

Constitution

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Constitution

Australian and New Zealand Head and Neck Cancer Society Limited

("Company")

1 Definitions and interpretation

1.1 Definitions

In this Constitution, unless the context requires otherwise:

"ACNC Act" means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

"Alternate" means a person appointed as an alternate Director under clause 20.

"ANZHNC Research Foundation" means the Australian and New Zealand Head and Neck Constitution Research Foundation.

"Applicable Act" means:

- (a) while the Company is a registered charity, the ACNC Act and the Corporations Act; or
- (b) if the Company is not, or ceases to be, a registered charity, even if it is still a charity, the Corporations Act.

"Board" means the Board of Directors of the Company.

"Chairperson" means the person appointed or elected from time to time pursuant to clause 17.

"Commissioner" means the Commissioner of Taxation, a second Commissioner of Taxation or a Deputy Commissioner of Taxation or other delegate of the Commissioner of Taxation for the purposes of the Tax Act.

"Company" means the company defined at the beginning of this Constitution.

"Community Justice Centre" has the meaning given by the *Community Justice Centres Act 1983* (NSW).

"Constitution" means this Constitution as supplemented, substituted or amended from time to time and includes any rules, regulations and by-laws of the Company for the time being in force.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Deputy Chairperson" means the person appointed or elected from time to time pursuant to clause 17.

"Director" means a person occupying the position of director of the Company and includes any person acting as an Alternate.

"Eligible Charity" means a fund, authority or institution –

- (a) which is charitable at law; and

- (b) if required under the Tax Act, gifts or contributions to which are deductible under item 1 of the table in section 30-15 of the Tax Act; and
- (c) if required under the Tax Act, which has objects and purposes similar to the objects and purposes of the Company and which is not carried on for the profit or gain of its members.

Eligible Person” means:

- (a) a person who:
 - (i) with respect to Ordinary Membership:
 - (A) is a registered medical or dental practitioner with a recognised specialist qualification in surgery, medicine or radiation oncology, or has a Fellowship in one of the Australasian Colleges with a particular interest in head and neck oncology;
 - (B) has a specialist qualification in another medical discipline (including but not limited to pathology, radiology or neurosurgery), a Fellowship in an Australasian College and a special interest in head and neck oncology;
 - (C) has a tertiary qualification at the doctoral level in a related discipline and is working actively in the field of head and neck oncology;
 - (D) is qualified in nursing or an allied health discipline with a particular interest in head and neck oncology; or
 - (E) a qualified medical practitioner in a registered specialist training post in any of the disciplines eligible for Ordinary Membership; and
 - (ii) with respect to Honorary Membership:
 - (A) has made a significant contribution to the Company or in the field of head and neck oncology in the opinion of the Executive; and
 - (B) has been invited by to apply for Honorary Membership by the Executive; or
 - (C) is retired from practice and
 - (iii) with respect to Student Membership, is a student or trainee who will be eligible for Ordinary Membership upon completion of his or her studies or training; and
- (b) who has been accepted for Membership; and
- (c) whose name is entered in the Register.

“Executive” means the persons who, together, comprise the Executive body of the Company, established under clause 17.1(b).

“First Resolution” has the meaning given to that term in clause 9.3(c).

“Foundation Chairperson” means the person appointed or elected from time to time as the Chairperson of the ANZHNCS Research Foundation.

“Gift Fund” means the Australian and New Zealand Head and Neck Cancer Society Gift Fund established or to be established for the purposes of the Tax Act in accordance with clause 4.

“GST” has the meaning given to that term by Section 195-1 of the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999*.

"Honorary Member" means a person who is entered in the Register as an Honorary Member.

"Joining Fee" means the once-off fee payable by an applicant upon their application for Membership being approved by the Executive.

"Member" means a person who is entered in the Register and includes:

- (a) each Ordinary Member;
- (b) each Honorary Member;
- (c) each Student Member; and
- (d) each member of any other class of Membership established by the Board in accordance with clause 5.1(e).

"Membership" means the contractual rights of a person to membership of the Company, being the rights attaching to the class of membership conferred on that person.

"Membership Year" means each period of 12 Months commencing on 30 June and ending on the next ensuing 30 June.

"Month" means calendar month.

"Non-Health Professional Executive members" means the persons appointed from time to time by the Executive pursuant to clause 21.1.

"Nominating Committee" means:

- (a) the Chairperson;
- (b) the immediate past Chairperson (or, for the first year of the Company, the immediate past President of the Incorporated Association);
- (c) the next immediate past Chairperson (or, for the first year of the Company, the next immediate past President of the Incorporated Association); and
- (d) if any of these persons are unable or unwilling to be a member of the Nominating Committee, then an Ordinary Member who is not a member of the Executive will take that person's place in the Nominating Committee.

"Office" means the Company's registered office.

"Ordinary Member" means a person who is entered into the Register as an Ordinary Member.

"Present" means, when used in relation to a Member at a meeting, present in person or by proxy.

"Register" means the register of members of the Company.

"Responsible Person" means an individual who –

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics or rules of conduct;
- (c) is officially charged with spiritual functions by a religious institution;
- (d) is a director of a company whose shares are listed on the ASX Limited;

- (e) has received formal recognition from government for services to the community;
or
- (f) is approved as a Responsible Person by the Commissioner.

“Secretary” means the person elected from time to time pursuant to clause 19.

“Security Interest” means any mortgage, lien, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance and includes any “security interest” within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth).

“Student Member” is a person who is entered in the Register as a Student Member.

“Subscription” means the annual subscription fee payable by Members pursuant to clause 5.3.

“Treasurer” means the person elected from time to time pursuant to clause 19.

“Tax Act” means the *Income Tax Assessment Act 1997* (Cth).

“Incorporated Association” means the incorporated body known as “The Australian & New Zealand Head and Neck Cancer Society” (INC3425212) whose funds and other assets and liabilities vested in the Company on the date of registration of the Company.

1.2 Words and expressions

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Constitution;
- (e) a reference to this Constitution includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;

- (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
- (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it;
- (o) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation; and
- (p) words or expressions defined in the Corporations Act but not in this Constitution have the same meaning in this Constitution.

1.3 Replaceable rules and interaction with the Applicable Act

- (a) To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company.
- (b) While the Company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts as they apply to a registered charity;
- (c) If the company is not a registered charity (even if it remains a charity) the Corporations Act overrides any clauses in this Constitution which are inconsistent with that Act.

2 Objects

2.1 Principal objects

The principal objects of the Company are to:

- (a) promote the prevention and the control of cancers and diseases of the head and neck in human beings;
- (b) promote and advance throughout Australia and New Zealand the multi-disciplinary practice of head and neck oncology;
- (c) promote and encourage standards of practice which aim to achieve optimal outcomes for patients with tumours and diseases of the head and neck;
- (d) encourage and participate in research related to tumours and diseases of the head and neck;
- (e) promote the education of patients, the public at large, non-specialist medical colleagues and paramedical groups in relation to diseases of the head and neck;
- (f) participate in and encourage accurate, prospective data collection related to head and neck oncology;
- (g) actively promote preventative health measures, especially in relation to smoking; and
- (h) advocate for public policy and practice that reduces the impact of head and neck cancer, including advice to governments and policy makers, and media commentaries.

2.2 Ancillary objects

For the purpose of achieving the principal objects set out in clause 2.1 the Company has and will continue to –

- (a) administer one or more funds into which all gifts, contributions, donations and bequests to the Company for the purposes of the Company will be credited;
- (b) conduct public programs including education programs, social and community programs and research programs;
- (c) disseminate information relating to education and community programs and to produce, edit, publish, issue, sell, circulate and preserve such papers, periodicals, books, circulars and other literary matters as are conducive to these objects;
- (d) establish and maintain relationships and close communications with corporations, entities, associations, foundations, institutions, organisations and groups including Federal, State and Local Government instrumentalities, authorities and professionals that may have related interests to the Company and utilise their resources and facilities to provide and achieve the objects of the Company;
- (e) seek and co-ordinate funding from Federal, State and Local Government and the private sector in the form of grants, gifts, donations and bequests committed to the objects of the Company;
- (f) encourage and promote and generally to create greater community awareness in the knowledge and understanding of the objects of the Company;
- (g) provide or attract funds for the facilitation of any of the objects of the Company;
- (h) take over the funds and other assets and liabilities of the Incorporated Association; and
- (i) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company and its Members.

The objects of the Company will be pursued principally in Australia and New Zealand.

2.3 Not for profit

- (a) The objects of the Company will not be carried on for the purpose of profit or gain to its Members and the income and property of the Company, from whatever sources derived, will be applied solely towards the promotion of the objects of the Company. No income or property of the Company will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (b) Notwithstanding anything contained in clause 2.3(a), nothing contained in that clause will prevent the payment, in good faith, of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual way of business, or prevent the payment of interest at a rate not exceeding the rate fixed for the purposes of this clause 2.3(b) by the Board on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company.

3 Powers of the Company

- 3.1 The Company has, subject to the Applicable Act, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.
- 3.2 Without limiting the generality of clause 3.1, the Company has all the rights, powers and privileges and the legal capacity of a natural person including, but not limited to, the powers to:
 - (a) accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company for the Company

on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;

- (b) make available (whether in writing or in any other form and whether by sale or otherwise) information relating to the Company and its functions;
- (c) to occupy, use and control any land or building owned or held under lease by any other person made available to the Company;
- (d) acquire, hold and dispose of real and personal property;
- (e) lease the whole or any part of any land or building for the purpose of the Company;
- (f) occupy, use and control any other land or building owned or held under lease by any other person and made available to the Company;
- (g) enter into contracts;
- (h) erect buildings;
- (i) employ managers and other staff to implement the objects of the Company and pay such fees, salaries, emoluments and expenses as the Board considers reasonable to such persons;
- (j) purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods;
- (k) act as trustee of moneys or other property vested in the Company on trust; and
- (l) do anything incidental to any of the Company's objects.

3.3 Notwithstanding anything contained in this Constitution, any money or other property held by the Company on trust or accepted by the Company subject to a condition, will not be dealt with except in accordance with the obligations of the Company as trustee or as the person who has accepted the money or other property subject to the condition, as the case may be.

3.4 It is intended that the public will contribute to the Gift Fund and the Company will invite the general public to make gifts to the Gift Fund for the purpose of carrying out the objects of the Company.

4 Gift Fund

- (a) The Company must, if required under the Tax Act, establish and maintain, for the specific purposes set out in clause 2, the Gift Fund:
 - (i) to which gifts of money, contributions or property for those purposes must be made;
 - (ii) to which any money received by the Company because of those gifts, contributions or property must be credited; and
 - (iii) that does not receive any other money, contributions or property.
- (b) The Gift Fund will not be maintained for the purpose of profit or gain to the Members of the Company.
- (c) All gifts or contributions made to the Gift Fund and any money received because of those gifts or contributions will be applied solely towards the promotion of the objects of the Company set out in clause 2 and no portion of the Gift Fund will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.

- (d) The Company will maintain a separate bank account for the Gift Fund and must comply with subdivision 30-BA of the Tax Act with respect to the administration of the Gift Fund.
- (e) The Gift Fund will be administered by a committee of not less than three persons appointed by the Board or the Executive, a majority of which must be Responsible Persons. The Gift Fund committee will have the sole responsibility for decisions regarding the use and application of all gifts or contributions made to the Gift Fund and any money received because of those gifts or contributions for the purposes set out in clause 2.
- (f) In accordance with the Tax Act, receipts issued for gifts must state:
 - (i) the name of the Company and Gift Fund;
 - (ii) the ABN applicable to the Company; and
 - (iii) the fact that the receipt is for a gift or contribution.
- (g) Clauses 4(b) to 4(f) (both inclusive) apply only if the Company is required to establish a Gift Fund by the Tax Act or if determined by the Board or the Executive.

5 Membership and eligibility

5.1 Number and classes of Membership

- (a) Subject to this Constitution and the Corporations Act, there must be at least one Member comprising an Ordinary Member.
- (b) The Executive may, from time to time, prescribe a maximum number of Members.
- (c) The Members will comprise:
 - (i) Ordinary Members;
 - (ii) Honorary Members;
 - (iii) Student Members; and
 - (iv) such other class or classes of Membership established by the Executive, from time to time, in accordance with clause 5.1(e).
- (d) Only an Eligible Person will be eligible to be admitted to Membership as an Ordinary Member, a Honorary Member or a Student Member and the Executive may, in its absolute discretion, require the applicant to provide such evidence as to the applicant's eligibility as the Executive considers necessary.
- (e) The Executive may, from time to time but subject to clauses 6.3 and 6.4, establish different classes of Membership and may prescribe the qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classes of Membership.

5.2 Admission to Membership

- (a) Every person who, at the date of registration of the Company, is:
 - (i) an ordinary member or associate member of the Incorporated Association and has paid the Subscription (if any) for the current Membership Year, will be an Ordinary Member;
 - (ii) a honorary member of the Incorporated Association, will be an Honorary Member.
- (b) A person who is not a Member of the Company at the date of registration of the Company will not be admitted to Membership unless:

- (i) the person applies for Membership in accordance with clause 5.2(c); and
 - (ii) the person's admission as a Member is approved by the Executive.
- (c) Each application must:
 - (i) be in writing, in the form prescribed by the Executive, and signed by the applicant;
 - (ii) specify the class of Membership sought and such other particulars as the Executive may either generally or, in a particular case, require;
 - (iii) specify the name of the Ordinary Member who nominates the applicant for admission into Membership and, unless the applicant is applying for Student Membership, the name of the Ordinary Member who seconds that nomination;
 - (iv) be accompanied by the curriculum vitae of the applicant demonstrating the applicant's eligibility for the class of Membership sought;
 - (v) contain, or be accompanied by, the undertaking referred to in clause 5.4 and
 - (vi) be delivered to the Secretary at the Office.
- (d) As soon as practicable after receipt of an application referred to in clause 5.2(c), the Secretary must refer the application to the Executive.
- (e) On an application being referred to the Executive, the Executive will determine, in their absolute discretion, whether to approve or to reject the application.
- (f) The Executive may, without giving any reason, decline to accept an application for Membership.
- (g) If an application is approved by the Executive:
 - (i) the Secretary must, as soon as practicable, notify the applicant in writing that the applicant has been approved for Membership and request payment of amounts referred to in clause 5.3 (if any) within 28 days of receipt of the notice; and
 - (ii) the applicant must deliver to the Secretary payment of the amounts referred to in clause 5.3 (if any) within 28 days of receipt of the notice.
- (h) An applicant for Membership becomes a Member and is entitled to exercise the rights of Membership when the applicant's name is entered into the Register.
- (i) The Secretary must:
 - (i) with respect to an application approved for Honorary Membership, enter the applicant's name in the Register on the same day as the date of the notice referred to in clause 5.2(g)(i); and
 - (ii) with respect to an application approved for Memberships other than Honorary Membership, enter the applicant's name in the Register within 28 days after approval by the Executive and receipt of the amounts (if any) referred to in clause 5.3.
- (j) If an application has been rejected by the Executive, the Secretary must, as soon as practicable notify the applicant in writing that the applicant's application has been rejected.

5.3 Subscription and Joining Fee

- (a) Subject to the following provisions of this clause 5.3, the Executive will determine the Subscription payable by Members in each Membership Year and the Joining Fee payable by applicants upon the approval of their application for Membership by the Executive.
- (b) The Executive is entitled to determine, in its absolute discretion, that the Subscription payable in any Membership Year by any Member, or class of Members, will vary to the Subscription payable by any other Member, or class of Members.
- (c) The Executive is entitled to determine, in its absolute discretion, that the Joining Fee payable in any year by any applicant or the applicants for a class of Membership will vary to the Joining Fee payable by any other applicant or applicants for any other class of Membership.
- (d) If the first Membership Year applicable to the person seeking admission to Membership is comprised of less than 365 days, the first year's Subscription payable by that person is to be apportioned according to the number of days remaining in that Membership Year.
- (e) The Subscription (if any) is to be paid by each Member, in advance before 1 April of each calendar year, by delivery to the Secretary, or to such other person or in such other manner as the Executive determines, from time to time.
- (f) The Joining Fee (if any) is to be paid by each applicant in accordance with clause 5.2(g)(ii).

5.4 Undertaking

- (a) Every Ordinary Member must provide a written undertaking in accordance with clause 5.4(b).
- (b) Every Ordinary Member undertakes to contribute to the property of the Company if the Company is wound up while he is an Ordinary Member, or within one year after he ceases to be an Ordinary Member, for payment of the debts and liabilities of the Company (contracted before he ceases to be an Ordinary Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding, in any event, \$10 per Ordinary Member.

5.5 GST

- (a) All payments that are required to be made by a Member under this Constitution (including but not limited to Subscriptions) are exclusive of GST.
- (b) If any payment referred to in clause 5.5(a) is for, or is in connection with, a supply made by the Company under this Constitution on which the Company is liable to pay GST, then such payment will be increased by the prevailing rate of that GST and the Member will pay that increased amount to the Company at the same time and in the same manner as all other payments required to be made.
- (c) The Company must issue to the Member a tax invoice for the increased amount referred to in clause 5.5(b) within 14 days from the date that the increased amount is required to be paid by the Member.

6 Rights of members

6.1 Rights and privileges

- (a) Subject to this Constitution, the Members are entitled to all the rights and privileges of Membership of the Company.

- (b) A right, privilege, or obligation of a person by reason of the person's Membership:
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates on cessation of Membership whether by death or resignation or otherwise as set out in clause 9.

6.2 Additional rights and privileges

Subject to this Constitution, Membership as an Ordinary Member will, in addition to all other rights and privileges of Membership of the Company, entitle each Ordinary Member to the use of the facilities of the Company and all other rights and entitlements conferred by the holding of that Membership.

6.3 Variation of Rights

If at any time the Executive exercise the powers under clause 5.1(e), the rights, restrictions or obligations of Members or any class of Members may be varied with either:

- (a) the written consent of not less than 75% of the existing Ordinary Members; or
- (b) the sanction of a special resolution passed at a separate general meeting of the existing Ordinary Members.

6.4 Effect of new class of Membership

If the Executive establishes a new class of Membership that has the same rights, restrictions or obligations as an existing class of Membership, the establishment of that new class of Membership is not treated as a variation of the rights attaching to that class.

7 Register of member

7.1 Information in Register

The Secretary must keep and maintain a Register containing:

- (a) the name and address of each Member;
- (b) the date on which each Member's name was entered in the register;
- (c) the class of Membership; and
- (d) any other information which the Executive considers necessary.

7.2 Inspection and copies

Subject to the Corporations Act:

- (a) the Register will be made available for inspection, free of charge, to any Member on request; and
- (b) a Member may make a copy of entries in the Register for a fee of \$1.00 per page or such other amount that the Executive may determine from time to time.

8 Default by members

- (a) If a Subscription is payable in any Membership Year and a Member fails to pay the Subscription, in whole or in part, in any Membership Year for more than 60 days after the due date for payment:
 - (i) all of the rights and privileges of that Member will be automatically suspended until the Subscription, or such part which is payable and remains outstanding, is paid or until the Member's

Membership has been determined in accordance with clause 8(b);
and

- (ii) the Secretary will give notice to that Member requiring payment of the Subscription, or such part of the Subscription which is payable and remains outstanding.
- (b) If any Member fails to pay a Subscription in accordance with clause 8(a), or any part which is payable and remains outstanding for more than 60 days after service of the notice to the Member in accordance with clause 8(a)(ii), the Member will automatically cease to be a Member pursuant to clause 9 and the Secretary must notify that Member accordingly.

9 Cessation of membership

9.1 Ceasing to be a Member

A person ceases to be Member of the Company if:

- (a) the person resigns as provided in clause 11.1; or
- (b) the provisions of clauses 8(a) and 8(b) or the succeeding provisions of this clause 9 become applicable to that Member.

9.2 Continuing liability

A Member who resigns continues to be liable for any Subscription and all arrears due and unpaid at the date of the Member's resignation and for all other amounts due by the Member to the Company and for any sum not exceeding \$10 for which the Member may become liable as a Member under clause 5.4(b).

9.3 Power to censure, suspend or expel

- (a) A complaint may be made to the Executive by any person that a Member:
 - (i) has failed to comply with this Constitution; or
 - (ii) has failed to comply with any of the rules, regulations or by-laws of the Company; or
 - (iii) is guilty of any conduct which is unbecoming of a Member or prejudicial to the interests of the Company or its Members ("**Complaint**").
- (b) On receiving the Complaint, the Executive must cause notice of the Complaint to be served on the Member and allow the Member 14 days from the date of the notice to make submission to the Executive in response to the Complaint.
- (c) After consideration of any submission made by the Member under clause 9.3(b), the Executive may, by resolution (the "**First Resolution**") censure, suspend or expel that Member if, in its opinion, the facts alleged in the Complaint have been established.
- (d) Where the Executive passes a First Resolution, the Secretary must, within 7 days of the First Resolution, serve on the Member, a notice in writing:
 - (i) setting out the First Resolution and the grounds on which it is based;
 - (ii) informing the Member of his right to appeal to the Company under clause 9.3(e) .
- (e) The Member may appeal against the First Resolution to the Company by providing written notice to the Secretary within 7 days of service of the notice of

the First Resolution and the notice of appeal may be accompanied by a statement of the grounds on which the Member intends to rely upon.

- (f) As soon as practicable after receipt of a notice of appeal referred to in clause 9.3(e), the Secretary refer the notice of appeal to the Executive.
- (g) On a notice of appeal being referred to the Executive, the Executive must call a general meeting of the Members within 28 days after the date on which the Secretary received the notice of appeal.
- (h) At a general meeting of the Members called in accordance with clause 9.3(g):
 - (i) no business other than the question of the appeal shall be transacted;
 - (ii) the Executive may place before the meeting details of the grounds for the First Resolution and the reasons for the passing of the First Resolution;
 - (iii) the Executive and the Member must be given an opportunity to be heard by either oral or written submission, or both; and
 - (iv) the Ordinary Members Present must vote by secret ballot on the question whether the First Resolution should be confirmed or revoked.
- (i) If at the general meeting:
 - (i) a 75% majority of the Ordinary Members Present and voting, vote in favour of the confirmation of the First Resolution, the First Resolution will stand confirmed; and
 - (ii) in any other case, the First Resolution will be revoked.
- (j) No Ordinary Member is entitled to vote at any general meeting called in accordance with clause 9.3(g) unless all amounts then due and payable to the Company by that Member have been paid.
- (k) If the First Resolution is confirmed by the Ordinary Members or the Member fails to deliver a notice of appeal in accordance with clause 9.3(e), the Member concerned will immediately cease to be entitled to exercise any rights or privileges as a Member and, in the case of a resolution to expel the Member concerned, that Member will be immediately expelled.

10 Internal Disputes

10.1 Mediation

A dispute between Members (in their capacity as Members) or between a Member and the Company must, in the first instance, be referred to a Community Justice Centre for mediation in accordance with the *Community Justice Centres Act 1983* (NSW).

10.2 Statement of Issues

The parties to the dispute must exchange statements of issues and provide a copy to the mediator no later than 7 days before the mediation pursuant to clause 10.1 takes place.

11 Resignation of member

- 11.1 A Member who has paid all amounts due and payable to the Company may resign from the Company by first giving one month's notice (or such other period as determined by the Executive) in writing to the Secretary of the Member's intention to resign and on the expiration of that period of notice, the Member will cease to be a Member.
- 11.2 On expiry of notice under clause 11.1, the Secretary will:
- (a) repay to the Member the proportion of the Subscription received by the Company referable to the unexpired term of the Membership Year; and
 - (b) make an entry in the Register recording the date on which the Member ceased to be a Member.

12 General meetings

12.1 Annual General Meeting

- (a) The Company will hold an annual general meeting in accordance with this Constitution and the Applicable Acts:
 - (i) within 18 months after registration of the Company and within 6 months after the expiration of the first financial year of the Company; and
 - (ii) after the first annual general meeting;
 - (A) if required by the Corporations Act, within five months after the end of the Company's financial year; or
 - (B) at least once in every calendar year and within 6 months after the expiration of each financial year of the Company.
- (b) To the extent applicable to the Company, the business of the annual general meeting may include:
 - (i) the election of the Chairperson, Deputy Chairperson, Secretary, Treasurer and the six Ordinary Members of the Executive referred to in clause 17.1(c)(ii);
 - (ii) the consideration of the financial reports of the Company, the Executive's report and the auditor's report;
 - (iii) to confirm the minutes of the preceding annual general meeting and of any general meeting held since that meeting; and
 - (iv) such other business as may be properly transacted at the annual general meeting.
- (c) The Chairperson of the Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

12.2 General meetings

All general meetings other than the annual general meeting will be called general meetings.

12.3 Calling

- (a) The Executive may call a general meeting at any time.
- (b) The ability of Ordinary Members to:

- (i) request that the Executive call a general meeting; and
 - (ii) call and arrange to hold a general meeting themselves,
- is limited to the powers set out in the Applicable Act and this Constitution.
- (c) The Executive must call and arrange to hold a general meeting on the written request of Ordinary Members with at least 5% of the votes that may be cast at the general meeting and must:
 - (i) within 21 days of the Ordinary Members' request being given to the Company, give notice of a general meeting; and
 - (ii) hold the general meeting within two months of the Ordinary Members' request.
 - (d) The percentage of votes that Ordinary Members have is to be worked out as at midnight before the Ordinary Members request the meeting.
 - (e) The Ordinary Members who make the request for a general meeting must:
 - (i) provide the request in writing;
 - (ii) state in the request any resolution to be proposed at the meeting;
 - (iii) state in the request the purpose or purposes of the meeting;
 - (iv) sign the request; and
 - (v) give the request to the Secretary.
 - (f) Separate copies of a document setting out the request may be signed by Ordinary Members if the wording of the request is the same in each copy.

12.4 General meetings called by Ordinary Members

- (a) If the Executive does not call a meeting to be held within one month after being requested under clause 12.3, 6 or more of the Ordinary Members who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a meeting the Members must:
 - (i) as far as possible, follow the procedures for general meetings set out in this Constitution;
 - (ii) call the meeting using the list of members of the Company's member register; and
 - (iii) hold the general meeting within three months after the request was given to the Company.
- (c) The Company must pay the Members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

12.5 Notice

- (a) At least 21 days written notice of a general meeting must be given to:
 - (i) each Member;
 - (ii) each Director;

- (iii) each member of the Executive;
- (iv) any auditor of the Company; and
- (v) any other person required by law.

No other person is entitled to receive notice of a general meeting.

- (b) Subject to clause 12.5(c) and the Applicable Act, notice of a meeting may be provided less than 21 days before the meeting if:
 - (i) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (ii) for any other general meeting, Members within at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) Subject to the Applicable Act, notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a Director;
 - (ii) appoint a Director in order to replace a Director who was removed; or
 - (iii) remove an auditor.

12.6 Content of notice

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and the special resolution itself; and
- (d) contain a statement specifying that:
 - (i) the Member has a right to appoint a proxy;
 - (ii) the proxy must be a Member; and
 - (iii) a Member entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

12.7 Failure to give notice

The failure or accidental omission to send notice of a general meeting to, or the non-receipt of a notice by, any person entitled to notice does not invalidate the proceedings or any resolution passed at the meeting.

12.8 Postponement or cancellation or change of general meeting

Subject to the Applicable Act, the Executive may at any time prior to the time at which a general meeting is to be held, postpone or cancel any general meeting or change the place of any general meeting. Any such postponement, cancellation or change must be communicated to each Member of the Company and each other person to whom notice was given, in any manner permitted under clause 31.

12.9 Resolutions without general meetings

- (a) Subject to the Applicable Act, the Company may pass a resolution without a general meeting being held if all the Ordinary Members entitled to vote on the

resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

- (b) Separate copies of a document may be used for signing by Ordinary Members if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Ordinary Member signs.

13 Proceedings at general meetings

13.1 Quorum

No business may be transacted at an annual general meeting or any other general meeting unless a quorum is Present at the time when the meeting proceeds to business. A quorum consists of five Ordinary Members entitled to vote at the meeting, unless the Company only has one Ordinary Member entitled to vote at the meeting, in which case the quorum is one.

13.2 Determining quorum

Each individual present at a general meeting may only be counted once toward a quorum. If a Member has appointed more than one proxy, only one of them may be counted towards a quorum.

13.3 Use of technology

If a general meeting is held by audio or audio-visual technology:

- (a) a Member is treated as Present if the Member is able to hear and be heard by all others attending; and
- (b) unless the Chairperson is notified that a Member is leaving the meeting, the Member will be assumed to have been present for the duration of the meeting.

13.4 Quorum not present

If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) if the meeting was convened at the request of Members, it is automatically dissolved; and
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place on the fifth business day after the meeting; and
 - (ii) if a quorum is not present within 30 minutes from the time appointed for the adjourned meeting, the Ordinary Members Present (being not less than three) will comprise a quorum.

13.5 Chairing meetings

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Members. If:

- (a) there is no Chairperson or Deputy Chairperson;
- (b) neither the Chairperson nor the Deputy Chairperson is present within 30 minutes after the time appointed for holding the meeting; or
- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Ordinary Members Present and entitled to vote will elect an Ordinary Member to chair the meeting.

13.6 Function of chairperson

The Chairperson of a general meeting is responsible for the general conduct and procedures to be adopted at the meeting.

13.7 Adjournment by chairperson

The Chairperson of a general meeting at which a quorum is present may, with the consent of the majority of Ordinary Members Present and entitled to vote adjourn the meeting to another time and place.

13.8 Adjourned meeting

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting. Notice of the adjourned meeting must be given if the meeting is adjourned for 14 days or more.

13.9 Show of hands

Unless a poll is demanded under clause 13.11:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands of the Ordinary Members entitled to vote; and
- (b) a declaration by the Chairperson that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

13.10 Majority vote

A resolution of Members must be passed by a majority of the votes cast by Ordinary Members entitled to vote on the resolution unless otherwise required under the Applicable Act or this Constitution.

13.11 Demanding a poll

Either before or on declaration of the result of a show of hands, a poll may be demanded by:

- (a) the Chairperson; or
- (b) at least three Ordinary Members Present and entitled to vote on the resolution.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

13.12 When and how polls must be taken

A poll will be taken when and in the manner the Chairperson directs, except for:

- (a) a poll demanded on the election of a Chairperson; or
- (b) a poll demanded on the adjournment of a meeting,

which must be taken immediately. The result of the poll will be the resolution of the meeting at which the poll was demanded.

13.13 Equal number of votes

If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson has a casting vote in addition to the Chairperson's vote as a Member, proxy, attorney or representative; and

- (b) the resolution is passed or not passed as the case may be.

14 Voting at general meetings

14.1 Number of votes

Subject to this Constitution and any rights or restrictions imposed on or attached to a class of Membership, every Ordinary Member who is Present at a general meeting and entitled to vote on a show of hands and on a poll, has one vote.

14.2 Voting by guardians

Subject to the Applicable Act, if the Executive is satisfied at least 24 hours before the time fixed for a general meeting that a person has the power to manage a Member's property under a law relating to the management of property of the mentally incapable, that person may vote and exercise any other rights in relation to the general meeting as if it were the Member entered on the Register and the Executive must not count the vote of the actual registered Member.

14.3 Unpaid Subscription

An Ordinary Member or proxy is not entitled to vote at a general meeting if any Subscription owing by that Member or proxy is in arrears at the date of the meeting.

14.4 Objections

An objection to the qualification of any voter:

- (a) may only be raised at the meeting or adjourned meeting at which the voter tendered its vote; and
- (b) must be determined by the Chairperson, whose decision, if made in good faith, will be final and conclusive.

A vote that the Chairperson does not disallow pursuant to an objection is valid for all purposes.

15 Proxies, attorneys and representatives

15.1 Proxies

An Ordinary Member entitled to attend and vote at a general meeting may appoint a proxy to attend and vote for the Member at the meeting. A proxy must be an Ordinary Member. An Ordinary Member may not hold more than five proxies.

15.2 Number of proxies

An Ordinary Member entitled to one vote at a general meeting may appoint one proxy.

15.3 Rights of proxies

Subject to this Constitution and the proxy's terms of appointment, a proxy has the same rights as the appointing Ordinary Member to speak at a general meeting, to vote provided that no Subscription owing by the proxy is in arrears at the date of the meeting, and to join in and demand a poll.

15.4 Voting rights of proxies

A proxy may vote either on a show of hands or a poll. If a proxy's appointment specifies the way in which the proxy must vote, the proxy must follow those instructions in accordance with the Applicable Act.

15.5 Attorneys

A Member may appoint an attorney to act for the Member at general meetings or to appoint a proxy to act for the Member at general meetings.

15.6 Rights of attorneys

Unless restricted by the terms of appointment or the Applicable Act, an attorney may exercise the same powers on the Member's behalf that the Member could exercise at a general meeting or in voting on a resolution.

15.7 Membership requirement

A proxy must be an Ordinary Member.

15.8 Standing appointments

An Ordinary Member may appoint a proxy to act at a particular general meeting or make a standing appointment. A Member may revoke any appointment.

15.9 Instrument of appointment of proxies

Subject to clause 15.11, the instrument of appointment of a proxy must be in a written form approved by the Executive and must be signed or executed by the appointing Ordinary Member or that Ordinary Member's attorney.

15.10 Instrument of appointment of attorneys

Subject to clause 15.11, the instrument of appointment of an attorney must be in a written form and must consist of a valid power of attorney signed by the appointing Ordinary Member in the presence of at least one witness.

15.11 Alternative method of appointment

Notwithstanding clauses 15.9 and 15.10, the instrument of appointment of a proxy or attorney will be valid if it is in a form and is authenticated in any manner prescribed by the Applicable Act.

15.12 Company must receive appointments

The appointment of a proxy or attorney is only effective in relation to a general meeting if the Company receives the instrument effecting the appointment and any additional documents required by clause 15.14 at least 24 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period).

15.13 Definition of receipt

The Company receives the documents referred to in clause 15.12 when they are received:

- (a) at the Office;
- (b) at a fax number at the Office;
- (c) at a place, fax number or electronic address specified in the notice of meeting; or
- (d) if the notice of meeting specifies other electronic means by which a Member may give the documents, by those means in accordance with the Applicable Act.

15.14 Additional documents

If an appointment purports to be executed under a power of attorney or other authority, the original power or authority or a certified copy of it must be received by the Company along with the appointment.

15.15 Chairperson may declare appointment valid

If:

- (a) the instrument of appointment of a proxy or attorney does not comply with the terms of this Constitution; or
- (b) the appointment and any additional documents are not received by the Company in accordance with the terms of this Constitution,

the appointment will be treated as invalid unless the Chairperson declares otherwise.

15.16 Adjourned meetings

An appointment of a proxy or attorney for a particular general meeting is valid at the adjourned meeting.

15.17 Rights of proxies and attorneys if Member present

A proxy or attorney has no power to act for an Ordinary Member at a general meeting at which the Ordinary Member is present in person or is present by attorney.

15.18 Priority of conflicting appointments

The following rules govern conflicting appointments:

- (a) an appointment of a proxy is revoked (or suspended for the particular general meeting if a standing appointment) if the Company receives a further proxy appointment that would result in the Ordinary Member having more proxies than the Ordinary Member is entitled to under clause 15.2;
- (b) the proxy appointment made first in time under clause 15.18(a) is the first to be treated as revoked or suspended under that clause; and
- (c) if more than one attorney appointed by an Ordinary Member is present at a general meeting and the Company has not received notice of revocation of any of the appointments:
 - (i) an attorney appointed to act at that particular meeting may act to the exclusion of an attorney appointed under a standing appointment; and
 - (ii) subject to clause 15.18(c)(i), the more recently appointed attorney may act to the exclusion of an attorney or representative appointed earlier in time.

15.19 Continuing authority

A vote cast by a proxy or attorney at a general meeting will be valid even if, before the vote, the appointing Member:

- (a) dies or becomes mentally incapacitated; or
- (b) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notification of the matter before the start or resumption of the meeting.

16 Class meetings

The provisions of this Constitution relating to general meetings apply, with any necessary modifications, to separate meetings of a class of Members except that the necessary quorum will be six Members of the relevant class entitled to vote at the meeting, unless there is only one such Member, in which case the quorum is one.

17 Directors and the Executive

17.1 Minimum and maximum number

- (a) The Company will have at least five Directors but no more than ten Directors, unless otherwise provided by the Corporations Act, each of whom will be:
 - (i) if there is only one Ordinary Member, appointed by the sole Ordinary Member; and
 - (ii) in any other case, elected by the Ordinary Members in accordance with clause 18.
- (b) The Board will comprise the following positions:
 - (i) Chairperson;
 - (ii) the immediate past Chairperson (or for the first year of the Company, the immediate past President of the Incorporated Association);
 - (iii) Deputy Chairperson;
 - (iv) Secretary; and
 - (v) Treasurer.
- (c) The Executive will consist of:
 - (i) the Board;
 - (ii) the six Ordinary Members elected in accordance with clause 19;
 - (iii) the Foundation Chairperson;
 - (iv) up to two Non-Health Professional Executive members at any given time; and
 - (v) such other persons appointed by the Executive from time to time.

17.2 Membership requirements

All members of the Executive must be an Ordinary Member, except for the immediate past Chairperson, the Foundation Chairperson, the Non-Health Professional Executive members and the persons referred to in clause 17.1(c)(v).

17.3 Other positions

A Director may simultaneously hold any other office or position in the Company on terms determined by the Executive.

17.4 Meetings of Members

Each member of the Executive is entitled to notice of, and to attend, all general meetings and class meetings.

17.5 Appointment and removal by Members

Subject to clause 17.1, the Company may by resolution passed in general meeting:

- (a) appoint a person to be a Director, Chairperson, Deputy Chairperson, Secretary, Treasurer or a member of the Executive referred to in clause 17.1(c)(ii);
- (b) remove a Director, Chairperson, Deputy Chairperson, Secretary, Treasurer or a member of the Executive referred to in clause 17.1(c)(ii) from office provided that, if requested by the Ordinary Member concerned, any written representation made to the Secretary or Chairperson (not exceeding a reasonable length) by that person has been read out at the meeting which the resolution is being considered or a copy has been provided to each Ordinary Member;

- (c) appoint another person in the place of the person referred to in clause 17.5(b) for the remainder of term;
- (d) fix the maximum number of Directors and increase or reduce that number; and
- (e) determine any rotation and retirement policies for Directors.

17.6 Casual vacancy or addition to the Board and the Executive

- (a) The Executive may appoint a person to be a Director or a member of the Executive at any time either to fill a casual vacancy or as an addition to the existing Directors or the existing Executive, but the total number of Directors must not exceed any maximum number fixed in accordance with clause 17.5(d).
- (b) A Director or a Member appointed to fill a casual vacancy in accordance with clause 17.6(a) will hold office for the remainder of the respective term of office whose office has become vacant and will be eligible for re-election in accordance with clause 17.7 at the end of that term.

17.7 Term of office

Subject to clause 17.8 and the terms of any agreement between the Company and the relevant person:

- (a) subject to clauses 17.7(b) and 17.7(c), a Director holds office until removed under clause 17.5 or until cessation under clause 17.8;
- (b) the Chairperson holds office, and the office of Director, for a period of 1 year but is eligible for re-election by Ordinary Members for a maximum of one additional 1 year term;
- (c) the Deputy Chairperson holds office, and the office of Director, for a period of 1 year but, if the Chairperson opts to stand for re-election, the Deputy Chairperson is eligible for re-election by Ordinary Members for a maximum of one additional 1 year term to coincide with the Chairperson's re-election;
- (d) each member of the Executive referred to in clause 17.1(c)(ii) holds office for a period of 3 years but is eligible for re-election by Ordinary Members;
- (e) the Foundation Chairperson holds office until the Foundation Chairperson resigns or until removed by ANZHNCs Research Foundation, the Board or the Executive; and
- (f) each person appointed to the Executive under clause 17.1(c)(v) holds office until removed by the Executive or until the person resigns.

17.8 Cessation of appointment

A person automatically ceases to be a Director, Chairperson, Deputy Chairperson, Secretary, Treasurer or a member of the Executive referred to in clause 17.1(c)(ii), if:

- (a) the person is not permitted or eligible under the Applicable Act (or an order made under the Applicable Act) to hold that office;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) ceases to be an Ordinary Member;
- (f) the person is removed from office under clause 17.5;
- (g) the term for which the person was appointed or elected expires; or

- (h) is absent without the consent of the Executive from all meetings of the Executive held during a six month period.

18 Election of Directors

The election of Directors, excluding Directors who retire in accordance with clauses 17.7(b) and 17.7(c) but are to be considered for re-appointment, will take place in the following manner:

- (a) the Nominating Committee will conduct the process in the spirit of:
 - (i) maintaining continuity of knowledge and experience within the Board;
 - (ii) ensuring, where possible, balanced representations within the Board based on speciality and geography; and
 - (iii) providing opportunities for Ordinary Members to progress onto the Board;
- (b) when a vacancy or vacancies for the office of Director are anticipated, the Nominating Committee will call for expression of interest from the Membership in writing at least 2 months prior to the annual general meeting;
- (c) subject to clause 17.7, any Ordinary Member wishing to serve or continue to serve as a Director must submit an expression of interest to the Nominating Committee no later than 30 days before the annual general meeting;
- (d) a list of the candidate's names, in alphabetical order, will be presented by the Nominating Committee to the Membership at least 7 days before date of the relevant annual general meeting;
- (e) if the number of candidates standing for election exceed the number of vacancies, the Nominating Committee may at its absolute discretion shortlist the candidates to be presented to the Membership in accordance with clause 18(d);
- (f) if there is not be a sufficient number of candidates, the Nominating Committee may canvass interest from individual Members;
- (g) balloting lists will be prepared containing the names of the candidates in alphabetical order and each Ordinary Member Present (excluding the candidates) at the annual general meeting will be entitled to vote for any number of candidates not exceeding the number of vacancies to be filled; and
- (h) if there remains an insufficient number of candidates, the Executive may fill the remaining vacancy or vacancies as they think fit.

19 Election of Executive

The election of the Chairperson, Deputy Chairperson, Secretary, Treasurer and the members of the Executive referred to in clause 17.1(c)(ii) excluding Executive members who retire in accordance with clause 17.7 but are to be considered for re-appointment will take place in the following manner:

- (a) the Nominating Committee will conduct the process in the spirit of:
 - (i) maintaining continuity of knowledge and experience within the Executive;
 - (ii) ensuring, where possible, balanced representations within the Executive based on speciality and geography; and
 - (iii) providing opportunities for Ordinary Members to progress onto the Executive;

- (b) when a vacancy or vacancies are anticipated on the Executive, the Nominating Committee will call for expression of interest from the Membership in writing at least 2 months prior to the annual general meeting;
- (c) subject to clause 17.7, any Ordinary Member wishing to hold or continue to hold the office of the Chairperson, Deputy Chairperson, Secretary or Treasurer, or be a member of the Executive referred to in clause 17.1(c)(ii) must submit an expression of interest to the Nominating Committee no later than 30 days before the annual general meeting;
- (d) a list of the candidate's names, in alphabetical order, will be presented by the Nominating Committee to the Membership at least 7 days before date of the relevant annual general meeting;
- (e) if the number of candidates standing for election exceed the number of vacancies, the Nominating Committee may at its absolute discretion shortlist the candidates to be presented to the Membership in accordance with clause 19(d);
- (f) if there is not a sufficient number of candidates, the Nominating Committee may canvass interest from individual Members;
- (g) balloting lists will be prepared containing the names of the candidates in alphabetical order and each Ordinary Member Present (excluding the candidates) at the annual general meeting will be entitled to vote for any number of candidates not exceeding the number of vacancies to be filled; and
- (h) if there remains an insufficient number of candidates, the Executive may fill the remaining vacancy or vacancies as they think fit.

20 Alternates

20.1 Appointment

With the approval of the Executive, a Director may appoint an Alternate to act in the appointing Director's place for a specified period and may terminate that appointment at any time.

20.2 No membership requirement

An Alternate must be an Ordinary Member.

20.3 Powers and duties

An Alternate is entitled to the same rights and powers as a Director while acting in that capacity (including the right to receive notice of and to attend and vote at Directors' meetings) and is subject to the same duties.

20.4 Cessation of appointment

An Alternate's appointment ceases if:

- (a) the appointing Director terminates it;
- (b) the appointing Director ceases to be a Director; or
- (c) an event occurs that would cause the Alternate to cease to be a Director under clause 17.8 if the Alternate were a Director.

20.5 Written notice

The appointment of an Alternate or its termination by the appointing Director is only effective when it is in writing signed by the appointing Director and a copy is given to the Company.

21 Non-Health Professional Executive Members

21.1 Appointment

The Executive may appoint up to two persons, at any time, with the relevant experience and expertise outside the field of health as a member of the Executive to hold the office of Non-Health Professional Executive members under clause 17.1(c)(iv) as the Executive, in its absolute discretion, thinks fit.

21.2 No membership requirement

A Non-Health Professional Executive member may, but need not, be an Ordinary Member.

21.3 Powers and duties

Subject to clause 21.4, a Non-Health Professional Executive member has the right to receive notice of and to attend and vote at Executive meetings.

21.4 Restrictions on Voting

A Non-Health Professional Executive member is not entitled to vote on resolutions where specialist knowledge in the field of health is required.

21.5 Term of office

Subject to clause 21.6 and the terms of any agreement between the Company and the relevant person, a Non-Health Professional Executive member holds office for a period of 2 years but is eligible for re-appointment by the Executive.

21.6 Cessation of appointment

An Non-Health Professional Executive member's appointment automatically ceases if:

- (a) the person is not permitted or eligible under the Applicable Act (or an order made under the Applicable Act) to hold office as a director;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Executive;
- (e) the person is removed from office by the Executive;
- (f) the term for which the person was appointed expires; or
- (g) is absent without the consent of the Executive from all meetings of the Executive held during a six month period.

22 Remuneration of Directors and Executive Members

22.1 Honorary

The Directors and members of the Executive (excluding those who are salaried employees) will be honorary.

22.2 Expenses

The Company may pay Directors and members of the Executive all reasonable travelling and other expenses properly incurred:

- (a) in attending the Board meetings, the Executive meetings or any meetings of committees of Directors;

(b) in attending any general meetings of the Company; and
in connection with the Company's business.

22.3 Extra services

If a Director or a member of the Executive, at the request of the Executive and for the purposes of the Company, performs any extra services or makes special exertions (including going or living away from their usual residential address) the Company may remunerate that Director or member of the Executive for doing so. This remuneration may be in addition to or in substitution for remuneration under clause 22.2.

22.4 Executive approval

All payments to Directors and members of the Executive under clause 22.2 must be approved by the Executive.

23 Powers and duties of Board

23.1 Management of the Company

The business of the Company will be managed by the Board. The Board may exercise all the powers of the Company except any powers that are required by this Constitution or the Applicable Act to be exercised by the Company in general meeting.

23.2 Specific powers

Without limiting the generality of clause 23.1, the Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) grant Security Interests in relation to any of the Company's property or business to secure any debt, liability or obligation of the Company or any other person;
- (c) guarantee, indemnify or otherwise become liable for the payment of money or the performance of any obligation by or of any other person; and
- (d) pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by the Company,

on any terms determined by the Board.

23.3 Duties under the Applicable Act

A Director must comply with the Applicable Act and fulfil any duties prescribed in the Applicable Act and the common law including:

- (a) reasonable care and diligence;
- (b) good faith and proper purpose;
- (c) proper use of position;
- (d) proper use of information;
- (e) disclosure of any material personal interest in the manner set out in clause 23.5.
- (f) responsible management of financial affairs; and
- (g) not to allow the Company to trade while insolvent.

23.4 No disqualification

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office, place of profit or position of employment with the Company;
- (b) acting in a professional capacity for the Company;
- (c) being a member or creditor of any corporation (including the Company) or partnership; or
- (d) entering into any agreement or arrangement with the Company.

23.5 Disclosure of interests

If required by the Applicable Act, a Director must disclose to the Board any material personal interest the Director has in a matter relating to the affairs of the Company. The Secretary must record details of any such disclosures in the minutes of the relevant Board meeting.

