



**ASIA PACIFIC FORUM**  
ADVANCING HUMAN RIGHTS IN OUR REGION

## Asia Pacific Forum of National Human Rights Institutions

**Members Guide**

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# Introduction

The Asia Pacific Forum of National Human Rights Institutions ('APF'), established in 1996, is the leading regional member-based human rights organisation in the Asia Pacific.

The responsibilities and functions of APF Members and the secretariat are set out in the APF Constitution, APF Policies and in applicable legislation.

This Guide applies to all APF Member Institutions, Forum Councillors, secretariat staff (including interns and volunteers) and consultants who are engaged from time to time to do work for the APF. Specific additional rights and responsibilities of Forum Council Members are set out in parts 5 and 6 and Appendix 4.

The purpose of this Members' Guide is to provide clarity to APF Members about the responsibilities, functions and expectations of APF Members, acting individually and collectively, in order to ensure compliance by all Members with the Constitution, APF policies and applicable legislation and to facilitate the APF's mission to protect and promote the human rights of the peoples of the Asia Pacific through its member institutions.

The Guide also serves as a resource and reference to assist the APF and its Member Institutions' to ensure the continued good corporate governance and management of the APF. It will be provided to all Forum Councillors and be available on the APF website. The Guide will be reviewed on a regular basis by the Forum Councillors to ensure relevance and best practice in corporate governance.

## 1. THE APF MISSION, VISION AND OBJECTIVES

The APF has a clearly articulated mission, vision and objectives which all APF Members have approved and therefore should embrace and adhere to.

The APF Mission Statement highlights the need for regional cooperation, coordination and collective effort and provides that:

*APF member institutions believe that regional cooperation and coordination is essential to protect and promote the human rights of the peoples of the Asia Pacific. Through the APF their collective efforts are focused on supporting the effective and efficient promotion of their respective mandates and the establishment and strengthening of new National Human Rights Institutions in full conformity with the Paris Principles.*

The APF Vision Statement articulates five ways by which the APF seeks to continue to be the leading eminent regional human rights organisation in the Asia Pacific by:

- promoting effective international, regional and national cooperation and coordination;
- being representative of its membership and responsive to their needs;
- strengthening the capacity of its membership to protect and promote human rights;
- securing sufficient funding for its activities; and
- being the best managed organisation in its class.

The APF has five strategic objectives. These objectives, which are the means by which the Mission and Vision are actualised, are to:

- Enhance member's institutional capacity;
- Enhance member's communication, cooperation and engagement;
- Promote compliance with the Paris Principles;

- Engage with regional and international human rights mechanisms; and
- Ensure the effective, efficient and strategic management of the APF.

## 2. THE APF CODE OF CONDUCT

The APF Code of Conduct is designed to ensure that the excellent reputation of the APF is maintained and, specifically, that the operations of the APF are conducted at all times with integrity, honesty, impartiality and objectivity.

The Code of Conduct provides operational guidelines regarding the exercise of the powers, duties and responsibilities of APF Member institutions, Forum Councillors, secretariat staff (including interns and volunteers) and consultants who are engaged from time to time to do work for the APF.

The Code complements the material contained in APF policy documents including the APF Discrimination and Harassment Policy, the APF Media Policy, the APF Discrimination and Harassment Grievance Procedure Policy and the APF Disciplinary Procedure Policy. Members are expected to become familiar with those policy documents and to adhere to them.

The Code, which is Appendix 1 to this Members' Guide, stipulates that APF Member institutions, Forum Councillors, APF Secretariat staff (including interns and volunteers) and Consultants will at all times while on APF duty:

- behave honestly, lawfully, fairly, ethically, with integrity and in a way that upholds the good reputation of the APF;
- act in good faith, responsibly, with due care, competence and diligence in the best interests of the APF and fulfil all fiduciary and legal obligations to the APF;
- act professionally, courteously, respectfully, and without unfair or unlawful discrimination or harassment, with all APF personnel and stakeholders;
- use APF property and resources accountably in furtherance of the APF's interest and not for personal gain;
- not make improper use of any information relating to the affairs of the APF, or of any opportunity received by virtue of the capacity, duties, status, power or authority of being an APF Member, Forum Councillor, staff member or consultant, in order to gain a personal benefit or advantage, or a benefit or advantage for any other entity;
- not accept from, or give to, stakeholders gifts or other benefits not customary in normal social interactions;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) regarding any matters that may come before the APF and abstain from discussion, voting or otherwise influencing a decision on any matter in which such an interest exists; and
- if facing public scrutiny in a matter of legal, financial, or any other impropriety, respond in a manner which at all times deflects negative publicity from, and upholds the good reputation of, the APF.

The Code also sets out eight principles of public life which guide the APF. These principles essentially articulate the values which underpin the operations of the APF: integrity, accountability, efficiency, impartiality, transparency, mutual respect and support, confidentiality and leadership.

Lastly, the Code states that APF personnel who act in a way which is in breach of, or inconsistent with, the Code or otherwise illegal, improper or unethical, involves maladministration, or which brings the APF into disrepute, will be dealt with in accordance with law and/or APF Personnel Disciplinary Procedures, as appropriate.

### 3. THE APF CONSTITUTION

The APF is an incorporated company limited by guarantee under the Commonwealth Corporations Act 2001 (the Corporations Act). This means that the APF draws its powers, authority and limitations from the Corporations Act. The Corporations Act imposes regulatory requirements on corporations and obliges corporations, like the APF, to:

- have internal governance rules, and
- set procedures for the alteration of these rules.

The APF has, accordingly, adopted a Constitution which sets out the APF's specific powers, authority and limitations and which governs the activities of the APF. The Constitution also sets out, amongst other things, APF membership categories, the convening of meetings and the roles, powers and duties of the Forum Council, APF Executive Officers and Advisory Committees.

The Constitution is Appendix 2 to this Guide.

### 4. APF GOVERNANCE AND PERSONNEL

#### 4.1 Members

The APF currently has 17 member NHRIs from the Asia Pacific region.

#### 4.2 The Forum Council

The APF Constitution provides for Members to be represented through the APF Forum Council with each full (or "A"-status) Member nominating one voting councillor. The Forum Council, as the decision-making body of the APF, meets each year as part of the APF Annual Meeting and on other occasions as required. The Forum Council serves a function similar to a Board of Directors; it sets the APF's policies and priorities, decides membership applications and exercises all the powers set out in the Constitution.

Forum Council meetings are run according to the [APF Rules of Procedures for Forum Councillors' Meetings](#) which govern matters such as convening, adjourning and giving notice of meetings of Forum Councillors, attendance and representation at meetings of Forum Councillors and how the meetings are to be conducted. The Rules of Procedure for Forum Councillor Meetings, Annual General Meetings and the APF Conference are Appendix 3 to this Guide.

#### 4.3 Committees

Forum Councillors can establish 'committees of councillors' to administer different aspects of the APF's operations (for example, a management committee to oversee APF operations).

#### 4.4 Secretariat

The secretariat is responsible for implementing the decisions of the Forum Council and for managing the day-to-day operations of the APF. The Director of the Secretariat reports to the Chairperson of the Forum Council on a regular basis and to the Forum Councillors through annual meetings and/or the management committee.

## 5. FORUM COUNCIL MEMBERS: RIGHTS AND RESPONSIBILITIES

The APF Constitution vests powers and restrictions in the Forum Council regarding the management of APF property and affairs (see Appendix 2).

The APF Constitution also explicitly stipulates in Rule 20.1 that 'Forum councillors means the Forum's board of directors'. The Forum Council representative nominated by the full Member must be registered with the Australian Securities and Investment Commission as a director of the APF and their activities on the Forum Council are subject to law which imposes a range of strict duties on directors to avoid any potential misuse of the power that they have to control the management, property and affairs of a company<sup>1</sup> and also imposes penalties for civil or criminal offences for breaches of those duties.

Accordingly, Forum Councillors must also at all times observe any restrictions to their, or the APF's, powers contained in the APF Constitution or the Corporations Act. Forum Councillors are also obliged to take steps to ensure their own and the Forum Council's compliance with relevant law.

Forum Councillors have both positive duties – things that they must do – and negative duties – things that they must not do.

The key positive duties are:

- to act in good faith in the best interests of the APF, and to exercise powers for a proper purpose;
- to exercise skill, care and diligence as Forum Councillors;
- to give adequate consideration and to retain discretion; and
- to disclose any material personal interest.

Forum Councillors also have positive duties in relation to financial reporting obligations and to ensure that the APF remains solvent.

The key negative duties are:

- to avoid a conflict of interest, and
- to not improperly use any position or information that is obtained by virtue of being a Forum Councillor.

Appendix 4 examines the obligations of Forum Councillors acting in their individual capacity as members of the Forum Council and also jointly as the Forum Council.

## 6. REMUNERATION, EXPENSES AND TRAVEL CLAIMS

### 6.1 Remuneration

Rule 5 of the APF Constitution provides that no part of the Forum's income and property may be paid, transferred or distributed to any of the APF members or Forum councillors. This is subject to three exceptions:

- Forum councillors who provide a professional or technical service to the APF, other than in the capacity as a Forum councillor, can receive a commercially reasonable payment so long as the provision of the service was approved first by the Forum councillors;
- the APF Constitution makes provision for the appointment of an executive officer for a period, at the remuneration and on the conditions that the Forum councillors think fit (Rule 15.3 (b)); and

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<sup>1</sup> These laws include Chapter 2D the Corporations Act and Commonwealth laws relating to taxation, privacy, industrial relations, employment, unfair dismissal, superannuation, taxation, anti-discrimination, criminal and occupational health and safety laws.

- a Forum councillor may hold another position (except as auditor) in the Forum and may be appointed to that position on terms as to remuneration, tenure and otherwise that the Forum councillors think fit (Rule 14.4).

## 6.2 Expense and travel claims

Rule 5 does not prohibit the Forum Council from approving a payment for out-of-pocket expenses incurred by a Forum councillor who performs a duty as a councillor of the Forum. Such expenses may include travelling and related expenses regarding attendance at Forum Council meetings and other activities directly connected to attending to Forum Council business. Appendix 5 sets out the APF Expense and Travel Claims Guidelines.

## 7. GRIEVANCE AND DISCIPLINARY PROCEDURES

Any complaint of discrimination or harassment in breach of the APF Discrimination and Harassment Policy will be dealt with in accordance with the APF Discrimination and Harassment Grievance Procedure Policy which is Annexure 3 to the Code of Conduct.

Any complaint of a breach of the Code of Conduct or APF Media Policy will be dealt with in accordance with the APF Disciplinary Procedure Policy which is Annexure 4 to the Code of Conduct.

As stated above, the Code of Conduct forms Appendix 1 to this Guide.

# Appendix 1:

## Code of Conduct to guide the work of the APF

### 1. INTRODUCTION

1.1 The following code of conduct is designed to ensure that the excellent reputation of the Asia Pacific Forum of National Human Rights Institutions (APF) is maintained and, specifically, that the operations of the APF are conducted at all times with integrity, honesty, impartiality and objectivity, in the promotion and protection of human rights in the Asia Pacific Region.

1.2 The code of conduct provides operational guidelines regarding the exercise of the powers, duties and responsibilities of Member institutions, Forum Councillors and Secretariat staff (including interns and volunteers) and Consultants who are engaged from time to time to do work for the APF (APF personnel).

1.3 This Code complements the material contained in APF policy documents including the APF Discrimination and Harassment Policy, the APF Media Policy, the APF Discrimination and Harassment Grievance Procedure Policy and the APF Disciplinary Procedure Policy which form annexures 1–4 respectively of the Code. Members are expected to become familiar with these policy documents and to adhere to them.

### 2. THE CODE

#### **APF personnel, while on duty, must at all times:**

- (1) behave honestly, lawfully, fairly, ethically, with integrity and in a way that upholds the good reputation of the APF;
- (2) act in good faith, responsibly, with due care, competence and diligence in the best interests of the APF and fulfil all fiduciary and legal obligations to, the APF;
- (3) act professionally, courteously, respectfully, and without unfair or unlawful discrimination or harassment, with all APF personnel and stakeholders;
- (4) use APF property and resources accountably in furtherance of the APF's interest and not for personal gain;
- (5) not make improper use of any information relating to the affairs of the APF, or of any opportunity received by virtue of the capacity, duties, status, power or authority of being APF personnel, in order to gain a personal benefit or advantage, or a benefit or advantage for any other entity;
- (6) not accept from, or give to, stakeholders gifts or other benefits not customary in normal social interactions;
- (7) disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) regarding any matters that may come before the APF and abstain from discussion, voting or otherwise influencing a decision on any matter in which such an interest exists; and
- (8) if facing public scrutiny in a matter of legal, financial, or any other impropriety, respond in a manner which at all times deflects negative publicity from, and upholds the good reputation of, the APF.

### 3. PRINCIPLES OF PUBLIC LIFE WHICH GUIDE THE APF

#### 3.1 Integrity

The integrity of the APF should be upheld and protected at all times. APF personnel must not place themselves under any financial or other obligations to outside individuals or organisations that might influence them in the performance of their official duties, or affect the independence of the APF.

#### 3.2 Accountability

In addition to the statutory requirements for accounting, APF personnel will ensure that they do not use APF resources for purposes other than APF work and that they submit full and appropriate acquittals for any expenses claimed in the course of performing duties for the APF.

#### 3.3 Efficiency

APF personnel must perform their duties and responsibilities, and use APF resources, in the most time- and cost-effective manner.

#### 3.4 Impartiality

It is the duty of APF personnel to uphold the political impartiality of the APF. Additionally, in the execution of their duties, APF personnel will act in an unbiased and impartial manner, and will not unfairly discriminate against any person on the grounds of race, gender, sex, marital status, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.

Further, APF personnel must not misuse their official position, or information acquired in the course of their official duties, to further their private interests, or the interests of their associates, friends or family. They must not receive benefits of any kind from a third party, which might reasonably be seen to compromise their personal judgement or integrity.

Finally, APF personnel have a duty to declare any private interests relating to their public duties. Should any conflict of interests arise, steps should be taken to resolve this in a manner which does not bring the APF or its work into disrepute.

#### 3.5 Transparency

APF personnel will be as open as possible with regard to all decisions and actions taken in the performance of their functions.

#### 3.6 Mutual respect and support

Interaction between APF personnel and between the APF and the public must be based on mutual respect, support, and the need to promote unity of purpose and solidarity in the pursuit of the goals of the APF.

#### 3.7 Confidentiality

The right of confidentiality of APF personnel and of members of the public must be respected.

### 3.8 Leadership

The APF Forum Council and the APF Secretariat will promote and support these principles and lead by example. The APF will promote a participatory, interactive and democratic style of leadership, directed towards the attainment of the APF vision, mission and goals, and away from self-promotion and personal prestige.

## 4. BREACHES OF THE CODE

APF personnel who act in a way which:

- is illegal, improper or unethical;
- is in breach of, or inconsistent with, this Code;
- may involve maladministration;
- brings the APF into disrepute;

will be dealt with in accordance with law and/or APF Personnel Disciplinary Procedures, as appropriate.

# APF Code of Conduct

## Annexure 1:

## APF discrimination and harassment policy

### 1. OVERVIEW

This policy has been formulated to provide a clear statement of the Asia Pacific Forum of National Human Rights Institutions (APF) expectations of its staff and affiliates in respect of conduct that may constitute unlawful harassment or discrimination.

### 2. SCOPE

This policy applies to all staff and affiliates of the APF. APF staff and affiliates are expected to act in accordance with this policy whilst in Australia or overseas on APF business.

### 3. APPLICATION

This policy applies to all conduct occurring during employment or consultancies in relation to APF business.

### 4. DEFINITIONS

**Affiliate** means a consultant or contractor to the APF, an intern or volunteer, or any other person appointed or engaged by the APF to perform duties or functions on its behalf.

**Staff or Staff Member** means an employee of the APF, including a casual employee.

### 5. POLICY

All staff and affiliates of the APF have a right to work in an environment that is free from unlawful harassment and discrimination, and to be treated with dignity and respect, irrespective of their background, beliefs or culture.

All staff and affiliates have a responsibility to ensure that they do not promote or engage in unlawful harassment or discrimination.

All managers and supervisors are actively responsible for intervening to prevent unlawful harassment and discrimination.

A breach of this policy may result in disciplinary action or termination of contract.

Any victimisation of or detrimental action towards any person who raises a complaint of unlawful harassment or discrimination in accordance with this policy will be treated seriously, and may result in disciplinary action. Any intentional misuse of this policy, including by knowingly making a false allegation of unlawful harassment or discrimination, will be treated seriously and may result in disciplinary action.

## 6. APPLICABLE LAW

The following Australian anti-discrimination laws apply to the APF:

- *Racial Discrimination Act 1975* (Cth)
- *Sex Discrimination Act 1984* (Cth)
- *Human Rights and Equal Opportunity Commission Act 1986* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Anti-Discrimination Act 1977* (NSW)

### 6.1 External assistance and advice

The APF will make every reasonable effort to resolve complaints of unlawful harassment and discrimination internally. However, if a person alleges that he or she has been unlawfully harassed or discriminated against by a visitor or other person over whom the APF has no jurisdiction, the APF may refer the person raising the problem, concern or complaint to an external complaints procedure or to another agency.

Staff and affiliates may also elect to contact the NSW Anti-Discrimination Board or the Australian Human Rights Commission at any time to seek advice and assistance in resolving unlawful harassment and discrimination complaints.

## 7. GUIDELINES

### 7.1 What is unlawful harassment?

Unlawful harassment is any type of behaviour that:

- the other person does not want; and
- offends, insults, humiliates or intimidates them; and is either
  - sexual, or
  - targets them because of their race, sex, pregnancy, marital status, transgender, sexual preference or orientation (including homosexuality, lesbianism, bisexuality and heterosexuality), disability, age, carers' responsibility, political belief, lack of a political belief, lack of a particular political belief (including trade union activity or lack of it, and student association activity or lack of it), religious belief, lack of a religious belief, and/or lack of a particular religious belief; and
- that, in the circumstances, a reasonable person should have expected would offend, insult, humiliate, or intimidate.

This includes actual, potential and perceived (imputed) race, sex, pregnancy, marital status, sexual preference etc.

Some types of harassment, such as sexual harassment and other forms of physical assault and/or stalking, are also illegal under Australian criminal law. These types of harassment may result in criminal prosecution.

### 7.2 What is unlawful discrimination?

Unlawful discrimination is any practice that makes an unlawful distinction between individuals or groups, so as to disadvantage some people and advantage others. Discrimination may be 'direct' or 'indirect'.

## Direct discrimination

'Direct' discrimination occurs when a person treats another person less favourably, because of the other person's race, sex, pregnancy, marital status, transgender, sexual preference or orientation (including homosexuality, lesbianism, bisexuality and heterosexuality), disability, age, carers' responsibility, political belief, lack of a political belief, lack of a particular political belief (including trade union activity or lack of it, and student association activity or lack of it), religious belief, lack of a religious belief, and/or lack of a particular religious belief, than they treat or would treat a person without that characteristic in the same or similar circumstances.

This includes actual, potential and perceived (imputed) race, sex, pregnancy, marital status, sexual preference etc.

**Example:**

*A selection committee decides not to appoint a young woman on the ground that she may in the future become pregnant and want to take maternity leave. This would be 'direct' discrimination on the ground of potential pregnancy.*

## Indirect discrimination

'Indirect' discrimination occurs when a person requires another person to comply with an unreasonable requirement or condition, with which the other person is unable to comply due to his or her race, sex, pregnancy, marital status, etc, and with which a substantially higher proportion of persons without that characteristic can or would be able to comply.

**Example:**

*An example of indirect discrimination is requiring all people who apply for a certain job to sit a test in a particular language, even though that language is not necessary for the job*

## 7.3 What to do if you think you have experienced discrimination or harassment?

There are a number of options. Choose the course of action you feel most comfortable with such as:

- Seek advice from anti-discrimination bodies such as the Australian Human Rights Commission or the NSW Anti-Discrimination Board
- Seek advice from a union or legal adviser
- Discuss allegations of harassment or discrimination with Director and Deputy Director of the APF
- If required document your complaint to the APF management committee (consisting of the Chair and two deputy chairs).

Note that it is advisable to document any allegations of discrimination or harassment in writing including the form of complaint and dates.

The APF is committed to providing an environment which is safe for all employees and affiliates. You will not be disadvantaged in your employment conditions or opportunities as a result of lodging a complaint.

This policy will be reviewed by APF management yearly, and be distributed to staff and affiliates regularly.

# APF Code of Conduct

## Annexure 2:

## APF media policy

Current from June 2010

### 1. PURPOSE

The Asia Pacific Forum (APF) is the leading regional human rights organisation in the Asia Pacific.

We are a member-based organisation that supports the establishment and strengthening of national human rights institutions in the region by providing advice, training and sharing knowledge and skills.

As such the APF has a role to engage with media outlets in the region to promote its work and discuss issues of concern to national human rights institutions in the region.

The Media Policy outlines the APF's approach to constructively engaging with the media and maintaining its reputation as the leading regional human rights body.

### 2. AIM

The APF Media Policy sets out:

- who has responsibility for public comment on behalf of the APF
- the broad issues on which the APF will – and will not – provide public comment
- the importance of identifying potential topics of media interest prior to participating in regional missions, training programs or human rights forums
- the steps that designated representatives of the APF should take before they speak to the media
- the need for designated representatives to report back to the APF Secretariat on any media comment or coverage.

### 3. RESPONSIBILITY FOR PUBLIC COMMENT

Public comment on behalf of the APF will be provided by the:

- APF Chairperson
- the Director of the APF Secretariat

As appropriate, the Director of the APF Secretariat may authorise the following to provide public comment to the media: staff members of the APF Secretariat, consultants to the APF and representatives of APF member institutions undertaking duties on behalf of the APF.

### 4. ISSUES FOR MEDIA ENGAGEMENT

The primary goal of engaging with the media is to promote the work of the APF and to discuss issues of concern to the APF and its member institutions, especially initiatives related to:

- the establishment of new national human rights institutions

- strengthening and supporting existing national human rights institutions
- regional cooperation on human rights issues.

In some instances the APF Chairperson and / or the Director of the Secretariat may choose to comment on major political or legislative developments that have the potential to undermine the independence of an APF member institution.

APF member institutions may also agree to issue a joint public statement on major human rights issues of concern in the region, as part of the APF Annual Meeting.

Delegated representatives of the APF **will not** respond to media requests to comment on the domestic human rights situation of countries in the Asia Pacific region or the performance of individual national human rights institutions. This dialogue is more appropriately held between the government, national human rights institution and civil society organisations of those particular countries.

Further, APF representatives will not comment on regional human rights issues where APF member institutions have not developed an agreed position.

## 5. PREPARING FOR MEDIA ENGAGEMENT

When preparing for participation in regional missions, training courses and human rights fora, the APF Secretariat will discuss with its partner organisations whether formal media commitments will be included in the program.

Where it is likely that media comment will be sought, the APF representative should liaise with the Director of the APF Secretariat in advance of the program to identify some key 'speaking points'. These should form the basis of any engagement with journalists.

In the event that a media request is made during the course of the program and the APF representative does not feel sufficiently prepared or equipped to provide comment, s/he should:

- request the interview be postponed to a later time, so further information can be sought
- seek feedback or direction from the Director of the APF Secretariat.

It should be stressed that the APF representative is under no obligation to provide public comment, especially if there is concern about the context in which their comments may be reported.

Where necessary, the APF representative can also refer the media request on to the Director of the APF Secretariat.

## 6. RESPONDING TO MEDIA REQUESTS

A person representing the APF who is requested to give a **media interview** should:

- clarify with the journalist the nature of the media request (topics to be covered, the media outlet where comment will be published, when and how the interview will be conducted, etc)
- determine whether the request falls within the agreed areas for APF media engagement (see above)
- determine whether they are the most appropriate person to provide public comment and whether they are confident to do so.

In the event that a **press conference** is being organised as part of an initiative involving the APF, the representative of the APF should clarify with organisers:

- which media outlets will be invited to the press conference
- the other participants in the press conference

- what issues are likely to be canvassed during the press conference and which participants will be responsible for responding to which queries.

An APF representative is not required to give a media interview or participate in a press conference if they feel that it is not appropriate to do so or if they do not feel sufficiently confident.

An APF representative who agrees to speak with the media on behalf of the APF must be formally authorised to do so by the Director of the APF Secretariat.

This authorisation can be provided prior to the APF representative participating in the program. Alternatively, authorisation can be sought via email, phone or SMS during the course of the program.

When providing public comment, the representative should clarify with the journalist the capacity in which they are representing the APF (e.g. as a staff member of the APF Secretariat, as a consultant to the APF or as representative of a member institution of the APF).

Representatives of the APF should refrain from providing ‘off the record’ information to journalists. Every interaction with a journalist, and all comments provided, should be considered as being ‘on the record’.

## 7. REPORTING ON MEDIA ENGAGEMENT

If public comment is provided to an individual journalist or to media representatives as part of a press conference, the APF representative should provide the APF Secretariat with an email summarising:

- the journalist / media outlets involved
- the key issues / questions raised
- the responses provided
- any subsequent media coverage (if known or available).

# APF Code of Conduct

## Annexure 3:

## APF discrimination and harassment grievance procedure policy

### 1. STATEMENT OF INTENT

1.1 The APF has a legal responsibility to ensure its personnel are not subjected to behaviour that may constitute unlawful discrimination, harassment, vilification or victimisation. Furthermore, the APF is committed to providing a work environment that is safe, fair and free from discrimination and harassment. To this end the APF has formulated a Discrimination and Harassment Policy which states clearly the APF's expectations of its staff and affiliates.

1.2 The purpose of this policy is to provide a framework for the prompt, sensitive and effective resolution of grievances including complaints of bullying, discrimination, harassment, victimisation or vilification having due regard to procedural fairness and confidentiality.

### 2. COVERAGE

2.1 The Policy applies to staff and affiliate staff as defined in the APF Discrimination and Harassment Policy and covers all grievances of unlawful discrimination, harassment, vilification and victimisation.

### 3. DEFINITIONS

**'Complainant'** refers to the person/s making the complaint.

**'Confidentiality'** means limiting disclosure of information relating to a grievance to as few people as possible, and only to those who are legitimately involved in the process of resolving the grievance.

**'Discrimination', 'Harassment', 'Victimisation'** all have the meanings ascribed to them in the APF Discrimination and Harassment Policy.

**'Grievance'** under these procedures is any complaint or incident of harassment or discrimination that occurred at or in connection with employment by the APF or any endorsed APF activity.

**'Procedural fairness'** refers to a process that displays fairness to all parties. It includes the right to be heard, the right to be treated without bias, the right to be informed of allegations being made and to be provided with an opportunity to respond to them and the right to be able to find out about the status of the grievance.

**'Respondent'** refers to the individual/s against whom the complaint is made.

### 4. PRINCIPLES

4.1 Grievances should be treated seriously and sensitively, having due regard to procedural fairness, and confidentiality and privacy. Requirements relating to confidentiality and privacy extend to the use and storage of any information and records related to a grievance.

4.2 Grievances should be handled quickly and as close as possible to their source. This may be modified by the nature of the grievance and the staff member's wishes. Staff should raise concerns as early as possible after the incident/s occurred.

4.3 Wherever possible, grievances should be resolved by a process of discussion, cooperation and conciliation. The aim is to reach an acceptable outcome that minimises any potential detriment to ongoing relationships.

4.4 Both the staff member raising the grievance (the complainant) and the person against whom the grievance is made (the respondent) will receive appropriate information, support and assistance in resolving the grievance. Parties may bring a support person to any interview.

4.5 No person should be victimised because they raise a complaint or are associated with a grievance.

4.6 Staff should not instigate grievances that are frivolous or malicious. All staff are expected to participate in the grievance resolution process in good faith.

## 5. APF DISCRIMINATION AND HARASSMENT GRIEVANCE PROCEDURE

### Preliminary action

Before initiating the grievance procedures, the complainant is encouraged to try to resolve any grievance directly with the person/s concerned. If this is not possible or appropriate, the complainant should proceed to Step 1 of these Procedures. Staff can seek advice at any stage from the APF Deputy Director.

#### Step 1 – Talk to the immediate supervisor

1.1 Where the complainant has been unable to resolve the grievance themselves, they should take the matter up with their immediate supervisor. Where the grievance involves that person, the complainant should refer the matter to the next most appropriate member of staff, for example, the supervisor's supervisor.

1.2 The supervisor should address the grievance with a view to resolving it expeditiously, normally within two weeks of receiving the complaint. This would usually involve the supervisor:

- (a) carefully listening to the staff member's concerns and their desired outcomes;
- (b) providing the staff member with a copy of this document, explaining the grievance procedures and the range of options open to them;
- (c) may require the complainant to put the grievance in writing;
- (d) either attempting to resolve the matter or referring the matter to Step 2 of these Procedures if it is unsuitable for resolution at this level;
- (e) keeping all those involved informed about the progress of the matter; and
- (f) monitoring the situation during and after the resolution process.

1.3 In any action taken the supervisor should ensure procedural fairness for all parties involved, which would normally include such steps as fully informing the respondent of the allegations made against them and providing them with an opportunity to respond.

1.4 At the end of their direct involvement with the matter, the supervisor should make appropriate file notes on the grievance resolution process and outcomes, which should be stored in a separate and

confidential grievance file. The *Discrimination and Harassment Grievance Report Form* (attached) will also need to be completed and forwarded to the Deputy Director.

## Step 2 – Referral to the nominated contact person

2.1 If the grievance remains unresolved, or is felt to be of such a serious nature that it cannot be resolved without investigation, the complainant or supervisor can refer the matter in writing to the APF Management Committee.

## Step 3 – Investigation by the nominated grievance contact person

3.1 After giving due consideration to the grievance the nominated grievance contact person may do one or more of the following:

- (a) refer the complaint back to the relevant supervisor , with advice, for resolution;
- (b) initiate an investigation into the matter in such manner as they think fit;
- (c) seek to resolve the matter directly; or
- (d) if necessary, contact an appropriate outside agency.

3.2 Any determination made by the nominated grievance contact person in accordance with Step 3 of these Procedures will be final save for the complainant/respondent's right to pursue the matter externally.

3.3 At the end of their involvement with the matter, the nominated grievance contact person should make appropriate file notes on the grievance resolution process and outcomes, which should be added to the supervisor's investigation report (the *Discrimination and Harassment Grievance Report Form*) in the confidential grievance file.

## Step 4 – Outcomes

4.1 Outcomes will vary from case to case depending on the nature and circumstances of each grievance. Outcomes could include:

- (a) the complainant gaining a better understanding of the situation and no longer feeling aggrieved;
- (b) the complainant receiving a verbal or written apology;
- (c) the respondent receiving a verbal or written reprimand;
- (d) one or both parties agreeing to participate in some form of counselling; and/or
- (e) disciplinary action where an APF policy or the APF Code of Conduct were found to have been breached, and/or where misconduct/serious misconduct or unsatisfactory performance has occurred.

4.2 Disciplinary action may also be taken where:

- (a) a grievance is found to have been malicious or vexatious;
- (b) a person victimises another person because of their involvement in the grievance;
- (c) unnecessary disclosure of information (a breach of confidentiality) has occurred.



## APF discrimination and harassment grievance report form

You should fill out this form if you are a supervisor who has been dealing with a discrimination or harassment grievance.

**Please complete this form for each discrimination and harassment complaint you deal with, at the end your involvement with the case. Forward the form, in an envelope marked confidential to the nominated grievance contact person**

Your name, title and contact number: .....

.....  
.....

Date: .....

### When and how did the complainant make contact with you?

Date of first contact: .....

Date/s of subsequent contacts: .....

.....  
.....

Is this a **new** complaint? (*i.e. one which raises a new discrimination/harassment matter*) Yes  No

If no, please explain: .....

.....  
.....  
.....

### Details about the person/s making the complaint (please do not include name/s)

Female  Male  Staff member  Other

Is this the first complaint of unlawful discrimination/harassment raised by this person? Yes  No

**Details about the person/s against whom the complaint has been made (please do not include name/s)**

Sex: Male  Female

Status: Staff  Other (please specify)  .....

Is this the first complaint of unlawful discrimination/harassment made against this person? Yes  No

If no, please explain: .....

.....

.....

.....

**What type of discrimination was involved?**

- |  |   |
|--|---|
| <input type="checkbox"/> Age   | <input type="checkbox"/> Political beliefs/views/affiliations                     |
| <input type="checkbox"/> Carer responsibilities/ family responsibilities | <input type="checkbox"/> Pregnancy or potential pregnancy                         |
| <input type="checkbox"/> Disability (incl HIV/AIDS status)               | <input type="checkbox"/> Race   |
| <input type="checkbox"/> Harassment – sexual                             | <input type="checkbox"/> Religious beliefs/views/affiliations                     |
| <input type="checkbox"/> Harassment – other (e.g. racial, disability)    | <input type="checkbox"/> Sex  |
| <input type="checkbox"/> Homosexuality                                   | <input type="checkbox"/> Trade Union activity                                     |
| <input type="checkbox"/> Marital status                                  | <input type="checkbox"/> Vilification (homosexual, HIV/AIDS, transgender, racial) |
| <input type="checkbox"/> Transgender or transexuality                    | <input type="checkbox"/> Victimisation  |

**Other**

- Unprofessional behaviour (including "bullying")
- Other (please specify): .....

**Provide a brief summary of the complaint (please include details of any incidents which were alleged to have occurred)**

.....

.....

.....

.....

.....

.....

**What action was taken to deal with this complaint?**

- (a) Information given, no further action
- (b) Complaint dealt with directly by complainant

Please provide brief details of actions taken to resolve the matter and the outcome: .....

.....  
.....  
.....  
.....  
.....

Did you undertake any follow up? (give date and details): .....

.....  
.....  
.....  
.....  
.....

- (c) Complaint dealt with by supervisor

Please provide brief details of action taken to resolve the matter and the outcome: .....

.....  
.....  
.....  
.....  
.....

Did you undertake any follow up? (give date and details): .....

.....  
.....  
.....  
.....

(d) Complaint dealt with by nominated grievance contact person

Please provide brief details of action taken to resolve the matter and the outcome: .....

.....  
.....  
.....

Did you undertake any follow up? (give date and details): .....

.....  
.....  
.....  
.....

(e) Complaint referred to external body  (give details):

### What was the outcome?

Unknown  Unresolved  Why? .....

Resolved by agreement  Resolved by other means  (*please explain*): .....

.....  
.....  
.....  
.....  
.....

### Estimated hours involved (*please specify the amount of time you have taken in dealing with this matter*)

.....  
.....

### Any further details or comments (*attach a separate page if necessary*)

.....  
.....  
.....  
.....  
.....  
.....  
.....

### Documentation

Are there any documents attached? Yes  No

Please specify nature of attachments and number of pages: .....

.....  
.....  
.....

Please forward this form in an envelope marked “Confidential” to .....  
Deputy Director, APF secretariat

# APF Code of Conduct

## Annexure 4:

## APF disciplinary procedure policy

### 1. STATEMENT OF INTENT

1.1 The purpose of this policy is to provide a framework for the prompt, sensitive and effective resolution of alleged breaches of the APF Code of Conduct and Media Policies having due regard to procedural fairness and confidentiality.

### 2. COVERAGE

2.1 The Policy applies to APF Member institutions, Forum Councillors, Secretariat staff (including interns and volunteers) and Consultants who are engaged from time to time to do work for the APF.

### 3. DEFINITIONS

**'Complainant'** refers to the person/s making a complaint of an alleged breach of the APF Code of Conduct and Media Policies.

**'Confidentiality'** means limiting disclosure of information relating to a grievance to as few people as possible, and only to those who are legitimately involved in the process of resolving the grievance.

**'Disciplinary Procedure contact person'** is the Deputy Director of the APF.

**'Procedural fairness'** refers to a process that displays fairness to all parties. It includes the right to be heard, the right to be treated without bias, the right to be informed of allegations being made and to be provided with an opportunity to respond to them and the right to be able to find out about the status of the grievance.

**'Respondent'** refers to the individual/s against whom the complaint of an alleged breach of the APF Code of Conduct and Media Policies is made.

### 4. PRINCIPLES

4.1 Alleged breaches of the Code of Conduct and Media Policy should be treated seriously and sensitively, having due regard to procedural fairness, confidentiality and privacy.

4.2 Alleged breaches of the Code of Conduct and Media Policy should be handled quickly and staff should raise concerns as early as possible after an incident has occurred.

4.3 Wherever appropriate alleged breaches of the APF Code of Conduct and Media Policies should be resolved by a process of discussion, cooperation and conciliation. The aim is to reach an acceptable outcome that minimises any potential detriment to ongoing relationships.

4.4 Both the staff member raising the alleged breach (the complainant) and the person regarding whom the alleged breach is made (the respondent) will receive appropriate information, support and assistance in resolving the grievance. Parties may bring a support person to any interview.

4.5 No person should be victimised because they raise or are associated with an alleged breach.

## 5. APF DISCIPLINARY PROCEDURE POLICY

### Step 1 – Preliminary action

1.1 Within seven days of receipt of a verbal or written complaint alleging a breach of the Code of Conduct or Media Policy the Disciplinary Procedure contact person must do the following:

- (1) establish the alleged facts of the breach;
- (2) notify the individual alleged to have committed the breach, in writing about the terms of the breach fully informing the respondent of the allegations made against them and providing them with an opportunity to respond;
- (3) hold a meeting with the individual (who may be accompanied) to discuss the alleged breach; and
- (4) decide whether informal action is or is not appropriate.

1.2 If informal action is appropriate, the Disciplinary Procedure contact person is authorised to resolve the complaint informally. The Disciplinary Procedure contact person must keep appropriate file notes on the disciplinary procedure process and outcomes, which should be stored in a separate and confidential disciplinary procedure file.

1.3 If the alleged breach remains unresolved, or is felt to be of such a serious nature that it cannot be resolved without investigation, the Disciplinary Procedure contact person must refer the matter in writing to the Management Sub-Committee. The Management Committee consists of the secretariat host institution (the Australian Human Rights Commission) and the institutions, which at the time of the complaint, occupy the positions of APF Chairperson and Deputy Chairperson.

1.4 If the alleged breach relates to the conduct of a Member or Forum Councillor then the relevant disciplinary provisions of the APF Constitution apply.

1.5 If the alleged breach relates to the Director of the APF secretariat, the issue will be referred to the APF Management Sub-Committee. If the alleged breaches relate to any staff or consultants, interns, volunteers under the supervision of the Director then the complaint shall be dealt with by the Disciplinary Procedure contact person. If the complaint is unable to be resolved through this process then the matter may be referred to the Management Sub-Committee for review and decision.

### Step 2 – Investigation by the Management Sub-Committee

2.1 After giving due consideration to the grievance the Management Sub-Committee may do one or more of the following:

- (1) refer the alleged breach back to the Disciplinary Procedure contact person, with advice, for resolution;
- (2) initiate an investigation into the matter in such manner as they think fit;
- (3) seek to resolve the matter directly; or
- (4) if necessary, contact an appropriate outside agency.

2.2 Any determination made by the Management Sub-Committee will be final save for the complainant/respondent's right to pursue the matter externally.

2.3 At the end of their involvement with the matter, the Management Sub-Committee should make appropriate file notes on the disciplinary procedure process and outcomes, which should be added to the investigation report of the Disciplinary Procedure contact person in the confidential disciplinary procedure file.

## Step 3 – Outcomes

3.1 Outcomes will vary from case to case depending on the nature and circumstances of each grievance. Outcomes could include:

- (1) the respondent giving a verbal or written apology;
- (2) the respondent receiving a verbal or written reprimand;
- (3) the respondent agreeing to participate in formal counselling; and/or
- (4) appropriate disciplinary action where:
  - (i) an APF policy or the APF Code of Conduct was found to have been breached, and/or where misconduct/serious misconduct or unsatisfactory performance has occurred.
  - (ii) a grievance is found to have been malicious or vexatious;
  - (iii) a person victimises another person;
  - (iv) unnecessary disclosure of information (a breach of confidentiality) has occurred.

# Appendix 2: APF Constitution

## 1. COMPANY'S NAME

- (a) The name of the company is the Asia Pacific Forum of National Human Rights Institutions.
- (b) In this constitution, the company is referred to as the Forum.

## 2. FORUM'S OBJECT

- (a) The Forum is established for the following public charitable purpose, namely, to protect and promote the human rights of the people of the Asia Pacific region.
- (b) For the purposes outlined in rule 2(a), the Forum councillors may:
  - (1) formulate policies;
  - (2) make rules in connection with any policy; and
  - (3) revoke or amend any policy or rules and formulate others.

## 3. FORUM'S POWERS

### 3.1 Powers

Solely for the purpose of carrying out the Forum's object, the Forum may:

- (a) support the establishment and development of national institutions;
- (b) promote cooperation and joint activity among national institutions, the United Nations, governments, human rights non-government organisations and other relevant organisations and individuals;
- (c) supply, and advise on, human rights capacity building and provide human resources and other support to assist in the establishment and development of national human rights institutions;
- (d) encourage the United Nations, governments, human rights nongovernment organisations and other relevant organisations and individuals to participate in meetings of, or arranged by, the Forum;
- (e) raise funds and invite and receive contributions, grants, distributions of income or capital, gifts (by will or otherwise), loans and deposits from any person;
- (f) provide funds or other material benefits by way of grant or otherwise to further the Forum's object;
- (g) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums;
- (h) accept and hold funds or property of any kind on or for any charitable objects or purposes specified or to be specified by any person or to be selected by the Forum councillors from a class of trusts, objects or purposes specified by any person;
- (i) accept and undertake full or partial trusteeship, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept

- fees, commissions or other remuneration in respect of the trusteeship, administration and management;
- (j) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges that are required for the purposes of, or capable of being conveniently used in connection with, the Forum's object. However, if the Forum takes or holds any property which is subject to a trust, the Forum may only deal with that property in the manner allowed by law having regard to that trust;
  - (k) manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property or any estate or interest in property;
  - (l) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
  - (m) construct, improve, maintain, develop, work, manage and control real or personal property and enter into contracts and agreements;
  - (n) appoint a person as the Forum's attorney or agent with the powers (including the power to sub-delegate) and on the terms the Forum thinks fit, and procure registration or recognition of the Forum in any other country or place;
  - (o) enter into any arrangement with any government or authority that seems conducive to the Forum's object, obtain from any government or authority any right, privilege or concession that the Forum thinks it desirable to obtain, and carry out, exercise and comply with any of those arrangements, rights, privileges and concessions;
  - (p) engage, dismiss or suspend any employee, agent, contractor or professional person;
  - (q) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other obligation by mortgage, charge or otherwise;
  - (r) spend money and do all other things that it considers desirable to promote the Forum's object;
  - (s) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
  - (t) print and publish newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by electronic means;
  - (u) accept any gift of property, whether subject to any special trust or not, for the Forum's object, but subject to the provisions in rule 3(j) relating to trusts (if applicable);
  - (v) take any steps by personal or written appeals, public meetings or otherwise, that the Forum considers expedient to procure contributions to the Forum's funds, by way of donations, gifts (by will or otherwise), grants, sponsorships or otherwise;
  - (w) appoint patrons of the Forum;
  - (x) make donations for charitable purposes;
  - (y) decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property; and
  - (z) do all other things that are incidental or conducive to attaining the Forum's object.

### 3.2 Independence of members

Notwithstanding what is herein contained, the independence, authority and national status of each of the full members and their powers, duties and functions shall in no way be affected by the establishment of this Forum and its incorporation, or its functioning.

## 4. ADDITIONAL POWERS

The Forum has the powers set out in the Act but only to the extent necessary or convenient to carry out, or incidental to carrying out, the Forum's object.

## 5. INCOME AND PROPERTY

The Forum's income and property must be applied solely towards promoting the Forum's object.

No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any of the members or Forum councillors.

However, this rule 5 does not prohibit making a payment approved by the Forum councillors for:

- (a) out-of-pocket expenses incurred by a Forum councillor in performing a duty as a councillor of the Forum; or
- (b) a service rendered to the Forum by a Forum councillor in a professional or technical capacity, including as an employee, other than in the capacity as a councillor of the Forum, where:
  - (1) the provision of the service has the prior approval of the Forum councillors; and
  - (2) the amount payable is not more than an amount which commercially would be reasonable payment for the service, or prohibit payment:
    - (a) in good faith to any member for goods supplied in the ordinary and usual course of business;
    - (b) of reasonable and proper interest on money borrowed from a member; or
    - (c) of reasonable and proper rent for premises let by any member to the Forum, or indemnification of, or payment of premiums on contracts of insurance for, any Forum councillor to the extent permitted by law and this constitution.

## 6. LIABILITY OF MEMBERS

The liability of the members is limited.

## 7. GUARANTEE BY FULL MEMBERS

- (a) Every full member undertakes to contribute an amount not more than \$100 to the property of the Forum if it is wound up while it is a full member or within one year after it ceases to be a full member, for:
  - (1) payment of the Forum's debts and liabilities contracted before the time it ceased to be a full member;
  - (2) the costs, charges and expenses of winding up; and
  - (3) the adjustment of the rights of the contributors among themselves.
- (b) There is no obligation of other members to contribute to the property of the Forum if it is wound up.

## 8. ESTABLISHMENT AND OPERATION OF PUBLIC FUND

### 8.1 Maintaining Public Fund

The Forum must maintain for its object, a public fund to be known as the Asia Pacific Forum of National Human Rights Institutions Public Fund (Public Fund):

- (a) to which gifts of money or property for that object are to be made;
- (b) to which any money received by the Forum because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

### 8.2 Limits on use of Public Fund

The Forum must use the following only for its object:

- (a) gifts made to the Public Fund; and
- (b) any money received because of those gifts.

### 8.3 Receipts

The Forum must ensure that receipts for donations to the Public Fund are issued in the name of the Public Fund.

## 9. WINDING UP

- (a) If, on the winding up or dissolution of the Forum, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to a fund, authority or institution:
  - (1) which is charitable at law; and
  - (2) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 5; and
  - (3) gifts to which can be deducted under Division 30 of the ITAA 97.
- (b) The identity of the fund, authority or institution referred to in rule 9(a) must be decided by the members by resolution at or before the time of winding up or dissolution of the Forum and, if the members cannot decide, by the Supreme Court of the State.
- (c) Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a gift or transfer under rule 9(a) to that fund, authority or institution must be made in accordance with or subject to those conditions.

## 10. ALTERING THIS CONSTITUTION

- (a) A special resolution making a material alteration to, or materially affecting, rules 2, 5, 8, 9, or 10 except an alteration necessary to enable the Forum to comply with the fundraising or collections legislation of any state or territory of Australia, has no effect unless approved in writing by a Deputy Commissioner of Taxation.
- (b) A special resolution making a material alteration to, or materially affecting, rules 14.1(d) or (e) has no effect unless approved in writing by all of the full members that may be affected by the special resolution.

## 11. MEMBERSHIP

### 11.1 Full members

#### (a) Qualifications of full members

Each full member must be a national human rights institution in the Asia Pacific region which in the opinion of the Forum councillors complies with the Paris Principles.

#### (b) Initial members

The initial members are:

- (1) Human Rights and Equal Opportunity Commission of Australia;
- (2) National Human Rights Commission of India;
- (3) Indonesian National Commission on Human Rights;
- (4) Human Rights Commission of New Zealand;
- (5) Commission on Human Rights of the Philippines;
- (6) Human Rights Commission of Sri Lanka;
- (7) Fiji Human Rights Commission; and
- (8) Human Rights Commission of Nepal.

#### (c) Status

The initial members are full members.

#### (d) Admission of further full members

- (1) The Forum councillors may admit any institution, meeting the qualifications set out in rule 11.1, to full membership of the Forum.
- (2) Every applicant for full membership (except the initial members) must be proposed by one and seconded by another full member. The application for full membership must be:
  - (A) made in writing and signed by the applicant and its proposer and seconder; and
  - (B) in the form prescribed by the Forum councillors.
- (3) Subject to rule 11.1(d)(4), at the next meeting of the Forum councillors after the receipt of an application for membership, the Forum councillors must consider the application and decide whether to admit or reject the admission of the applicant. The Forum councillors need not give any reason for rejecting an application.
- (4) The Forum councillors may, at their discretion, defer the consideration of an application for full membership.

### 11.2 Candidate members

#### (a) Qualifications of candidate members

Each candidate member must be a national human rights institution in the Asia Pacific region which in the opinion of the Forum councillors could comply with the Paris Principles within a reasonable period but does not do so at the time of the application for membership and which commits, in a form

acceptable to the Forum councillors, to take active steps towards compliance with the Paris Principles within a reasonable period.

(b) Admission of candidate members

- (1) The Forum councillors may admit any institution meeting the qualifications set out in rule 11.2(a) to candidate membership of the Forum.
- (2) Every applicant for candidate membership must be proposed by one full member and seconded by another full member.

The application for candidate membership must be:

- (A) made in writing and signed by the applicant and its proposer and seconder; and
  - (B) in the form prescribed by the Forum councillors.
- (3) Subject to rule 11.2(b)(4), at the next meeting of the Forum councillors after the receipt of an application for candidate membership, the Forum councillors must consider the application and decide whether to admit or reject the admission of the applicant. The Forum councillors need not give any reason for rejecting an application.
  - (4) The Forum councillors may, at their discretion, defer the consideration of an application for candidate membership.

(c) Rights of candidate members

Candidate members have no voting rights.

### 11.3 Associate members

(a) Characteristic of associate members

Each associate member must be a human rights institution in the Asia Pacific region which, in the opinion of the Forum councillors, does not comply with and is unlikely to comply with the Paris Principles within a reasonable period.

(b) Admission of associate members

- (1) The Forum councillors may admit any institution, having the characteristic set out in rule 11.3(a), to associate membership of the Forum.
- (2) Every applicant for associate membership must be proposed by one full member and seconded by another full member.

The application for associate membership must be:

- (A) made in writing and signed by the applicant and its proposer and seconder; and
  - (B) in the form prescribed by the Forum councillors.
- (3) Subject to rule 11.3(b)(4), at the next meeting of the Forum councillors after the receipt of an application for associate membership, the Forum councillors must consider the application and decide whether to admit or reject the admission of the applicant. The Forum councillors need not give any reason for rejecting an application.
  - (4) The Forum councillors may, at their discretion, defer the consideration of an application for associate membership.

(c) Rights of associate members

Associate members have no voting rights.

## 11.4 Review of compliance by full members with the Paris Principles

(a) Occasion for review

- (1) The Forum councillors may, on their own motion and at any time, decide to review the compliance of a full member with the Paris Principles.

A full member must notify the Forum if there has been any change to the constitutional and/or legislative base or administration of the institution which materially impacts upon its compliance with, or ability to comply with, the Paris Principles.

(b) Review

- (1) Following a decision to review under rule 11.4(a)(1) or receipt of a notification under rule 11.4(a)(2), the Forum councillors must meet to consider whether the institution complies with the Paris Principles.

- (2) If the Forum councillors decide that the institution does not so comply, they may, by resolution, expel a member under rule 12.2.

## 11.5 Review of commitment by candidate members to comply with the Paris Principles

(a) Occasion for review

- (1) The Forum councillors may, on their own motion and at any time, decide to review the commitment of a candidate member to take active steps to comply with the Paris Principles within a reasonable period.

- (2) A candidate member must notify the Forum if there has been any change to the constitutional and/or legislative base or administration of the institution which materially impacts upon its commitment or ability to take those active steps to comply with the Paris Principles within a reasonable period.

(b) Review

- (1) Following a decision to review under rule 11.5(a)(1) or receipt of a notification under rule 11.5(a)(2), the Forum councillors must meet to consider whether the institution is taking active steps to comply with the Paris Principles.

- (2) If the Forum councillors decide that the institution is not taking those active steps, they may, by resolution, expel a member under rule 12.2.

## 12. WHEN MEMBERSHIP CEASES

### 12.1 Resignation and other events

An institution immediately ceases to be a member if the institution:

- (a) resigns as a member by giving written notice to the Forum; or
- (b) becomes insolvent or makes any arrangement or composition with its creditors or if a liquidator, receiver or other external administrator is appointed in respect of the institution; or

(c) is expelled under rule 12.2.

## 12.2 Expulsion

- (a) The Forum councillors may by resolution expel a member from the Forum:
  - (1) if, in their absolute discretion, they decide it is not in the interests of the Forum for the institution to remain a member; or
  - (2) in accordance with rules 11.4(b) or 11.5(b).
- (b) If the Forum councillors intend to propose a resolution under rule 12.2(a), at least one month before the meeting at which the resolution is to be proposed, they must give the member written notice:
  - (1) stating the date, place and time of the meeting;
  - (2) setting out the intended resolution and the grounds on which it is based; and
  - (3) informing the member, candidate member or associate member that a representative of the member, candidate member or associate member may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

## 13. GENERAL MEETINGS

### 13.1 Calling general meetings

- (a) The Forum councillors may call and arrange to hold a general meeting whenever they think fit.
- (b) A general meeting may be called and arranged to be held only as provided by this rule 13.1 or as provided by sections 249D, 249E, 249F and 249G of the Act.
- (c) The Forum councillors may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the members or the court under the Act. If a general meeting is called and arranged to be held under section 249D of the Act, the Forum councillors may not:
  - (1) postpone it beyond the date by which section 249D requires it to be held; or
  - (2) cancel it without the consent of the requisitioning member.

### 13.2 Notice of general meetings

- (a) Notice of every general meeting must be given in any manner authorised by rule 19 to:
  - (1) every full member, except a member who has not supplied the Forum with an address for giving notices;
  - (2) each Forum councillor; and
  - (3) the auditor.

No other person is entitled to receive notice of general meetings.

- (b) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting; and
  - (2) except as provided by the Act, state the general nature of the business to be transacted at the meeting.
- (c) An institution may waive notice of a general meeting by written notice to the Forum.

- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any institution entitled to receive notice of a general meeting under this rule 13.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the institution:
    - (A) has waived or waives notice of that meeting under rule 13.2(c); or
    - (B) has notified or notifies the Forum of the institution's agreement to that act, matter, thing or resolution by written notice to the Forum. An institution's attendance at a general meeting waives any objection that institution may have to:
- (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the institution objects to the holding of the meeting; and
  - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the institution objects to considering the matter when it is presented.

### 13.3 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
  - (1) if the full members have fixed a number for the quorum, that number of full members; and
  - (2) if the full members have not fixed a number for the quorum:
    - (a) if the number of full members is 9 or less, 3 full members;
    - (b) if the number of full members is between 10 and 15, 4 full members; and
    - (c) if the number of full members exceeds 15, 5 full members, present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
  - (2) in any other case:
    - (A) the meeting stands adjourned to the day, and at the time and place, that the Forum councillors decide or, if the Forum councillors do not make a decision, to the same day in the next week at the same time and place; and
    - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### 13.4 Chairperson of general meetings

- (a) The chairperson of Forum councillors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
  - (1) there is no chairperson of Forum councillors;

- (2) the chairperson of Forum councillors is not present within 15 minutes after the time appointed for the meeting; or
- (3) the chairperson of Forum councillors is present within that time but is not willing to act as chairperson of the meeting, the full members present must elect as chairperson of the meeting another person who is present and willing to act.

### 13.5 Conducting and adjourning general meetings

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by rule 13.5(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (e) Where a meeting is adjourned, the Forum councillors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act, the Forum councillors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member.
- (f) A Forum councillor may attend and speak at general meetings.

### 13.6 Observers

Any person may attend a general meeting if so invited by the Forum councillors present and with the permission of the chairperson, may speak at the meeting.

### 13.7 Decisions at general meetings

- (a) Decisions at general meetings should, as far as possible, be arrived at by consensus.
- (b) Where there is no consensus and except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the full members present at the meeting. Such a decision is for all purposes a decision of the full members. However, when such a decision pertains to the policy or principles governing a human rights issue any full member who disagrees wholly or partly with such a policy and/or principle may record its dissent/reservation specifying the area of dissent or reservation.
- (c) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.
- (d) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (1) the chairperson of the meeting;

- (2) at least 2 full members present; or
- (3) a full member or full members present at the meeting and representing at least 5% of the total voting rights of all the full members on a poll.
- (e) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (f) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Forum, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (g) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (h) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (i) The demand for a poll may be withdrawn.
- (j) If the Forum has only one member, the Forum may pass a resolution by the member recording it and signing the record.

### 13.8 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting every full member present has one vote.
- (b) A proxy, attorney or representative is entitled to a separate vote for each full member the person represents.
- (c) An objection to the qualification of a person to vote at a general meeting must be:
  - (1) raised before or at the meeting at which the vote objected to is given or tendered; and
  - (2) referred to the chairperson of the meeting, whose decision is final.
- (d) A vote not disallowed by the chairperson of a meeting under rule 13.8(c) is valid for all purposes.

### 13.9 Representation at general meetings

- (a) Subject to this constitution, each full member may vote:
  - (1) by proxy;
  - (2) by attorney; or
  - (3) by its representative.
- (b) A proxy, attorney or representative may be appointed for:
  - (1) all general meetings;
  - (2) any number of general meetings; or
  - (3) a particular general meeting.
- (c) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative is taken to confer authority:

- (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
  - (2) to speak to any proposed resolution on which the proxy, attorney or representative may vote;
  - (3) to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
  - (4) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
    - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
    - (C) to act generally at the meeting; and
  - (5) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (d) An instrument appointing a proxy, attorney or representative may direct the manner in which the proxy, attorney or representative is to vote in respect of a particular resolution. Where an instrument contains such a direction, the proxy, attorney or representative is not entitled to vote on the proposed resolution except as directed in the instrument.
- (e) Subject to rule 13.9(f), an instrument appointing a proxy, attorney or representative need not be in any particular form as long as it is in writing, legally valid and executed by the appointer or the appointer's attorney.
- (f) A proxy, attorney or representative may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, attorney or representative, and the authority under which the instrument is signed or a certified copy of the authority, are received in the places or at the fax numbers, and before the times, specified for that purpose in the notice calling the meeting. In the notice:
- (1) the place may be the Forum's registered office or another place and a fax number may be the fax number at the Forum's registered office or another fax number; and
  - (2) the time may be before the time for holding the meeting or adjourned meeting.
- (g) The Forum councillors may waive all or any of the requirements of rules 13.9(e) and
- (f) and in particular may, on production of any other evidence the Forum councillors require to prove the validity of the appointment of a proxy or attorney, accept:
- (1) an oral appointment of a proxy, attorney or representative;
  - (2) an appointment of a proxy, attorney or representative which is not signed or executed in the manner required by rule 13.9(e); or
  - (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy, attorney or representative, or of the power of attorney or other authority under which the instrument is signed.
- (h) A vote given in accordance with the terms of an instrument appointing a proxy, attorney or representative is valid despite the revocation of the instrument, or of the authority under which the instrument was executed, if the Forum has not received written notice of revocation by the time and at one of the places at which the instrument appointing the proxy, attorney or representative is required to be received under rule 13.9(f).

## 14. FORUM COUNCILLORS

### 14.1 Appointing and removing Forum councillors

- (a) There must be at least 3 Forum councillors.
- (b) The first Forum councillors are the persons who have consented to act as proposed Forum councillors and who are named as proposed Forum councillors in the application for registration of the Forum.
- (c) The Forum may by resolution increase or reduce the minimum or decide a maximum number of Forum councillors and increase or reduce that maximum provided that the minimum is not reduced below three or to a number less than one more than the number of full members at the time of the resolution.
- (d) Subject to rule 14.1(e), each full member may appoint an individual as a Forum councillor and remove that Forum councillor.
- (e) Despite rule 14.1(d), Human Rights and Equal Opportunity Commission of Australia may appoint two individuals as Forum councillors and remove any person so appointed.
- (f) The first Forum councillors are deemed to have been appointed as follows:
  - (1) [AB] and [CD] are deemed to have been appointed by Human Rights and Equal Opportunity Commission of Australia;
  - (2) [EF] is deemed to have been appointed by National Human Rights Commission of India;
  - (3) [GH] is deemed to have been appointed by Indonesian National Commission on Human Rights;
  - (4) [IJ] is deemed to have been appointed by Human Rights Commission of New Zealand;
  - (5) [KL] is deemed to have been appointed by Commission on Human Rights of the Philippines;
  - (6) [MN] is deemed to have been appointed by Human Rights Commission of Sri Lanka;
  - (7) [OP] is deemed to have been appointed by Fiji Human Rights Commission; and
  - (8) [QR] is deemed to have been appointed by Human Rights Commission of Nepal.
- (g) The Forum councillors may appoint any individual as a Forum councillor, either to fill a casual vacancy or as an addition to the existing Forum councillors, but the total number of Forum councillors must not at any time exceed the maximum number allowed under this constitution.
- (h) Subject to rule 14.3 and to the terms of any agreement entered into between the Forum and the relevant Forum councillor, a Forum councillor holds office until he or she dies or is removed from office under rules 14.1(d) or (e).
- (i) An appointment or removal under rules 14.1(d) or (e) must be made by notice in writing to the secretary.

### 14.2 Residency of Forum councillors

Not less than two Forum councillors at any time must be residents of Australia.

### 14.3 When office of Forum councillor becomes vacant

In addition to the circumstances prescribed by the Act, the office of a Forum councillor becomes vacant if the member that appointed the Forum councillor ceases to be a member or if the Forum councillor:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes an arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the Forum councillors do not within one month after that conviction resolve to confirm the Forum councillor's appointment or election (as applicable) to the office of Forum councillor; or
- (d) resigns by written notice to the Forum.

#### 14.4 Interested Forum councillors

- (a) Subject to rule 5, a Forum councillor may hold another position (except as auditor) in the Forum or any related body corporate in conjunction with his or her office of Forum councillor and may be appointed to that position on terms as to remuneration, tenure and otherwise that the Forum councillors think fit.
- (b) A Forum councillor:
  - (1) may be or become a director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the Forum or in which the Forum is interested as a shareholder or otherwise; and
  - (2) is not accountable to the Forum for any remuneration or other benefits he or she receives as a director or officer of, or from having an interest in, that body corporate.
- (c) The Forum councillors may exercise the voting rights conferred by shares in any body corporate held or owned by the Forum in the manner in all respects that they think fit.
- (d) A Forum councillor is not disqualified merely because he or she is a Forum councillor from contracting with the Forum in any respect including, but not limited to:
  - (3) selling property to, or purchasing property from, the Forum;
  - (4) lending money to the Forum with or without interest or security;
  - (5) guaranteeing the repayment of money borrowed by the Forum for a commission or profit;
  - (6) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the Forum or in which the Forum is interested as a shareholder or otherwise, for a commission or profit; or
  - (7) being employed by the Forum or acting in any professional capacity (except as auditor) on behalf of the Forum.
- (e) A contract made by a Forum councillor with the Forum and a contract or arrangement entered into by or on behalf of the Forum in which any Forum councillor may be in any way interested is not avoided or rendered voidable merely because the Forum councillor holds office as a Forum councillor or because of the fiduciary obligations arising out of that office.
- (f) A Forum councillor contracting with or being interested in any arrangement involving the Forum is liable to account to the Forum for any profit realised by or under that contract or arrangement unless the Forum councillors decide otherwise.
- (g) Unless section 195 of the Act permits, a Forum councillor who has a material personal interest in a matter that is being considered at a Forum councillors' meeting must not:
  - (1) be present while the matter is being considered at the meeting; or
  - (2) vote on the matter.

- (h) The Forum councillors may make regulations requiring the disclosure of interests that a Forum councillor, and any person considered by the Forum councillors as related to or associated with the Forum councillor, may have in any matter concerning the Forum or a related body corporate. Any regulations made under this constitution bind all Forum councillors.

#### 14.5 Powers and duties of Forum councillors

- (a) The Forum councillors are responsible for managing the Forum's business and affairs and may exercise to the exclusion of the Forum in general meeting all the Forum's powers which are not required, by the Act or by this constitution, to be exercised by the Forum in general meeting.
- (b) Without limiting rule 14.5(a), the Forum councillors may exercise all the Forum's powers to:
  - (1) borrow or otherwise raise money;
  - (2) charge any property or business of the Forum; and
  - (3) issue debentures or give any other security for a debt, liability or obligation of the Forum or of any other person.
- (c) The Forum councillors may decide how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the Forum.
- (d) The Forum councillors may pay out of the Forum's funds all expenses of the promotion, formation and registration of the Forum and the vesting in it of the assets acquired by it.
- (e) The Forum councillors may:
  - (1) appoint or employ a person to be an officer, agent or attorney of the Forum for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Forum councillors), for the period and on the conditions they think fit;
  - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the Forum and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (f) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the Forum councillors think fit.

#### 14.6 Proceedings of Forum councillors

- (a) The Forum councillors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Forum councillors to constitute a quorum constitutes a meeting of the Forum councillors. All the provisions in this constitution relating to meetings of the Forum councillors apply, so far as they can and with any necessary changes, to meetings of the Forum councillors by telephone or other electronic means.
- (c) A Forum councillor who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the Forum councillors involved was at that place for the duration of the meeting.

## 14.7 Convening meetings of Forum councillors

- (a) A Forum councillor may request a meeting of the Forum councillors.
- (b) A secretary must notify the Forum councillors of the request for a meeting of the Forum councillors.
- (c) If a majority of Forum councillors advise the secretary (in writing or orally) that they agree to the request for a meeting of the Forum councillors, then the secretary must convene a meeting of the Forum councillors.

## 14.8 Notice of meetings of Forum councillors

- (a) Subject to this constitution, notice of a meeting of Forum councillors must be given to each person who is at the time of giving the notice:
  - (1) a Forum councillor, except a Forum councillor on leave of absence approved by the Forum councillors; or
  - (2) an alternate Forum councillor appointed under rule 14.14 by a Forum councillor on leave of absence approved by the Forum councillors.
- (b) A notice of a meeting of Forum councillors:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting;
  - (4) may be given in person or by post, telephone, fax or other electronic means; and
  - (5) is taken as given to an alternate Forum councillor if it is given to the Forum councillor who appointed that alternate Forum councillor.
- (c) A Forum councillor or alternate Forum councillor may waive notice of a meeting of Forum councillors by notifying the Forum to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of Forum councillors by, or a failure to give notice of a meeting of Forum councillors to, a Forum councillor does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the Forum councillor or an alternate Forum councillor appointed by the Forum councillor:
    - (A) has waived or waives notice of that meeting under rule 14.8(c); or
    - (B) has notified or notifies the Forum of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (3) the Forum councillor or an alternate Forum councillor appointed by the Forum councillor attended the meeting.
- (e) The non-receipt of notice of a meeting of Forum councillors by, or a failure to give notice of a meeting of Forum councillors to, an alternate Forum councillor or a Forum councillor on leave of absence approved by the Forum councillors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the alternate Forum councillor or the Forum councillor who appointed the alternate Forum councillor:

- (A) has waived or waives notice of that meeting under rule 14.8(c); or
  - (B) has notified or notifies the Forum of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (3) the alternate Forum councillor or the Forum councillor who appointed the alternate Forum councillor attended the meeting.
- (f) Attendance by a person at a meeting of Forum councillors waives any objection which that person and:
- (1) if the person is a Forum councillor, an alternate Forum councillor appointed by that person; or
  - (2) if the person is an alternate Forum councillor, the Forum councillor who appointed that person as alternate Forum councillor, may have to a failure to give notice of the meeting.

#### 14.9 Quorum at meetings of Forum councillors

- (a) No business may be transacted at a meeting of Forum councillors unless a quorum of Forum councillors is present at the time the business is dealt with.
- (b) A quorum consists of:
  - (1) if the Forum councillors have fixed a number for the quorum, that number of Forum councillors; and
  - (2) if the Forum councillors have not fixed a number for the quorum:
    - (A) if the number of Forum councillors is 9 or less, 3 Forum councillors;
    - (B) if the number of Forum councillors is between 10 and 15, 4 Forum councillors; and
    - (C) if the number of Forum councillors exceeds 15, 5 Forum councillors, present at the meeting of Forum councillors.
- (c) If there is a vacancy in the office of a Forum councillor then, subject to rule 14.9(d), the remaining Forum councillors may act.
- (d) If the number of Forum councillors in office at any time is not sufficient to constitute a quorum at a meeting of Forum councillors, or is less than the minimum number of Forum councillors fixed under this constitution, or if the requirements outlined in rule 14.2 concerning the residency of Forum councillors are not satisfied, the remaining Forum councillors must act as soon as possible to:
  - (1) encourage those members of the Forum who have not appointed a Forum councillor to do so; or
  - (2) convene a general meeting of the Forum for that purpose, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

#### 14.10 Chairperson of Forum councillors

- (a) The Forum councillors may elect a Forum councillor as chairperson of Forum councillors and may decide the period for which that person is to be the chairperson.
- (b) The chairperson of Forum councillors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each meeting of Forum councillors.
- (c) If at a meeting of Forum councillors:
  - (1) there is no chairperson of Forum councillors;

- (2) the chairperson of Forum councillors is not present within 10 minutes after the time appointed for the meeting; or
- (3) the chairperson of Forum councillors is present within that time but is not willing to act as chairperson of the meeting, the Forum councillors present must elect one of the Forum councillors as chairperson of the meeting.
- (d) The chairperson of Forum councillors may not vote at meetings of Forum councillors unless the chairperson is a Forum councillor.

#### 14.11 Deputy chairperson of Forum councillors

The Forum councillors may elect one or more Forum councillors as deputy chairpersons and may decide the period for which that person or persons will serve as deputy chairpersons.

#### 14.12 Decisions of Forum councillors

- (a) A meeting of Forum councillors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Forum councillors under this constitution.
- (b) Questions arising at a meeting of Forum councillors must be decided by a majority of votes cast by the Forum councillors present. Such a decision is for all purposes a decision of the Forum councillors.
- (c) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting, even if a Forum councillor, does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.

#### 14.13 Written resolutions

- (a) If:
  - (1) a majority of the Forum councillors entitled to vote at meetings assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
  - (2) the Forum councillors who assent to the document would have constituted a quorum at a meeting of Forum councillors held to consider that act, matter, thing or resolution, then that act, matter, thing or resolution is taken as done at or passed by a meeting of the Forum councillors.
- (b) For the purposes of rule 14.13(a):
  - (1) the meeting is taken as held:
    - (A) if the Forum councillors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to; or
    - (B) if the Forum councillors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to;
  - (2) 2 or more separate documents in identical terms, each of which is assented to by one or more Forum councillors, are taken as constituting one document; and
  - (3) a Forum councillor may signify assent to a document by signing the document or by notifying the Forum of the Forum councillor's assent in person or by post, telephone, fax or other electronic means.

- (c) Where a Forum councillor signifies assent to a document otherwise than by signing the document, the Forum councillor must as confirmation sign the document at the next meeting of the Forum councillors that Forum councillor attends, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

#### 14.14 Alternate Forum councillors

- (a) A Forum councillor may, with the approval of the Forum councillors, appoint a person as his or her alternate Forum councillor for the period the Forum councillor thinks fit.
- (b) An alternate Forum councillor may, but need not, be a Forum councillor of the Forum.
- (c) One person may act as alternate Forum councillor to more than one Forum councillor.
- (d) An alternate Forum councillor may, if the appointer does not attend a meeting of Forum councillors, attend and vote in place of and on behalf of the appointer.
- (e) An alternate Forum councillor is entitled to a separate vote for each Forum councillor the alternate Forum councillor represents in addition to any vote the alternate Forum councillor may have as a Forum councillor in his or her own right.
- (f) In the absence of the appointer, an alternate Forum councillor may exercise any power that the appointer may exercise. The exercise of such a power by the alternate Forum councillor is taken to be the exercise of the power by the appointer.
- (g) The office of an alternate Forum councillor is vacated if and when the appointer vacates office as a Forum councillor.
- (h) The appointer may terminate the appointment of an alternate Forum councillor at any time, even though the period of the appointment has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate Forum councillor must be in writing signed by the Forum councillor who makes or made the appointment and does not take effect until the Forum has received written notice of the appointment or termination.
- (j) An alternate Forum councillor is not to be taken into account in counting the minimum or maximum number of Forum councillors allowed under this constitution.
- (k) In deciding whether a quorum is present at a meeting of Forum councillors, an alternate Forum councillor who attends the meeting is to be counted as a Forum councillor for each Forum councillor on whose behalf the alternate Forum councillor is attending the meeting.
- (l) An alternate Forum councillor, while acting as a Forum councillor, is:
  - (1) responsible to the Forum for his or her own acts and defaults; and
  - (2) not to be taken to be the agent of the Forum councillor by whom he or she was appointed.

#### 14.15 Committees of Forum councillors

- (a) The Forum councillors may delegate any of their powers to one or more committees consisting of the number of Forum councillors they think fit.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Forum councillors.
- (c) The provisions of this constitution that apply to meetings and resolutions of Forum councillors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of Forum councillors.

#### 14.16 Delegation to individual Forum councillors

- (a) The Forum councillors may delegate any of their powers to one Forum councillor.
- (b) A Forum councillor to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the Forum councillors.

#### 14.17 Forum councillors appointed by Human Rights and Equal Opportunity Commission of Australia

- (a) Despite any other provision in this constitution, only one Forum councillor appointed by Human Rights and Equal Opportunity Commission of Australia may vote at meetings of Forum councillors.
- (b) The Forum councillor so entitled is to be nominated by notice from time to time to the secretary by Human Rights and Equal Opportunity Commission of Australia.

#### 14.18 Validity of acts

An act done by a person acting as a Forum councillor, a meeting of Forum councillors, or a committee of Forum councillors attended by a person acting as a Forum councillor, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a Forum councillor;
- (b) the person being disqualified to be a Forum councillor or having vacated office; or
- (c) the person not being entitled to vote, if that circumstance was not known by the person, the Forum councillors or the committee (as applicable) when the act was done.

### 15. EXECUTIVE OFFICERS

#### 15.1 Executive director

- (a) The Forum councillors may appoint an executive director.
- (b) The Forum councillors may appoint a Forum councillor as executive director. If the executive director is a Forum councillor then his or her appointment as executive director automatically terminates if he or she ceases to be a Forum councillor.

#### 15.2 Secretaries

- (a) The Forum councillors must appoint at least one secretary and may appoint additional secretaries.
- (b) The Forum councillors may appoint one or more assistant secretaries.

#### 15.3 Provisions that apply to all executive officers

- (a) A reference in this rule 15.3 to an executive officer is a reference to an executive director, secretary or assistant secretary appointed under this rule 15.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions that the Forum councillors think fit.

- (c) Subject to any contract between the Forum and the relevant executive officer, an executive officer may be removed or dismissed by the Forum councillors at any time, with or without cause.
- (d) The Forum councillors may:
  - (1) confer on an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the Forum councillors) they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An act done by a person acting as an executive officer is not invalidated merely because of:
  - (1) a defect in the person's appointment as an executive officer; or
  - (2) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

## 16. ADVISORY COMMITTEES

### 16.1 Establishment and termination

- (a) The full members in general meeting may:
  - (1) establish one or more advisory committees consisting of a single individual or a number of individuals; and
  - (2) appoint and remove, or make provision for the appointment and removal of, members of those advisory committees; and
  - (3) terminate any advisory committee established by them.
- (b) The Forum councillors may:
  - (1) establish one or more advisory committees consisting of a single individual or a number of individuals;
  - (2) appoint and remove, or make provision for the appointment and removal of, members of those advisory committees; and
  - (3) terminate any advisory committee established by them.

### 16.2 Functions

- (a) The full members in general meeting may decide the functions of each advisory committee. Subject to any such decision, the functions will be to recommend to the Forum councillors how payments or applications of income and capital should be made under rule 2.
- (b) The full members in general meeting may specify:
  - (1) the manner in which proceedings of each advisory committee are to be conducted;
  - (2) the matters which the advisory committee must consider in carrying out its functions; and
  - (3) any other matters concerning the advisory committee or its functions that the full members in general meeting decide.

- (c) The Forum councillors may decide the functions of each advisory committee. Subject to any such decision, the functions will be to recommend to the Forum councillors how payments or applications of income and capital should be made under rule 2.
- (d) The Forum councillors may specify:
  - (1) the manner in which proceedings of each advisory committee are to be conducted;
  - (2) the matters which the advisory committee must consider in carrying out its functions; and
  - (3) any other matters concerning the advisory committee or its functions that the Forum councillors decide.

## 17. INDEMNITY AND INSURANCE

### 17.1 Persons to whom rules 17.2 and 17.4 apply

Rules 17.2 and 17.4 apply to:

- (a) each person who is or has been a Forum councillor, alternate Forum councillor or executive officer (within the meaning of rule 15.3(a)) of the Forum; and
- (b) any other officers or former officers of the Forum or of its related bodies corporate that the Forum councillors decide in each case.

### 17.2 Indemnity

The Forum must

- (a) indemnify; and
- (b) if requested by a person to whom this rule 17.2 applies, enter into a deed indemnifying, on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 17.2 applies for all losses or liabilities incurred by the person as an officer of the Forum or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred;
- (c) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (d) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Act.

### 17.3 Extent of indemnity

The indemnity in rule 17.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 17.2 applies even though that person has ceased to be an officer of the Forum or of a related body corporate; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### 17.4 Insurance

The Forum may, to the extent permitted by law:

- (a) purchase and maintain insurance; or

- (b) pay or agree to pay a premium for insurance, for any person to whom this rule 17.4 applies against any liability incurred by the person as an officer of the Forum or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

## 17.5 Savings

Nothing in rules 17.2 or 17.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the Forum to indemnify or provide insurance for any person to whom those rules do not apply.

## 18. AUDITOR

The Forum must appoint a properly qualified auditor whose duties will be regulated in accordance with the Act.

## 19. NOTICES

### 19.1 How notices may be given

A notice may be given by the Forum to a member or by a member to the Forum by:

- (a) delivering it to the addressee personally;
- (b) sending it to the addressee's fax number or electronic address, if the addressee has nominated one to the sender for receipt of notices; or
- (c) posting it by prepaid post to the addressee's address as last notified in writing to the sender.

### 19.2 When taken as given

A notice is taken as given and received:

- (a) if delivered, at the time of delivery;
- (b) if faxed, when the sender receives a confirmation report that all pages of the fax have been transmitted to the addressee's, fax number, but if transmission or receipt is after 5.00 pm, it is taken as received on the next business day;
- (c) if sent electronically, on the next business day; and
- (d) if posted, on the second business day after it was posted.

## 20. DEFINITIONS AND INTERPRETATION

### 20.1 Definitions

In this constitution:

**Act** means the *Corporations Act 2001*;

**Asia Pacific region** means the region from time to time decided by the Forum councillors;

**associate member** means an associate member of the Forum;

**auditor** means the auditor of the Forum;

**business day** means a day on which the major trading banks are open for business in Sydney, except a Saturday, Sunday or public holiday;

**Forum** means Asia Pacific Forum of National Human Rights Institutions;

**candidate member** means a candidate member of the Forum;

**human rights** includes, but is not limited to, the rights and freedoms contained in United Nations international human rights instruments;

**Forum councillors** means the Forum's board of directors;

**ITAA 97** means the *Income Tax Assessment Act 1997*;

**members** means the full members, candidate members, and associate members;

**Paris Principles** means the Principles Relating to the Status of National Institutions, adopted by the United Nations Commission on Human Rights in resolution 1992/54 of 3 March 1992 and endorsed by the United Nations General Assembly in resolution 48/134 of 20 December 1993;

**secretary** means a person appointed to perform the duties of a secretary of the Forum and includes an honorary secretary; and

**State** means New South Wales.

## 20.2 Interpretation

In this constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the Forum to its members;
- (b) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (c) a reference to a member present at a general meeting is reference to a member present in person or by proxy, attorney or representative;
- (d) a reference to writing and written includes printing, lithography and other ways of representing or reproducing words in a visible form;
- (e) a word or expression defined in the Act has the same meaning unless it is defined differently; and
- (f) the singular (including defined terms) includes the plural and the plural includes the singular.

## 20.3 Headings

Headings are used for convenience only and do not affect the interpretation of this constitution.

## 21. APPLICATION OF THE ACT

### 21.1 What parts of the Act apply

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to rule 21.1(a), an expression in a rule that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

### 21.2 Replaceable rules displaced

- (a) The provisions of this constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this rule) to the Forum.
- (b) The replaceable rules do not apply to the Forum except those which operate as mandatory rules for public companies under the Act.

The initial members of the Forum (whose consents are set out below) adopt, on registration of the Forum, the above constitution as the Forum's constitution in accordance with section 136(1) of the Act.

Full name and address of initial members

Signatures consenting to be a member

**Human Rights and Equal Opportunity Commission of Australia** of Level 8, 133 Castlereagh Street, Sydney, NSW, Australia

.....  
Authorised representative

**National Human Rights Commission of India** of Sardar Patel Bhavan, Parliament Street, New Delhi, India

.....  
Authorised representative

**Indonesian National Commission on Human Rights** of Jalan Latuharhary No 4B, Jakarta Pusat, Jakarta, Indonesia

.....  
Authorised representative

**Human Rights Commission of New Zealand** of 4th Floor, Tower Centre, Corner Queen & Customs Streets, Auckland, New Zealand

.....  
Authorised representative

**Commission on Human Rights of the Philippines** of SAAC Building, Commonwealth Ave, UP Complex, Diliman, Quezon City, Philippines

.....  
Authorised representative

**Human Rights Commission of Sri Lanka** of No 36, Kynsey Road, Colombo, Sri Lanka

.....  
Authorised representative

**Fiji Human Rights Commission** of Level 2, Civic Tower, Victoria Parade, Suva, Fiji

.....  
Authorised representative

**Human Rights Commission of Nepal** of Harihar Bhavan, Pulchwock, Kathmandu, Nepal

.....  
Authorised representative

Date:

# Appendix 3:

## APF rules of procedure

### A. RULES OF PROCEDURE FOR ANNUAL GENERAL MEETINGS OF THE APF

#### 1. Statement of purpose

The following Rules of Procedure apply to Annual General Meetings of the Asia Pacific Forum of National Human Rights Institutions (the APF).

The APF must hold an Annual General Meeting (AGM) each year in order to satisfy its obligations under the Australian Corporations Act (Cth) 2001 (the Act). The purpose of the Annual General Meeting (which is hosted by one of the full member institutions of the APF) is to enable the full members of the APF to receive the APF's annual [financial report](#), [directors' report](#) and auditor's report.

#### 2. Convening an AGM

##### 2.1 Frequency, time and place

The APF must hold an AGM once in each calendar year and within 5 months after the end of its [financial year](#).

This rule above accords with clause 13.1(a) of the Constitution and s. 250N (2) of the Act.

##### 2.2 Extension of time for holding the AGM

If an extension of time is needed for holding the AGM beyond 5 months after the end of the financial year, the Forum Councillors must apply to the Australian Securities and Investments Commission for that extension in accordance with Section 250P of the Act.

This rule above accords with s. 250P of the Act.

##### 2.3 Notice of an AGM

At least 6 weeks' notice of an AGM must be given to every full member institution, each Forum councillor and the auditor of the APF personally, by facsimile, by e-mail or by pre-paid post. The notice must specify the date, time and place of the meeting and state the general nature of the business to be transacted at the meeting.

This rule above accords with clauses 13.2 and 19 of the Constitution and s. 249H of the Act.

##### 2.4 Adjourning an AGM

Prior to an AGM, the Forum Councillors may change the venue for, postpone or cancel the Meeting (in accordance with clause 13.1 of the Constitution).

At the AGM, the Chairperson may, and must if so directed by the meeting, adjourn the meeting time and place. The only business that can be discussed at any adjourned meeting is the unfinished business from the meeting at which the adjournment took place.

This rule above accords with clause 13.5 of the Constitution.

### 3. Documentation for the AGM

#### 3.1 Provision of background papers

Background papers will be available to all full member institutions 14 days prior the meeting.

#### 3.2 Communications/submissions by member institutions prior to an AGM

Any communications, submissions or documents to be tabled at an AGM must be forwarded to the APF Secretariat by electronic mail within 21 days of the date of the meeting.

### 4. Attendance, representation and credentials

#### 4.1 Full member institutions/ Forum Councillors/ Auditor

All full member institutions may attend and vote at AGMs. Forum Councillors may attend and speak at AGMs. The APF's auditor or his/her representative is also entitled to attend and speak at an AGM.

This rule above accords with clause 13.5(f) of the Constitution and s249V of the Act.

#### 4.2 Representation at AGMs

Each full member institution has one vote and may vote by proxy, attorney or representative in accordance with clause 13.9 of the Constitution.

This rule accords with clauses 13.8(a) and 13.9 of the Constitution and ss. 250A, 250D of the Act.

#### 4.3 Candidate and associate member Institutions and observers

Any person may attend an AGM if invited by the Forum Councillors and, with the permission of the Chairperson, may speak but not vote at the meeting.

This rule above accords with clause 13.6 of the Constitution.

#### 4.4 Credentials

All invitees should inform the Secretariat of their intention to participate in an AGM in writing at least two weeks in advance. If that invitee is an organisation, it must nominate, in writing, one spokesperson.

### 5. Conduct of the Meeting

#### 5.1 Chairperson

The Chairperson of Forum Councillors must preside as Chairperson at each AGM and shall be responsible for the control of all sessions of the meeting and for ensuring that the Rules of Procedure are adhered to. Any question arising relating to the order of business, procedure or conduct of the meeting must be referred to the Chairperson whose decision is final.

If that Chairperson is not present, or not willing to act as Chairperson of the meeting, the full member institutions present must elect a Chairperson of the meeting.

#### 5.2 Agenda

The Forum Councillors shall approve the provisional agenda prepared by the Secretariat.

This rule above accords with clauses 13.4 and 13.5(a) of the Constitution and Section 249U of the Act.

### 5.3 Business to be discussed

The business of an AGM shall be the consideration of the annual [financial report](#), [directors' report](#) and [auditor's report](#), the fixing of the [auditor's remuneration](#) and any other item on the Agenda approved by the Forum Councillors.

The Forum Councillors **must** present the following reports to the AGM:

- The financial report;
- The directors' report;
- The auditors' report.

The Chairperson must also allow a reasonable opportunity for full member institutions to ask questions about, or comment upon, the management of the Forum.

If the auditor or his/her representative attends the AGM, the Chairperson must also allow a reasonable opportunity for full member institutions to ask questions about the conduct of the audit and the preparation and content of the auditor's report.

This rule above accords with ss. 250R, 250S and 250T of the Act.

### 5.4 Quorum

No business may be transacted at an AGM, except the election of a Chairperson and adjournments, unless a quorum of full member institutions is present when the meeting proceeds to business. A quorum is either a number determined by the full member institutions or, if the full member institutions have not fixed a number, by the following method:

- (i) If the number of full member institutions is 9 or less, 3 full member institutions;
- (ii) If the number of full member institutions is between 10 and 15, 4 full member institutions; or
- (iii) If the number of full member institutions exceeds 15, 5 full member institutions.

If there is no quorum 30 minutes after the starting time of an AGM then it can be adjourned to another date. If there is no agreement about the date for the adjourned AGM it must be adjourned to the same day in the next week at the same time and place.

This rule above accords with clause 13.3 of the Constitution and Section 249E of the Act.

### 5.5 Order for discussion

The order for discussion is progression through the agenda.

### 5.6 Speaking rights

Full member institutions may speak to each agenda item and then candidate and associate member institutions and other observers may speak (with the permission of the Chairperson) prior to moving onto the next agenda item.

This rule above accords with clause 13.6 of the Constitution

### 5.7 Decision-making

Decisions at AGMs will, as far as possible, be arrived at by consensus. Where the Chairperson deems that there is no consensus the matter will be decided by a majority of votes by hand. Only full member institutions may vote on agenda items and each full member institution present has one vote. A proxy, attorney or representative is entitled to a separate vote for each full member institution that the person represents. Where the votes are equal the proposed resolution is lost. Candidate and associate member institutions do not have voting rights.

This rule above accords with clauses 13.7, 13.8 and 13.9 of the Constitution.

### 5.8 Working language of AGMs

The working language of the meetings of the APF shall be English.

## 6. The APF secretariat

### 6.1 Role

The Secretariat shall facilitate the work of the AGMs of the full member institutions by:

- (i) Providing necessary advice, clarifications, inputs and information;
- (ii) Acting as resource persons – particularly in the preparation of background papers; and
- (iii) Summarising discussions and preparing the final report of the meeting.

### 6.2 Reporting

The Secretariat will publish the executive summary of the AGM within 60 days of the meeting being held.

## 7. Adoption and amendment of rules of procedure

### 7.1 Adoption and amendment

These Rules shall come into force on adoption by the Forum Councillors, will remain in force until amended by the Forum Councillors, and can be amended by the Forum Councillors as required.

### 7.2 Matters not covered by the rules

Any matter not covered by these rules may be determined by a vote of the full member institutions.

## B. RULES OF PROCEDURE FOR THE CONFERENCE OF THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

### 1. Statement of purpose

The Asia Pacific Forum of National Human Rights Institutions (APF) plenary Conference (the Conference) is the key participatory Conference for all APF member institutions and registered observers in the Asia Pacific region. The aim of the Conference is to bring together national human rights institutions, the United Nations (UN), governments and Non-Governmental Organisations (NGOs) in a harmonious and practical setting in order to mobilise co-operation for regional human rights initiatives and to facilitate the establishment of new national human rights institutions in accordance with the Paris Principles. At the Conference, APF member institutions and registered observers hear and discuss reports from APF member institutions, Asia-Pacific governments and NGOs and discuss human rights issues of regional significance.

### 2. Representation and attendance

#### 2.1 Attendees

The Conference may be attended by all APF member institutions (full, candidate and associate), representatives of the OHCHR (and other UN agencies), government and NGO representatives, other relevant institutions and individuals who have been invited to observe or address the Conference.

All invitees should inform the Secretariat of their intention to participate in the Conference in writing at least four weeks in advance and must nominate one spokesperson for their organisation that has been granted powers by a proper authority enabling him or her to represent the organisation at the Conference.

#### 2.2 Proxies/representatives

If an attendee has given notice of their intention to participate but they cannot subsequently be present at the Conference, she/he may nominate, in writing, one representative/proxy to attend instead.

### 3. Conduct of the Conference

#### 3.1 Working language

The working language of the Conference of the APF shall be English.

#### 3.2 Frequency, time and place of Conference

The frequency, time and place of the Conference shall be determined by the APF Forum Councillors.

#### 3.3 Notice requirements

The APF Forum Councillors shall provide notice of the Conference at least 6 weeks prior to the Conference date by electronic mail. Notice will be given to all APF member institutions, representatives of the OHCHR and any other UN agencies invited to address the Conference, government and NGO and other relevant institutions.

### 3.4 Agenda

The Chairperson of the Forum Councillors shall approve the provisional agenda prepared by the APF Secretariat.

### 3.5 Chairing of Conference and Conference sessions

The Chairperson of the Forum Councillors (Chairperson) shall preside at the Conference and ensure that the Rules of Procedure are adhered to. Any question arising relating to the order of business, procedure or conduct of the Conference must be referred to the Chairperson whose decision is final.

Conference's sessions will be chaired by an APF full member institution (session Chairperson) as determined by the agenda. The session Chairperson will be responsible for the control of the session and for ensuring that the Rules of Procedure are adhered to. The session Chairperson shall endeavour to allow all who wish to make interventions to do so during the allotted time.

### 3.6 Background papers

Background papers prepared for sessions will be available, where possible, to all participants or can be downloaded from the APF website at [www.asiapacificforum.net](http://www.asiapacificforum.net).

### 3.7 Communications/submissions prior to the Conference

Any communications, submissions or documents to be tabled at the Conference are to be forwarded to the APF Secretariat by electronic mail at least 14 days prior the date of the Conference.

### 3.8 Order for discussion

The order for discussion is progression through the agenda.

## 4. Participation

### 4.1 Participation of APF member institution representatives

Member institutions of the APF are the principal actors of the Conference and interventions by them will take place before those of other participants.

For each session, APF member representatives may make initial introductory presentations and make subsequent comments. If APF member institutions propose to make introductory presentations they should provide a copy or outline of the presentation to APF Secretariat in electronic format 14 days before the Conference.

The responsibility for finalising the Conference conclusions lies with the Forum Councillors.

### 4.2 Participation of the United Nations

Representatives of the Office of the High Commissioner for Human Rights and other specified United Nations agencies may be invited to observe or address the Conference.

United Nations representatives with prepared written statements are requested to provide a copy of these to the APF Secretariat in electronic format 14 days before the Conference.

The session Chairperson should allow an appropriate opportunity for interventions by representatives of the United Nations.

#### 4.3 Participation of Government representatives

Representatives of Government may be invited to observe or address the Conference.

Government representatives with prepared written statements are requested to provide a copy of these to the APF Secretariat in electronic format 14 days before the Conference.

The session Chairperson should allow an appropriate opportunity for interventions by government representatives.

#### 4.4 Participation of NGOs

NGO representatives may be invited to observe or address the Conference.

NGO representatives are encouraged to prepare a collective report and to nominate a single representative to make any oral submissions. A copy of the collective report should be provided to the APF Secretariat in electronic format 14 days before the Conference.

The session Chairperson may allow, if time permits, an opportunity for additional interventions by NGOs.

### 5. Final Conference statement

#### 5.1 Content of the final Conference statement

The Final Conference Statement may only contain a summary of items discussed during the Conference.

#### 5.2 Preparation of the final Conference statement

Only Forum Councillors may draft and adopt the Final Conference Statement and they will do so in closed session(s). Candidate and associate member institutions may observe the session(s).

### 6. The role of the APF secretariat

#### 6.1 Role

The Secretariat shall facilitate the work of the Conference by:

- (i) Providing necessary advice, clarifications, inputs and information;
- (ii) Acting as resource persons – particularly in the preparation of background papers;
- (iii) Assisting the Chairperson and session Chairperson; and
- (iv) Summarising discussions and preparing the final report of the Conference.

#### 6.2 Reporting

The Secretariat will publish the executive summary of the Conference on the APF website within 60 days of the Conference being held.

## 7. Adoption and amendment of the rules of procedure

### 7.1 Adoption and amendment

These Rules shall come into force on adoption by the Forum Councillors and may be amended by the Forum Councillors as required.

### 7.2 Matters not covered by the rules

Any matter not covered by these rules may be determined by a vote of the Forum Councillors.

## C. RULES OF PROCEDURE FOR MEETINGS OF THE FORUM COUNCILLORS OF THE APF

### 1. Statement of purpose

Forum Councillors of the Asia Pacific Forum of National Human Rights Institutions (APF) (Forum Councillors) are directors for the purposes of the Australian Corporations Act (Cth) 2001 (the Corporations Act). The Forum Councillors are responsible for managing the APF's business and affairs. A meeting of Forum Councillors provides an opportunity for Forum Councillors to meet and discuss general business, policy, strategy and membership issues of the APF. The following Rules of Procedure apply to meetings of Forum Councillors.

### 2. Convening a meeting of Forum Councillors

#### 2.1 Frequency, time and place

The Forum Councillors may meet together and otherwise regulate their meetings as they think fit. They will, however, hold a meeting of Forum Councillors once in each calendar year immediately before the APF Annual General Meeting ('AGM').

This rule above accords with clause 14.6 of the Constitution and S.248C of the Corporations Act..

#### 2.2 Adjournment of a meeting of Forum Councillors

The Forum Councillors may adjourn their meetings as they think fit.

This rule above accords with clause 14.6 of the Constitution and S. 248C of the Corporations Act.

#### 2.3 Notice of a meeting of Forum Councillors

At least 6 weeks' notice must be given to each Forum Councillor for the meeting of Forum Councillors held immediately before the APF AGM. Reasonable notice should be provided for all other meetings of Forum Councillors. Such notice must be given either personally, by telephone, facsimile, electronic means or by post. The notice must specify the time and place of the meeting. It may state the general nature of the business to be transacted at the meeting.

This rule above accords with clause 14.8 of the Constitution.

### 3. Documentation for a meeting of Forum Councillors

#### 3.1 Provision of background papers

Background papers prepared will be available to all Forum Councillors 14 days prior to the meeting of Forum Councillors which occurs immediately before the APF AGM. Background papers for all other meetings of Forum Councillors will be provided as soon as practicable prior to the meeting.

There are no rules in the Constitution or the Corporations Act which govern this Rule.

#### 3.2 Communications/submissions by members prior to a meeting of Forum Councillors

Any communications, submissions or documents to be tabled at a meeting of Forum Councillors should be forwarded to the APF Secretariat by electronic mail within 21 days of the date of the meeting.

There are no rules in the Constitution or the Corporations Act which govern this Rule.

## 4. Attendance, representation and credentials

### 4.1 Forum Councillors

All Forum Councillors may attend and vote at a meeting of Forum Councillors.

This rule above accords with clause 13.5(f) of the Constitution and s249V of the Act.

### 4.2 Appointment of alternate Forum Councillors to attend and vote at a meeting of Forum Councillors

A Forum Councillor may, with the approval of the Forum Councillors, appoint a person as his or her alternate for a specified period in accordance with rule 14.14 of the Constitution. If the appointer does not attend the meeting, the alternate Forum Councillor may attend and vote in place of, and on behalf of, the appointer.

This rule above accords with clause 14.14 of the Constitution and s201K of the Corporations Act.

### 4.3 Invitation to attend a meeting of Forum Councillors

The Forum Councillors may invite any person to attend a meeting of Forum Councillors or part thereof. Invitees may speak, with the permission of the Chairperson, but not vote at the meeting.

### 4.4 Credentials

All invitees must inform the Secretariat in writing of their intention to attend a meeting of Forum Councillors at least two weeks in advance of the meeting and, if an organisation, must nominate one spokesperson for their organisation.

## 5. Conduct of meetings of Forum Councillors

### 5.1 Chairperson

The Forum Councillors may elect a Forum Councillor as Chairperson (and one or more Forum Councillors as deputy Chairpersons) and may decide the period for which that person is to be the Chairperson<sup>2</sup>.

The Chairperson elected by the Forum Councillors must preside as Chairperson at meetings of Forum Councillors.

If at a meeting there is no Chairperson, or the Chairperson is not present within ten minutes after the time appointed for the meeting, or the Chairperson is present but is unwilling to chair the meeting, then the Forum Councillors present must elect one of the Forum Councillors as Chairperson.

The Chairperson shall be responsible for the control of the meeting and for ensuring that the Rules of Procedure are adhered to. Any question arising relating to the order of business, procedure or conduct of the meeting must be referred to the Chairperson whose decision is final.

This rule above accords with clauses 14.10 of the Constitution.

Section 248E in the Corporations Act regarding chairing meetings of members is a replaceable rule.

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<sup>2</sup> Generally the positions of Chairperson, first and second deputy Chairpersons are rotated annually. The established practice has been that the Chairperson/Chief Commissioner/President of the host institution of the APF Annual General Meeting (AGM) is elected as the Chairperson of the APF. The position of first deputy Chairperson is accorded to the Chairperson/Chief Commissioner/President of the institution that will host the next AGM and the position of second deputy Chairperson is accorded to the Chairperson/Chief Commissioner/President of the institution that held the most recently concluded AGM.

## 5.2 Business to be discussed

The Forum Councillors must discuss any applications for membership to the APF which have been received since the preceding meeting of Forum Councillors. The applicant must not be in attendance while their application for membership is being discussed.

The Forum Councillors may discuss such other business as they see fit. However, where a Forum Councillor has a material personal interest in an issue that is being discussed they must not be present while the matter is being considered.

This rule above accords with section 195E of the Corporations Act and clause 11 of the Constitution.

## 5.3 Quorum

No business may be transacted at a meeting of Forum Councillors unless a quorum of Forum Councillors is present at the time the business is dealt with.

A quorum consists of a fixed number for the quorum determined by the Forum Councillors.

If the Forum Councillors have not fixed a number, a quorum will be:

- (i) If the number of Forum Councillors is 9 or less, 3 Forum Councillors;
- (ii) If the number of Forum Councillors is between 10 and 15, 4 Forum Councillors; or
- (iii) If the number of Forum Councillors exceeds 15, 5 Forum Councillors.

This rule above accords with clause 14.9 of the Constitution.

## 5.4 Order for discussion

The order for discussion is progression through the agenda.

## 5.5 Decision-making

Decisions at a meeting of Forum Councillors should, as far as possible, be arrived at by consensus. Where there is no consensus decisions must be decided by a majority of votes cast by the Forum Councillors present. Such a decision is for all purposes a decision of the Forum Councillors. Each Forum Councillor has one vote. Where the votes on a proposed resolution are equal the Chairperson does not have a second or casting vote and the proposed resolution is lost.

This rule above accords with clause 14.12 of the Constitution and Section 249G of the Corporations Act.

## 5.6 Written resolutions

If a majority of Forum Councillors entitled to vote at a meeting of Forum Councillors assent to a document containing a statement that an act, matter or thing has been done, or a resolution has been passed, and they would have constituted a quorum at a meeting of Forum Councillors then that act, matter, thing or resolution is taken as done at or passed by a meeting of the Forum Councillors.

If the Forum Councillors assented to the document at different times or on different days, the meeting will be taken as being held at the latest time, or on the last day, when the document was assented to.

A Forum Councillor may signify assent to a document by signing the document or by notifying the Forum Councillors of the Forum councillor's assent in person or by post, telephone, fax or other electronic means.

This rule above accords with clause 14.13 of the Constitution.

#### 5.7 Working language of a meeting of Forum Councillors

The working language of the meetings of the APF shall be English.

### 6. The APF secretariat

#### 6.1 Role

The Secretariat shall facilitate the work of the meeting of the Forum Councillors by:

- (i) Providing necessary advice, clarifications, inputs and information;
- (ii) Acting as resource persons – particularly in the preparation of background papers; and
- (iii) Summarising discussions and preparing the final report of the meeting.

#### 6.2 Reporting

The Secretariat will publish the executive summary of the meeting of the Forum Councillors within 60 days of the meeting being held.

### 7. Adoption and amendment of rules of procedure

#### 7.1 Adoption and amendment

These Rules shall come into force on adoption by the Forum Councillors, will remain in force until amended by the Forum Councillors, and can be amended by the Forum Councillors as required.

#### 7.2 Matters not covered by the Rules

Any matter not covered by these rules may be determined by a vote of the Forum Councillors.

# Appendix 4:

## Obligations of Forum Councillors under Australian Corporations Law

### 1. POSITIVE OBLIGATIONS OF FORUM COUNCILLORS

#### Act in good faith in the best interests of the APF and for a proper purpose

APF Forum Councillors must exercise their powers and discharge their duties in good faith in the best interests of the APF and for a proper purpose. This means that, in the exercise of management and other powers, they must always make the interests of the APF the principal consideration, exercise an active discretion (actually consider and take part in all decision-making) and act for the benefit of the existing and future interests of the APF as a whole.

The APF Constitution stipulates extensive powers for the APF Forum in Rule 3.1. The APF Constitution also prescribes powers and duties of Forum councillors in Rule 14.5 (see Appendix 2).

#### Exercise skill, care and diligence

APF Forum Councillors must exercise their powers and discharge their duties with the degree of care and diligence that a [reasonable person](#) would exercise if they were an APF Forum Councillor and had the same responsibilities within the APF.

APF Forum Councillors must ensure that they have made a reasonable and informed judgement in the circumstances and that they believe that the business judgement is in the best interests of the APF.

Although courts take into account an individual's circumstances, personal background, understanding and experience, directors are required to understand the nature and effect of their duties and are under a continuing obligation to keep informed about the activities and affairs of the organisation. It is important to know that ignorance is no defence to liability for a breach of this duty – an APF Forum Councillor must ask questions and seek advice, where necessary, in order to have a complete understanding of all issues, discussions and resolutions.

APF Forum Councillors must also bring an informed and independent judgment to bear on the various matters that arise. For example, a reasonable person would make use of any knowledge or experience which that person has so if a director has expertise in a particular field, he or she should use that expertise to benefit the corporation. If, on the other hand, a complex situation requires specialist knowledge, a director should ensure that expert advice is sought and relied upon.

The duty to exercise diligence is an ongoing one. An APF Forum Councillor must take reasonable steps to become and stay familiar with the affairs of the APF (without necessarily devoting continuous attention to them) and must put himself/herself in the position to guide and monitor the management of the APF. For example, if an APF Forum Councillor is put on notice that something may be amiss they are obliged to monitor the situation. If a complex situation requires specialist knowledge, an APF Forum Councillor must ensure that expert advice is sought and relied upon.

#### Give adequate consideration and to retain discretion

The law requires director's to always give adequate and active consideration to the exercise of their powers and functions. The law permits delegations by directors but obliges directors to retain an

active discretion and not to abdicate the responsibilities of their office or fetter their future exercise of discretion.

'Adequate consideration' requires active consideration – not acting blindly at the direction of another person. It is the responsibility of Forum Councillors to ask searching questions in order to gain a complete understanding of all Forum Council matters and to obtain clarity on any of the affairs of the APF. However the Corporations Act makes it clear that if a [director](#) relies in good faith on [information](#), professional or [expert](#) advice, given or prepared by an employee of the [corporation](#), a professional adviser or expert, another director or [officer](#) (or a committee of directors) and makes an independent assessment of the information or advice then the director's reliance on the information or advice is presumed to be reasonable unless [proved](#) otherwise.

### Delegation of the Forum's functions

Delegation of the Forum's functions is only permissible as authorised by Rule 14.5 (e), 14.15, 14.16 and 15.3 of the APF Constitution.

Forum Councillors may legitimately delegate responsibility for a particular matter to another officer and trust the officer to perform the duties honestly where the Forum Councillor believes the person to be reliable and competent. Provided that a Forum Councillor believes on reasonable grounds, in good faith, and after making proper inquiry, that a delegate would exercise the delegated [power](#) in conformity with the delegation and informs the Forum Council of any material failure by the delegate, the Forum Councillor is not responsible for the exercise of the power by the delegate.

### Disclose any material personal interest

Rule 14.4 of the APF Constitution makes specific provision for activities by Forum Councillors which do and do not amount to a conflict of interest.

Specifically Forum councillors may:

- be or become a director or other officer of, any related body corporate promoted by the Forum or in which the Forum is interested and is not accountable to the Forum for any remuneration or other benefits he or she receives.
- exercise the voting rights conferred by shares in any body corporate held or owned by the Forum as they think fit.
- not be disqualified from contracting with the Forum merely because he or she is a Forum councillor including:
  - (1) selling property to, or purchasing property from, the Forum;
  - (2) lending money to the Forum with or without interest or security;
  - (3) guaranteeing the repayment of money borrowed by the Forum for a commission or profit;
  - (4) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the Forum or in which the Forum is interested as a shareholder or otherwise, for a commission or profit; or
  - (5) being employed by the Forum or acting in any professional capacity (except as auditor) on behalf of the Forum.

Moreover, a contract made by a Forum councillor with the Forum or a contract or arrangement entered into by or on behalf of the Forum (in which any Forum councillor is interested) is not voidable merely because the Forum councillor holds office as a Forum councillor.

However, a Forum councillor contracting with or being interested in any arrangement involving the Forum is liable to account to the Forum for any profit realised under that contract or arrangement unless the Forum councillors decide otherwise and Forum councillors who have a material personal interest in

a matter that is being considered at a Forum councillors' meeting must not be present while the matter is being considered at the meeting; or vote on the matter.

A Forum Councillor who has a material personal interest in a matter that relates to the affairs of the APF must give the other Forum Councillors notice of the interest. The duty to act in good faith places a Forum Councillor under an obligation not to promote his or her personal interest by making or pursuing a gain in circumstances where there is a conflict, or a real or substantial possibility of a conflict, between his or her personal interests and those of the APF.

In practice, inevitable conflicts of interest may arise and, in such circumstances, a Forum Councillor must be candid with disclosure in relation to the nature of the interest and its relation to the affairs of the organisation.

## Display of ACN

The Corporations Act places specific obligations on companies in relation to using a corporation's name and the ACN. Forum Councillors ought to ensure that the company name, the words 'Australian Company Number' (or 'ACN') or 'Australian Business Number' (or 'ABN') and the relevant number are displayed on the common seal, every public document (for example, letters, accounts, invoices), every negotiable instrument (e.g. cheque, promissory note etc.), all documents lodged with ASIC and brochures and leaflets advertising specific goods and services.<sup>3</sup>

## Financial reporting obligations under the Corporations Act

The Corporations Act proscribes obligations relevant to the APF regarding the recording and disclosure of information, include those regarding financial records, financial reports and audits, continuous disclosure and the duty to advise members about the purpose of a general meeting.

Obligations regarding the recording and disclosure of information<sup>4</sup> include the provision of financial reports, directors' reports, auditing, reporting to members and lodgement with ASIC. The key obligations regarding financial records, financial reports and audits are to maintain financial records, prepare an annual financial report<sup>5</sup>, prepare an annual director's report, have the annual financial report audited<sup>6</sup>, send the annual financial, director's and auditor's reports to the members, lodge all of the reports with ASIC<sup>7</sup>, and place the financial, directors and auditor's reports for the last financial year before the AGM.<sup>8</sup>

The end of year financial reports must include a board resolution, signed by a director, which states whether there are reasonable grounds to believe that the entity will be able to pay its debts and whether the financial statements comply with the Corporations Act.<sup>9</sup> Finally, the director's report must also be adopted by a resolution of directors and dated and signed by a director. The report must include a review of operations, details of any significant changes in the corporation's state of affairs, a statement of the corporation's principal activities and any significant changes to those activities, details of matters that may affect the future operation of the corporation and likely developments regarding the future operation of the corporation.<sup>10</sup>

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<sup>3</sup> See ASIC PN 47 which details ASIC's views of requirements about ACN's.

<sup>4</sup> See sections 292, 301, 302, 314, 319 Corporations Act.

<sup>5</sup> See section 295(1) Corporations Act.

<sup>6</sup> See sections 301(1), 302 Corporations Act.

<sup>7</sup> See section 319 Corporations Act.

<sup>8</sup> See sections 314, 317 Corporations Act.

<sup>9</sup> See section 295(4) Corporations Act.

<sup>10</sup> See sections 299 and 300 Corporations Act.

## Ensure that the organisation remains solvent

A Forum Councillor has an ongoing duty to ensure that the organisation does not incur a debt unless there is a reasonable prospect that the organisation will be able to repay the debt when it falls due. A Forum Councillor is also obliged to maintain familiarity with the financial status of the organisation by a regular review of financial statements.

## 2. NEGATIVE DUTIES OF FORUM COUNCILLORS

### Avoid a conflict of interest

Forum Councillors are not able to misuse their positions to gain an advantage for themselves, or a third party, at the expense of the company which they serve as directors. Accordingly, a Forum Councillor must avoid any real possibility of conflict between their duty to the APF and either a personal interest or a duty to some third party by improperly using their position.

There are three principle rules relating to conflict of interest and director's duties. They relate to conflict of interest, profit and misappropriation and they provide as follows:

- directors must not, except with the corporation's full consent, have a personal interest in, or inconsistent engagement with, a third party, in relation to any matter within the scope of their obligations as a director of the first corporation.
- directors must not, except with the corporation's full consent, improperly use their position, or information gained by virtue of their position, for their own or a third party's advantage-they must account for any gain arising out of their position.
- directors may not misappropriate the company's property either for their own benefit or the benefit of a third party.

The possibility of conflict is sufficient to signal a potential breach; there is no need to establish an actual conflict. If a Forum Councillor is in a situation where there is a potential breach of conflict, or perception of a potential breach, they must fully disclose the situation to the Forum Council and take extreme care to ensure that he or she and the APF have complied with the various requirements of the Corporations Act, the Common law and the APF Constitution.

The overall guiding principle for compliance is to disclose any potential interest and seek approval for any action that may be seen otherwise to constitute a conflict.

### Do not improperly use of office or position

An APF Forum Councillor must not make improper use of his or her position to gain an advantage for himself or herself or for any other third person or to cause detriment to the APF.

The term 'improper' refers to 'conduct which is inconsistent with the proper discharge of the duties, obligations and responsibilities of the officer concerned'.<sup>11</sup> Impropriety is also broader than abusing power-it extends to doing an act which a director knows or ought to know they shouldn't do.<sup>12</sup> For example, where a Forum Councillor acts in relation to a transaction in which s/he, or a party to whom the director owes a fiduciary duty, stands to gain a benefit without making adequate disclosure of his/her interest, that director acts "improperly". Significantly, impropriety is determined objectively and does not depend upon the director's consciousness of impropriety: it consists in a breach of the standards of conduct that would be expected of a person in the position of the director by reasonable persons with knowledge of the duties, powers and authority of the position and the circumstances of the act.<sup>13</sup>

<sup>11</sup> *Grove v Flavel* (1986) ACLC 654 at 662.

<sup>12</sup> *R v. Byrnes* (1995) 183 CLR 501 (at 514–517)

<sup>13</sup> 514–15 per Brennan, Deane, Toohey and Gaudron JJ.

## Do not improperly use corporate information

A Forum Councillor's use of the information of the APF is limited by the duty not to disclose or misuse confidential information. A Forum Councillor must refrain from improperly using any information obtained at Forum Council meetings or divulged to them in their capacity as Forum Council members in order to gain a personal advantage or an advantage for a third party, or to cause any detriment to the organisation. A Forum Councillor may not, without the authorisation of the APF:

- (i) use or divulge information which is not public knowledge and which has been communicated to him or her in circumstances giving rise to an obligation of confidentiality;
- (ii) make improper use of information, confidential or otherwise, acquired by virtue of his or her position to gain, directly or indirectly, an advantage for himself or herself or any third party or to cause detriment to the body corporate; or
- (iii) compile records of APF information for their own purposes.

## Do not misappropriate corporate property and information

The misappropriation rule is a common law principle that complements the statutory conflict of interest provisions; it requires that a director not apply company property either for the director's personal benefit or for the benefit of any other person without the authority of the corporation and nor must a director improperly destroy corporate property.

A consequence of the rule is that directors are precluded from benefiting from the company's resources unless such a benefit is authorised by law, the company's constitution or by the company in general meeting giving fully informed consent.<sup>14</sup>

Accordingly, a Forum Councillor may only use APF property for his or her own benefit or for that of a third party with the express or implied authorisation of the APF.

## 3. CIVIL AND CRIMINAL CONSEQUENCES OF BREACHES OF DUTIES OF GOOD FAITH, USE OF POSITION OR INFORMATION

The consequences of a Forum Councillor breaching their statutory duties to the APF are diverse and the potential number of litigants against a Forum Councillor, as a consequence of a breach of a statutory duty, include: the APF itself, the members of the APF in their capacity as members, other persons having dealings with the APF, ASIC, or other relevant regulators depending upon the nature of the duty breached and to whom the duty is owed.

Similarly, possible actions to remedy or resolve a breach are diverse and may include, for example:

- (1) the APF in general meeting prospectively or retrospectively consenting to or ratifying a breach of fiduciary duty, affirming any contract and/or waiving its rights against the directors concerned;
- (2) the APF affirming a contract made in breach of duty, but taking action through the courts or otherwise to enforce a legal remedy for breach of a fiduciary or statutory duty;
- (3) the APF electing to avoid a contract;
- (4) the personal action of an individual member;
- (5) a court directing that a transaction is invalid or void
- (6) prosecution of the director under a relevant statute; and

<sup>14</sup> For more information see Goss, J. and Hodgekinson, K "Australia: The Corporate Opportunity Principle" 20 November 2007 online paper at [www.mondaq.com/article.asp?articleid=54462](http://www.mondaq.com/article.asp?articleid=54462).

(7) remedial court orders on the application of the appropriate regulator, a prescribed external manager or as a consequence of the prosecution.

## Civil proceedings

ASIC, a member of the APF or another interested person could bring civil proceedings to obtain relief in relation to a contravention (or threatened contravention) of the Corporations Act by the APF.

Such a contravention, for example, could be a failure to provide financial reports, director's reports, audits, a failure to report to members or a failure to lodge with ASIC. Where it is proved that there has been a contravention of the Act, a court can declare a contravention and ASIC can seek a penalty order for payment of up to \$200,000<sup>15</sup>, a disqualification order or a compensation order.<sup>16</sup>

In deciding whether to apply a civil penalty the courts will look at matters such as the Forum Councillor's awareness of the impropriety of their conduct, the seriousness of the conduct and the director's character.

## Offences under the Corporations Act and criminal proceedings

The criminal acts for which Forum Councillor may be liable include misappropriation of company property, misuse of company property or records, falsification of company records, the publication of fraudulent statements and defrauding the company or those dealing with the company.

The Act sets out maximum pecuniary and imprisonment penalty provisions. By way of example, a director who is recklessly or intentionally dishonest or who uses their position dishonestly with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation may be fined up to \$222,000 or imprisoned for up to 5 years or both.<sup>17</sup>

Note also that directors' reports constitute a set of representations by directors as to the state of affairs of the company and the Corporations Act establishes a series of criminal liability offences for making false or misleading statements or for omitting relevant material. Lastly, directors who breach of their strict responsibilities to assist auditors are also subject to criminal sanctions.<sup>18</sup>

## Statutory relief, ratification and relaxation of duties by members and limitation of liability for actions of delegates

The Corporations Act<sup>19</sup> provides relief from liability for directors in civil proceedings for negligence, default, breach of trust or breach of duty if the court believes that the person acted honestly and ought fairly to be excused.

As discussed above, a board or director can legitimately delegate their powers as authorised by the Constitution, Corporations Act or by resolution of the general meeting. A Forum Councillor will only be responsible for a delegate's exercise of power if he or she did not believe on reasonable grounds and in good faith, after making proper inquiries that the delegate was reliable and competent in relation to the power delegated and would exercise the power in conformity with the duties imposed.<sup>20</sup>

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<sup>15</sup> An order for payment can only be ordered where the contravention materially prejudices the interests of the corporation or its members or the corporation's ability to pay its creditors or is a serious contravention.

<sup>16</sup> See s. 1317 E and G Corporations Act.

<sup>17</sup> Note that section 1311(1A) sets out the exceptions to 1311(1) and de-criminalises many provisions of the Corporations Act dealing with internal management. See Ford, op cit, at page 88.

<sup>18</sup> Sections 312, 323 and 323B Corporations Act.

<sup>19</sup> Sections 1318 and 1317S.

<sup>20</sup> See s190(2) Corporations Act.

# Appendix 5: APF expense and travel claims guidelines

## 1. DEFINITION OF OFFICIAL TRAVEL

Travel by APF sponsored participants to conduct business on behalf of the APF; or to attend meetings, workshops or training programs sponsored or organised by the APF; is considered to be official travel and therefore must be approved by the Forum Council or APF Secretariat prior to travel being undertaken.

## 2. EXPENSE AND TRAVEL CLAIMS

The APF shall reimburse the following types of expense and travel claims relating to official travel:

### 2.1. Return economy airfare

The APF will fund the cheapest or most economical return economy class airfare available. Where possible, members should organise to book their travel via their local travel agents. Once a tentative itinerary has been organised, please forward a copy of this itinerary to the APF Secretariat, with the request to have the itinerary approved. Once the itinerary has been approved, please proceed to have the ticket issued and paid for, directly or by your institution.

The APF Secretariat may, in exceptional cases, pay for the ticket directly to the local travel agent prior to the travel being undertaken. Prior approval must be sought from the APF Secretariat.

### 2.2 Accommodation

The APF will provide funding for accommodation (room only) for the official dates of the event. All personal miscellaneous costs, such as laundry, telephone costs, mini bar etc, shall be at the expense of the member. Any costs associated with any extended stay either prior to and/or after the event, must be met by the participant.

### 2.3 Travel allowance

The APF shall provide an allowance to cover any meals and incidentals not already provided for in the program. The travel allowance shall be based on those rates as provided by the Australian Taxation Office (ATO).<sup>21</sup> ATO rates will be applied to all member institutions as well as secretariat staff.

In the case that a member institution's travel policy provides for a higher rate of travel allowance than the APF allowance, the APF rate applies. Member institutions may wish to supplement the APF rate from within their own budget.

### 2.4 Ground transportation

The APF shall fund those costs related to ground transportation to and from the airport.

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<sup>21</sup> The taxation determination sets out the amounts that the Australian Government considers are reasonable for overseas travel allowance expenses. The current taxation determination TD 2009/15.

## 2.5 Visas

The APF shall fund the costs of obtaining a travel visa, if any, to the destination country.

## 3. REIMBURSEMENT CLAIMS PROCEDURE

The APF shall reimburse members for those abovementioned costs: airfare, travel allowance, ground transportation and visa fees (if any).

All claims for reimbursement must be accompanied by original official receipts and/or invoices and include the relevant bank account details for international telegraphic transfers.

A reimbursement claim is attached, however, claim forms can be obtained from Mr Kwame Owusu-Akyeampong, Finance Manager at [kwameo@asiapacificforum.net](mailto:kwameo@asiapacificforum.net)

Completed reimbursement claim forms including receipts should be sent to the APF secretariat at the following address:

Asia Pacific Forum of National Human Rights Institutions  
GPO Box 5218  
Sydney NSW 2001  
AUSTRALIA

Please also fax/scan a copy of the reimbursement claim form, along with all required receipts to:  
+61 2 9284 9825 or [apf@asiapacificforum.net](mailto:apf@asiapacificforum.net)

The APF shall make the reimbursement via international telegraphic transfer to the nominated bank account, within 10 working days of receipt of the claim.

Claims for reimbursements must be received by the APF Secretariat no later than 6 weeks after the event.



## Reimbursement claim form

Funded delegates only

Family name: .....

First name: .....

Title: .....

Institution: .....

Name of the event you participated in? .....

### Travel

Date	Origin city	Destination	Airline	Amount	Receipt attached - please check box

**Accommodation – if mandatory stop-over was required only**

Date	Reason	Hotel	Amount	Receipt attached – please check box

**Ground transportation – to and from airport**

Date	From	To	Amount	Receipt attached – please check box

**Other expenses – e.g. Visa**

Date	From	To	Amount	Receipt attached – please check box

Please attach another claim form if more space is required.

**Details required for telegraphic transfer:**

**Beneficiary details:**

Full name: .....

Full address: .....

Country: .....

**Bank account details:**

Account number: .....

Bank name: .....

Swift code: .....

Branch full address and country: .....

I, ..... (insert name), declare that the expenses as described above, are true and accurate and that I have attached all original receipts as required to process the reimbursement.

**Delegate signature:** .....

**Approved by APF:** .....