

ASSOCIATION RULES OF THE MAGNOLIA PROJECT

Australian Business Number (ABN) 53 001 681 455

An unincorporated association

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***Definitions**

1.1 In these rules, words and phrases have the meaning set out below:

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC Act means Australian Charities and Not-for-profits Commission Act 2012 (Cth) as amended from time to time.

AGM means annual **general meeting**.

association means the unincorporated **association** described in rule 2.

committee and **committee member(s)** means the **association's committee** of management and the members of the **committee** of management respectively (see rule 12.2).

general meeting means the meetings of members of the **association** as described in rule 15, consisting of AGMs and special **general meetings**.

purposes means the charitable **purposes** of the **association** as described in rule 4.1.

registered charities means charities registered with the ACNC.

special resolution means a resolution of members:

- of which at least 21 days' notice of the meeting at which it will be considered has been given to members, and
- that is passed at a **general meeting** by 75% or more of the members voting (who are eligible to vote), voting in favour of it.

2. *Preliminary

2.1 The name of the **association** is The Magnolia Project.

2.2 The **association** is unincorporated.

2.3 The **association** is established to be, and continue as, a charity.

2.4 These rules are intended to be binding on members of the **association** and enforceable by courts in South Australia.

2.5 The founders of the Magnolia Project are the office bearers until the AGM when other office bearers may be elected.

3. *Alteration of rules

3.1 Subject to rule 3.2 below, these rules may be changed, added to, or replaced by **special resolution** of the **association's members** at a **general meeting**. This includes a change to the **association's** name.

3.2 The **members** must not pass a **special resolution** that amends these rules if passing it causes the **association** to no longer be a charity.

4. *Charitable purposes and not-for-profit status

- 4.1 The **association** will pursue the following charitable **purposes**:
to support a range of new initiatives and programs that can develop policy and practice across the criminal justice system.
- 4.2 The **association** may do all things that help it to achieve these **purposes**, in accordance with these rules.
- 4.3 The **association** and its **committee** may only do things and use the income and assets of the **association** (including those held on trust for the **association** or its **purposes**) for the **purposes**.
- 4.4 The **association** must operate consistently with legal requirements for **registered charities**.
- 4.5 The **association** must not distribute any income or assets, directly or indirectly, to its members.
- 4.6 Rule 4.5 does not stop the **association** from doing the following things, provided they are done in good faith (fairly and honestly):
- paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **association**, or
 - making a payment or providing a benefit to a member in carrying out the **association's** charitable **purpose(s)**.

Indemnity

- 4.7 To the extent possible under law, members (including **committee members**) are entitled to be indemnified out of the assets held for the **association** for any debts or liabilities incurred personally by a member when acting on behalf of the **association**, so long as the member was:
- i. authorised by the **association** to take that action, and
 - ii. acting in good faith (fairly and honestly) and in the best interests of the **association**.
- 4.8 This indemnity is a continuing obligation and is enforceable by a person even if that person is no longer a member of the **association**. This indemnity only applies to the extent that the person is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 4.9 To the extent permitted by law, and if the **committee** considers it appropriate, the **association** may pay or agree to pay a premium for a contract insuring a person who is or has been a member of the **association** (including a **committee member**) against any liability incurred by that person as a member of the **association** (including as a **committee member**).

5. * Funds and assets

- 5.1 The **committee** must establish policies about the holding and management of funds and assets on behalf of the **association** or its **purposes**, and that set out who oversees these funds and assets and who can make decisions about them (see Appendix).
- 5.2 The **association** must satisfy any obligations that apply to the use of assets over which a trust exists.
- 5.3 The **association** can receive funding from:
- i. joining and annual membership fees
 - ii. donations
 - iii. grants
 - iv. fundraising
 - v. interest, and
 - vi. any other lawful sources approved by the **committee** that are consistent with furthering the **association's purposes**.

6. * Financial year

- 6.1 The financial year of the **association** is from 1 July to 30 June, unless the **committee** passes a resolution to change the financial year.

7. * Record-keeping

- 7.1 The **association** must make and keep written financial records that:
- i. correctly record and explain the **association's** transactions and financial position and performance, and
 - ii. enable true and fair financial statements to be prepared and to be audited.
- 7.2 The **association** must also keep written records that correctly record its operations, and be able to produce these records if required by law.
- 7.3 The **association** must retain its records for at least seven years, or as otherwise required by the ACNC Act or any other laws that may apply (for example, taxation law).
- 7.4 The **committee members** must take reasonable steps to ensure that the **association's** records are kept safe.

8. * Contracts

- 8.1 As an unincorporated **association**, the **association** cannot enter into contracts in its own name but only in the collective names of three or more individuals appointed by the **committee**.

- 8.2 The individuals who enter into the contract under the previous rule may elect to re-execute a contract if one or more of the individuals is no longer a member of the **association**, in which case the **committee** shall point one or more individuals in their place.

