile signature may not be affixed to a document unless the auditors, internal auditors or bankers of the Company have reported to the Board in writing that the document may be sealed in that manner.

### **73 CREATION, AMENDMENT AND REPEAL OF BY-LAWS**

The Board has power to make By-Laws concerning membership application and qualification for membership of the Company and any other matter which the Board believes suitable for including in such By-Laws.

### **74 AMENDMENT OF CONSTITUTION**

The Company may only alter this Constitution by special resolution passed at a General Meeting.

## **FINANCIAL MATTERS**

### **75 ACCOUNTS**

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company so as to enable a complete examination of the records by the auditor of the Company.

### **76 AUDIT**

The following provisions in this Clause shall apply to the Company.

- (a) A registered company auditor must be appointed. No appointment of an auditor shall be effective unless the auditor has first tendered to the Company a signed consent to so act.
- (b) The auditor must not be an officer of the Company.
- (c) The Company must:
  - (i) at its first Annual General Meeting appoint an auditor; and

- (ii) at each subsequent Annual General Meeting, if there is a vacancy in the office of auditor, appoint an auditor to fill the vacancy.
- (d) An auditor appointed pursuant to Clause 76(c) shall hold office until resignation or removal from office or until the auditor is not capable of acting as auditor for any reason.
- (e) An auditor may be removed by resolution passed at a General Meeting.
- (f) Where an auditor resigns in accordance with Clause 76(d) or is removed in accordance with Clause 76(e), the Board may appoint another person to be the auditor.
- (g) The auditor appointed pursuant to Clause 76(f) shall remain as auditor until the next Annual General Meeting, whereupon his appointment shall be subject to the ratification or otherwise of the Members.

## **77 APPLICATION OF INCOME AND PROPERTY**

- (a) The Income and property of the Company however derived will be applied solely towards the promotion of the objects of the Company as set out in this Constitution, and no portion of the Income or the property of the Company will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to Members of the Company.
- (b) Nothing in this Constitution shall prevent the payment in good faith:
  - (i) of the payments contained in Clauses 45 hereof;
  - (ii) payment of insurance premiums to the extent permitted by the Act; and
  - (iii) indemnification to the extent permitted by the Act and this Constitution.

## **78 DIVIDENDS AND RESERVES**

No payment of dividends and other distributions to Members shall be made.

## **WINDING UP**

### **79 PROCEDURE**

The Company may be dissolved by a special resolution of Members at a General Meeting.

### **80 CONTRIBUTION OF MEMBERS ON WINDING UP**

Every Member of the Company undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member such amount as may be required not exceeding one dollar (\$1.00), for the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member of the Company, and the costs charges and expenses of winding up and for

the adjustment of the rights of the contributors amongst themselves. No members other than Members shall have any requirement and/or liability to contribute to the assets of the Company in the event of the Company being wound up.

## **81 DISTRIBUTION OF PROPERTY ON WINDING UP**

In the event of the Company being wound up, the amount that remains after such wind up 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.

## SCHEDULE 1– DIRECTOR APPOINTMENT



Lacrosse Australia Foundation Limited

I/We.....

being a Member/Members of the abovenamed Company, hereby appoint

..... of .....

or, in his/her absence,

..... of .....

as my/our proxy to vote for me/us on my/our behalf at the General Meeting to be held on the ..... day of ..... ,20.. . and at any adjournment of that meeting.

SIGNED this .....day of.....20...

SIGNATURE

OF MEMBER: .....

[SIGNATURE]

To be inserted if desired:—

This form is to be used:

- ☐ in favour of\*; or
- ☐ against\*

the resolution(s) appearing below

*\*strike out whichever is not desired.*

## SCHEDULE 2 –MEMBERSHIP AGREEMENT



Lacrosse Australia Foundation Limited

I/We.....

being a FULLY FINANCIAL Member ASSOCIATION OF THE AUSTRALIAN LACROSSE ASSOCIATION LTD ,

HEREBY AGREE TO MEMBERSHIP OF THE LACROSSE AUSTRALIA FOUNDATION –

WITH THE INTENTION OF ASSISTING/SUIPPORTING THE ORGANISATION IN IT'S PURPOSE AS  
OUTLINED IN THE CONSTITUTION.

Please print:

Name:

Position:

Organisation:

SIGNATURE:



### SCHEDULE 3 – AGM REPRESENTATIVE APPOINTMENT



Lacrosse Australia Foundation Limited

I/We.....

being a FULLY FINANCIAL Member ASSOCIATION OF THE AUSTRALIAN LACROSSE ASSOCIATION LTD ,

Appoint:

(Please print full name)

Contact: Email

Mobile

To represent this organisation at the Annual General Meeting of the Lacrosse Australia Foundation Ltd being held on Tuesday 12 November 2019, by teleconference.

Signed:

Organisation:

Date: