



**Explanation of draft amendments to
the *Bibbulmun Track Foundation Rules 2009* (as amended)
to be considered at the 2022 AGM**

Why are the amendments being proposed?

Although the Bibbulmun Track Foundation (BTF) is termed a “not-for-profit” organisation, the real meaning of that is that none of the BTF’s members is entitled to any of the BTF’s money merely because they are a member. It does not mean that the BTF is not allowed to make a profit for itself.

The *Association Incorporation Act 2015* (“the Act”) sets out what incorporated associations, such as the BTF, can do and how they must operate. Section 14 of the Act sets out their powers, but those powers are subject to what their rules say.

The *Bibbulmun Track Foundation Rules 2009*, which have been amended since 2009, limit where the BTF can keep its money to, in effect, bank accounts. See rule 40. Rule 40 limits section 14 of the Act and limits how the BTF can invest its money.

That has meant that the only way the BTF has been able to earn money from its reserve funds is by keeping them in term deposits and the like. The BTF’s rules were drafted when banks paid more interest on term deposits and the like than they do now.

Over the past 20 years, due to prudent and disciplined financial management and many years of rent-free office space, the BTF is in a healthy financial position and has money in reserve.

The annual cost of running the BTF has risen and continues to do so. One major new expense since March 2018 is rent. Currently the BTF’s rent (taking account the rent the BTF receives from subletting space to the Munda Bidji Trail Foundation) is about \$38 000 p.a. There is a need to enable the BTF to get better returns on the money it has in reserve in order to help meet those costs and to address the fact that the value of the BTF’s reserves is being reduced by inflation and the interest rates paid by banks.

Although interest rates paid by banks have risen slightly recently, they are still low compared to the returns available from other types of investment.

It is being suggested that the BTF consider buying its own premises to save having to pay rent. It is unclear whether the BTF’s rules limit its power to buy real estate.

The amendments are being proposed to increase the BTF’s investment options.

What would the proposed amendments do?

The proposed amendments are set out on pages 3 & 4 of this document. They propose to amend rule 40 and to insert a new rule 40A.

The amendments proposed to rule 40 would mean—

- The BTF would still have to keep the money it needs for its day-to-day operations in an account with a bank that is authorised under the *Banking Act 1959* of the Commonwealth.
- The BTF would be able to decide whether to continue to keep the money not needed for its day-to-day operations in term deposits and the like at banks, or to invest it as would be allowed by the proposed new rule 40A.

The proposed new rule 40A would mean the BTF would be able to invest the money it does not need for its day-to-day operations in—

- real estate;
- government bonds issued in Australia;
- income-producing securities listed on the Australian Stock Exchange (ASX);
- unlisted income producing securities that are recommended by financial adviser who is registered by the Australian Securities and Investments Commission.

Proposed rule 40A would also mean that only the BTF’s board can make decisions about such investments.

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Bibbulmun Track Foundation

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Amendments to rule 40: to insert the underlined text and to delete the crossed-out text.

40. Control of finances

- (1) The Treasurer must ensure this rule is obeyed.
- (2) Every operating account of the Foundation must be at an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwlth) section 5).
- (3) The signatories to an account of the Foundation must be the Treasurer and at least 2 members approved by the Board.
- (4) A record must be made of all of the Foundation's receipts and payments.
- (5) All money received by the Foundation must be deposited in an operating account of the Foundation.

~~(6) The Foundation's money that is not needed for immediate payment must be kept or invested in an account of the Foundation.~~

(6) The Foundation's money that is not likely to be needed as a reasonable amount of working capital must—

(a) be kept or invested in an account of the Foundation at an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cwlth) section 5); or

(b) be invested in accordance with rule 40A; or

(c) be dealt with partly under paragraph (a) and partly under paragraph (b).

as decided by the Board.

- (7) All payments by or on behalf of the Foundation must have the Treasurer's prior approval.
- (8) The Treasurer must not approve any single payment that exceeds an amount set from time to time by the Board.
- (9) Any cheque, order for the payment of money, bill of exchange, promissory note or other negotiable instrument issued by the Foundation must be signed by at least 2 of the persons who are signatories to the accounts under rule 40(3).
- (10) At each Board meeting, the Treasurer must give the Board—
 - (a) a statement of the receipts and payments; and
 - (b) a statement of the property and liabilities,

of the Foundation and a written report on the Foundation's financial position at the end of the period to which the statements relate.

- (11) Rule 40(10) does not prevent the Board from requiring the Treasurer to provide a Board meeting with either or both—
- (a) a full statement of the receipts and payments; and
 - (b) a full statement of the property and liabilities, of the Foundation.

New rule 40A: to insert the underlined text.

40A. Investments

- (1) Any decision by the Foundation as to whether to invest any of its money, as to where and how the money is invested, and as to any such investment once made, may be made only by the Board.
- (2) The Foundation may invest its money in only such of the following types of investment as the Board decides—
- (a) real property;
 - (b) bonds issued by the Commonwealth of Australia or an Australian state or territory;
 - (c) income-producing securities listed at the time of their purchase on the all ordinaries index of the Australian Securities Exchange Ltd (ASX);
 - (d) unlisted income-producing securities issued by a responsible entity in respect of a fund, where the securities are recommended in writing by a financial adviser who is registered by the Australian Securities and Investments Commission.
- (3) Rule 40 and this rule do not limit the Foundation’s power under the Associations Incorporation Act 2015 section 14(1)(a) in relation to real property.
- (4) Notwithstanding the Associations Incorporation Act 2015 section 14(1)(c)(i), the Trustees Act 1962 section 17(a) does not apply to the Foundation.

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