9. * Membership

- 9.1 Anyone who supports the **purposes** and agrees to be bound by these rules can apply to join the **association** as a member.
- 9.2 The **committee** decides the process for receiving and approving or rejecting membership applications.
- 9.3 After the **committee** has approved or rejected a membership application, the **committee** must write to the applicant as soon as possible to tell them whether their application was approved or rejected. If an application is rejected, the **association** does not have to give reasons.
- 9.4 The **committee** can propose to set or change joining fees and membership fees for members. Joining and membership fee proposals must be approved by a majority of members voting at a **general meeting**.
- 9.5 Members must pay any membership fee and any unpaid joining fee within one month of being asked. If a member does not pay in time, their membership may be suspended by the **committee**. If the member does not pay all amounts owing within six months of their membership being suspended, their membership may be cancelled by the **committee**.
- 9.6 When membership is suspended, a member cannot exercise their members' rights such as voting at a **general meeting**.
- 9.7 A person immediately stops being a member if:
- i. their membership is cancelled under these rules
 - ii. they resign by writing to the **committee**, or
 - iii. they die.
- 9.8 If a member resigns, the **association** is not required to refund any joining and membership fees already paid.

10. * Register of members

- 10.1 The **association** must maintain a register of members.
- 10.2 Members' names and contact details (an email address is sufficient instead of other contact details, if the **committee** approve this) must be entered in the register of members when membership is approved. A person becomes a member when their name is entered on the register.

- 10.3 The **committee** must record the date that a person stops being a member of the **association** in the register of members as soon as possible after the person stops being a member.
- 10.4 If a member requests that access to their details on the register of members be restricted, the **committee** may decide whether access will be restricted and will notify the member of this.

11. * Members' access to documents

- 11.1 A member may make reasonable requests to inspect (at a reasonable time) the:
- i. rules of the **association**
 - ii. **general meeting** minutes, and
 - iii. register of members.
- 11.2 A member may make reasonable requests for copies of the documents requested under rule 11.1. The **association** can charge a reasonable fee for providing copies.
- 11.3 Members may only use information that is accessed in accordance with rules 11.1 or 11.2 for lawful and proper **purposes** related to the **association**.
- 11.4 Subject to rule 11.5, the **association** must provide access to documents or copies requested under rules 11.1 and 11.2 within a reasonable time.
- 11.5 The **association** can refuse to provide access or copies, or provide only limited access, if the documents contain confidential, personal, employment, commercial or legal matters, or if granting the request would breach a law or could cause damage or harm to the **association**, or if the request is otherwise unreasonable.
- 11.6 Members cannot inspect or get copies of **committee** meeting minutes or parts of the minutes, unless the **committee** specifically allows it.

12. * The committee

- 12.1 The **association** is governed by the **committee** that is made up of **committee** members. The role of the **committee** is to ensure that the **association** is responsibly managed and pursues its **purposes**.
- 12.2 The **committee** can exercise all powers and functions of the **association** (consistently with these rules, relevant Australian laws and requirements for **registered charities**), except for powers and functions that the members are required to exercise at a **general meeting** (under these rules, relevant Australian laws or requirements for registered charities).
- 12.3 The **committee** can delegate any of its powers and functions to a **committee** member, a sub-**committee**, a staff member or a member, other than the power of delegation or a

duty that applies to the **committee** or particular **committee** member under Australian laws.

- 12.4 **Committee** members are elected by a ballot of members of the **association** at a **general meeting**.
- 12.5 The **committee** is made up of a minimum of three **committee** members.
- 12.6 At the first **committee** meeting after each **AGM**, the **committee** must appoint a **committee** member as Chair.
- 12.7 The **committee** may appoint and remove **committee** members to and from any positions (such as Chair, President, Deputy President, Treasurer and Secretary) and decide their responsibilities in those roles.
- 12.8 Each **committee** member finishes their time on the **committee** at the end of the next **AGM** after they were appointed, but they can be elected again.
- 12.9 A member can nominate to be on the **committee** by writing to the **committee** or at a **general meeting** where an election for the **committee** is held. Another member must support their nomination.
- 12.10 To be eligible to be a **committee** member, a person:
- i. must not be ineligible to be a responsible person under the ACNC Act
 - ii. must be nominated under rule 12.9
 - iii. must give the **association** their signed consent to act as a **committee member** of the **association**, and
 - iv. must be a member of the **association** at the time of their nomination, appointment, and for the duration of their time on the **committee**.
- 12.11 If the number of eligible applicants nominated to be **committee** members is equal to the number of **committee** members required, the chair may declare the positions filled without holding a ballot.
- 12.12 A **committee** member stops being on the **committee** if they:
- i. resign, by writing to the **committee**
 - ii. stop being a member of the **association**
 - iii. are removed by a resolution of members of the **association**
 - iv. are absent without the consent of the **committee** from all meetings of the **committee** held during a period of six months
 - v. become ineligible to be a responsible entity (**committee** member) under the ACNC Act, or
 - vi. die.
- 12.13 If a **committee** member stops being on the **committee** before the next AGM, the **committee** can temporarily appoint a member of the **association** to fill the vacancy on the **committee** until the next AGM.

13. * Duties of the committee

- 13.1 Among its other responsibilities, the **committee** is responsible for making sure that:
- i. accurate minutes of **general meetings** and **committee** meetings are made and kept
 - ii. other records are kept in accordance with rules 7.1 to 7.4, and
 - iii. documents of the **association** are made available to members in accordance with rules 11.1 to 11.6.
- 13.2 **Committee** members must:
- i. comply with their legal duties under Australian laws and ensure that the **association** complies with its duties under Australian laws, and
 - ii. meet the requirements for responsible entities (**committee members**) of registered charities and comply with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
 - a. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a **committee** member of the **association**
 - b. to act in good faith (fairly and honestly) in the best interests of the **association** and to further the charitable **purpose(s)** of the **association** set out in rule 4,
 - c. not to misuse their position as a **committee** member
 - d. not to misuse information they gain in their role as a **committee** member
 - e. to disclose any perceived or actual material conflicts of interest
 - f. to ensure that the financial affairs of the **association** are managed responsibly, and
 - g. not to allow the **association** to operate while it is insolvent.
- 13.3 For clarity, rule **Error! Reference source not found.**(ii) is intended to require compliance with the ACNC governance standards as amended or modified from time to time.

14. * Committee meetings

- 14.1 A **committee** member can call a meeting by giving seven days' notice of a meeting to **committee** members unless the meeting is an urgent meeting (in which case reasonable notice must be given).
- 14.2 The **committee** can decide how often it meets, and the way in which it meets, including by allowing **committee** members to attend through technology, so long as it allows everyone to communicate.
- 14.3 The Chair will chair **committee** meetings. If the Chair does not attend, the **committee** members can choose who will chair that meeting.
- 14.4 A resolution is passed if more than half of the **committee** members voting at the **committee** meeting vote in favour of the resolution.

- 14.5 A majority (more than half) of **committee** members must be present (either in person or through the use of technology) for the meeting to be validly held (this is the quorum for **committee** meetings).
- 14.6 The **committee** can allow circular resolutions. To pass a circular resolution, each **committee** member must agree to it in writing, including by email or other electronic communication, and it is passed once the last **committee** member has agreed to it.

15. * General meetings of members

- 15.1 **General meetings** of members can be called by the **committee**. The **committee** must call a **general meeting** if requested by a group of members making up at least 10% of members who are entitled to vote at **general meetings**. The members must state in the request any resolution to be proposed at the meeting.
- 15.2 If the **committee** does not call and hold a meeting where requested to do so under rule 15.1 within two months of the request, 50% or more of the members who made the request may call and arrange to hold a **general meeting**. The meeting must be held within three months from the time the request was made and as far as possible, should follow the procedures for calling **general meetings** set out in these rules. The members are entitled to claim any reasonable expenses that they incur in calling the meeting from the assets of the **association**.
- 15.3 At least 10% of the members that are entitled to vote at the meeting must be present at a **general meeting** (either in person or through technology that allows for clear and simultaneous (interactive) communication of all meeting participants, for the meeting to be held (this is the quorum for **general meetings**)).
- 15.4 Written notice of **general meetings** must be provided to all members (and the **association's** auditor or reviewer, if one is appointed) at least 21 days before the meeting. Notice to members must be sent to the members' contact addresses listed on the register of members.
- 15.5 Any notice of **general meetings** must include the meeting details (including whether the meeting is to be held in two or more places and the technology that will be used to facilitate this), proposed issues to be discussed and resolutions to be moved at that meeting.
- 15.6 The **association** must hold its first **AGM** within 18 months of being formed. After that the **association** must hold an **AGM** at least once in every calendar year, at which it provides reports to members about the financial position and activities of the **association**.
- 15.7 The ordinary business of the **AGM** is to confirm the minutes of the previous **AGM**, receive reports and statements on the previous financial year, and elect **committee** members. The notice of the **AGM** must include any special business or resolutions to be considered.
- 15.8 A group of at least 10% of members who are eligible to vote at a **general meeting** can propose resolutions to be voted on at a **general meeting** by writing to the **committee** advising them of the proposed resolutions, so long as requirements to notify members of

the resolutions prior to the **general meeting** can be met (which will depend on the type of resolution proposed).

- 15.9 Any resolution proposed under rule 15.8 must be considered at the next **general meeting** held no more than two months after the date the **committee** is notified of the request to present a resolution to members. This rule does not limit any other right that a member has to propose a resolution at a **general meeting**.
- 15.10 The Chair (see rule 12.6 and 12.7) will chair **general meetings**. If the Chair does not attend, the members at the meeting can choose another **committee** member to be the chair for that meeting. The Chair is responsible for the conduct of the **general meeting**, and for this **purpose** must give members a reasonable opportunity to make comments and ask questions (including to the auditor or reviewer (if any)).
- 15.11 Each member has one vote.
- 15.12 A resolution (other than a **special resolution**) is passed if more than half of the members present at a **general meeting** vote in favour of the resolution.
- 15.13 Votes may be held by a show of hands or written ballot, or another method that the chair decides is fair and reasonable in the circumstances. If a vote is held initially by show of hands, any member can request a vote be held again by written ballot. If a vote of the members is tied, the chair of the meeting does not have an additional, deciding vote and shall declare that the motion has failed.
- 15.14 The chair can adjourn the meeting if there are not enough members at the meeting (a quorum – see rule 15.3) within 30 minutes of the meeting start time, or if there is not enough time at a meeting to consider all business. A new notice must be sent to members for the adjourned meeting (but does not have to comply with time for notice requirements, unless the adjourned meeting is more than 21 days after the original meeting date). Only unfinished business may be dealt with at a resumed meeting. The chair must adjourn the meeting if a majority of members entitled to vote at the meeting direct the chair to do so.
- 15.15 On a show of hands, the chair's decision is conclusive evidence of the result of the vote.
- 15.16 The chair and the meeting minutes do not need to state the number or proportion of the votes in favour or against on a show of hands.

Dispute resolution process

- 15.17 If there is a dispute between a member or **committee** member and:
- i. one or more members, and
 - ii. one or more **committee** members

the parties (the people who disagree) involved must first attempt to resolve the dispute between themselves within a period of at least 14 days from the date the dispute is known to all parties involved.

- 15.18 If the dispute cannot be resolved between the people involved, the **committee** must be notified, and a dispute resolution process must be put in place by the **committee**. The **committee** may develop a policy regarding dispute resolution.
- 15.19 A dispute resolution process must allow each party a reasonable opportunity to be heard and/or submit arguments in writing, and should first attempt to resolve the dispute by the parties reaching agreement. If agreement cannot be reached, the **committee** may appoint an unbiased person to decide the outcome of the dispute. The unbiased person may be a member, non-member or professional mediator who is not connected with the dispute or the people involved in it.

Disciplining members

- 15.20 The **committee** can take disciplinary action against a member of the **association** if it considers the member has breached these rules or if the member's behaviour is causing (or has caused) damage or harm to the **association**. The **committee** must follow a disciplinary process in accordance with rule 15.23. The **committee** may choose to adopt a more detailed discipline policy, dealing with issues such as rights to appeal.
- 15.21 Disciplinary action can include warning a member, or suspending or cancelling the member's membership. It cannot include a fine. Membership cannot be suspended for more than 12 months.
- 15.22 The **committee** must write to the member to tell them why they propose to take disciplinary action.
- 15.23 The **committee** must arrange a disciplinary procedure that meets these requirements:
- i. the outcome must be determined by an unbiased decision-maker (who cannot be a **committee** member),
 - ii. the member must have an opportunity to explain or defend themselves, and
 - iii. the disciplinary procedure must be completed as soon as reasonably practical.
- 15.24 The **committee** must notify the member of the outcome of the disciplinary procedure as soon as reasonably practical.
- 15.25 There will be no liability for any loss or injury suffered by a member as a result of any decision made in good faith (fairly and honestly) under rule 15.23.

16. * Winding up

- 16.1 The **association** can be wound up by its members if the members pass a special resolution to wind up the **association** at a **general meeting**.
- 16.2 If the **association** is wound up, after it has paid all debts and other liabilities (including the costs of winding up), any remaining assets:
- i. must not be distributed to the members or former members of the **association**, and

- ii. subject to the requirements of Australian laws and any Australian court order, must be distributed to another organisation or other organisations with similar **purposes**, which is/are charitable at law, and which is/are not carried on for the profit or personal gain of members.
- 16.3 In making distributions upon winding up, the **association** must satisfy any obligations that apply to assets over which a trust exists.

Appendix: Financial Rules

Purpose: The Magnolia Project policy about the holding and management of funds and assets on behalf of the association or its purposes, and that set out who oversees these funds and assets and who can make decisions about them.

- The founders of the Magnolia Project (Dr Andrew Day and Dr Katherine McLachlan) will oversee all funds and assets and be the signatories to the Magnolia Project bank account.
- A treasurer will be elected at the Magnolia Project AGM who will then keep record and accounts of expenditure.
- All expenditure should be consistent with the purposes of the Magnolia Project and compatible with its guiding principles (see Magnoliaproject.com.au)