23.6 Voting if a Director has an interest

- (a) A Director who has a material personal interest in a matter being considered at a Board meeting must not, except as provided under this clause 23.6:
 - (i) be present at the Board meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (b) A Director may still be present, counted towards quorum and vote if:
 - (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;
 - (ii) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that member incurs as a Director of the Company (see clause 33);
 - (iii) their interest relates to a payment by the Company under clause 33, or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (iv) ASIC makes an order allowing the Director to vote on the matter; or
 - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of that Director's interest in the matter and how it relates to the affairs of the Company; and
 - (B) states that those members are satisfied that the interest should not stop that Director from being present or voting.
- (c) Subject to clause 23.6(b) any transactions that relate to the interest may proceed and the Director may participate in the execution of any relevant document; and if disclosure is made before the transaction is entered into:
 - (i) the Director may retain benefits under the transaction; and
 - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

23.7 Obligation of secrecy

Each member of the Board, the Executive and other agent or officer of the Company must:

- (a) keep the transactions and affairs of the Company confidential, except:
 - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (ii) as required by the Board, Executive or the Company in general meeting; and
 - (iii) as required by law; and
- (b) if requested by the Board or the Executive, sign a confidentiality undertaking consistent with this clause 23.7.

24 Delegation of Directors' powers

24.1 Power to delegate to the Executive

The Board may delegate any of its powers to the Executive.

24.2 Power to delegate generally

The Board may delegate any of its powers to:

- (a) a committee of Directors;
- (b) a Director;
- (c) an employee or adviser of the Company;
- (d) an attorney; or
- (e) a sub-committee.

24.3 Terms of delegation

A delegation of powers under clause 24.2 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including the power to delegate further) and subject to any restrictions that the Board determines.

A document of delegation may contain provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

24.4 Delegate to comply with directions

A delegate under clause 24.2 must exercise its powers subject to any direction from the Board.

24.5 Board may revoke delegation

The Board may revoke a delegation of its powers at any time.

24.6 Advisory Board

- (a) The Board or the Executive may establish one or more advisory boards comprising such members as the Board or the Executive thinks fit. A member of an advisory board may, but need not be, a Director.
- (b) An advisory board will act in an advisory capacity only and in the exercise of the powers delegated in accordance with this clause 24, conform to any direction from the Board or the Executive.

24.7 Proceedings of committees and advisory Board

Subject to the terms on which power is delegated to a committee or advisory Board and any directions from the Board or the Executive:

- (a) a committee or advisory board is free to determine the rules that regulate its meetings and proceedings; and
- (b) in the absence of such a determination, the rules will be the same as those that govern Board or Executive meetings in this Constitution, so far as they are applicable,

and the Board or the Executive may change any of the powers, duties and functions of a committee or advisory committee, may remove any member of a committee or advisory board or dissolve a committee or advisory board at any time.

25 Board meetings

25.1 Procedure

Subject to this Constitution and the Corporations Act, the Board may meet, adjourn and otherwise regulate its meetings as it determines. The Board may invite any other person it considers necessary or appropriate to attend and speak at any meeting but that person is not entitled to vote.

25.2 Calling

A Director may at any time, and the Secretary must on such request, convene a Board meeting.

25.3 Notice

Each Director must be given at least 48 hours (or such other period unanimously agreed by the Directors) of a Board meeting or the resumption of an adjourned Board meeting. Notice may be given in any manner determined or adopted by the Board from time to time.

25.4 Use of technology

A Board meeting may be held using any audio, audio-visual or other technology:

- (a) that enables the participating members of the Board to simultaneously hear each other and participate in discussion; or
- (b) to which all Directors have consented.

A minute certified by the chairperson of such a meeting will be conclusive evidence of the proceedings at that meeting and the observance of all necessary formalities.

25.5 Consent

A Director's consent under clauses 25.3 and 25.4 may be a standing one and may only be withdrawn within a reasonable period before the meeting.

25.6 Quorum

The quorum necessary for the transaction of business at a Board meeting is 3 Directors unless the Board determines a greater number. A quorum must be present for the entire meeting.

25.7 Quorum not present

- (a) If a quorum is not present within 30 minutes after the time appointed for the Board meeting, the meeting will stand adjourned to the same time and place on the fifth business day after the meeting.
- (b) if a quorum is not present within 30 minutes from the time appointed for the adjourned meeting, the meeting is automatically dissolved.

25.8 When a Director is treated as present

If a Board meeting is held by audio or audio-visual technology:

- (a) a Director is treated as present if that member is able to hear and be heard by all others attending; and
- (b) unless the Chairperson is notified that a Director is leaving the meeting, that Director will be assumed to have been present for the duration of the meeting.

If a meeting is held using any other technology consented to by all Directors, the Board must determine the basis on which Directors are treated as present.

25.9 Chairperson

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Board. If:

- (a) there is no Chairperson or Deputy Chairperson;
- (b) neither the Chairperson nor the Deputy Chairperson is present within 30 minutes after the time appointed for holding the meeting; or
- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Directors present and entitled to vote will elect a Director to chair the meeting.

25.10 Decisions

A resolution of the Board must be passed by a majority of votes cast by Directors entitled to vote. If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson has a casting vote in addition to the chairperson's vote as a Director; and
- (b) the resolution is passed or not passed as the case may be.

25.11 Too few Directors

The Board may continue to act even if there are vacancies on the Board. If the number of Directors is reduced below the minimum required under clause 17.1, the continuing Directors may act as the Board only:

- (a) to convene a general meeting of Members; or
- (b) in emergencies.

25.12 Written resolutions passed by multiple Directors

The Board may pass a resolution without holding a meeting if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

25.13 Signing written resolutions

For the purposes of clause 25.12, the Company may accept a copy of a signed document sent by facsimile or electronic means.

25.14 Valid proceedings

Each resolution passed or other thing done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or

- (b) the person was disqualified from continuing in office, voting on the resolution or doing that thing.

26 Executive meetings

26.1 Procedure

Subject to this Constitution and the Corporations Act, the Executive may meet, adjourn and otherwise regulate its meetings as it determines. The Executive may invite any other person it considers necessary or appropriate to attend and speak at any meeting but that person is not entitled to vote.

26.2 Calling

The Executive must meet at least 3 times in each period of 12 months at such time and place as the Executive determines.

The Chairperson or an Executive member may at any time, and the Secretary must on such request, convene an Executive meeting.

26.3 Notice

Each member of the Executive must be given at least 48 hours (or such other period unanimously agreed by the members of the Executive) of an Executive meeting or the resumption of an adjourned Executive meeting. Notice may be given in any manner determined or adopted by the Executive from time to time.

26.4 Use of technology

An Executive meeting may be held using any audio, audio-visual or other technology:

- (a) that enables the participating members of the Executive to simultaneously hear each other and participate in discussion; or
- (b) to which all the member of the Executive have consented.

A minute certified by the chairperson of such a meeting will be conclusive evidence of the proceedings at that meeting and the observance of all necessary formalities.

26.5 Consent

An Executive member's consent under clauses 26.3 and 26.4 may be a standing one and may only be withdrawn within a reasonable period before the meeting.

26.6 Quorum

The quorum necessary for the transaction of business at an Executive meeting is 3 members of the Executive unless the Executive determines a greater number. A quorum must be present for the entire meeting.

26.7 Quorum not present

- (a) If a quorum is not present within 30 minutes after the time appointed for the Executive meeting, the meeting will stand adjourned to the same time and place on the fifth business day after the meeting.
- (b) if a quorum is not present within 30 minutes from the time appointed for the adjourned meeting, the meeting is automatically dissolved.

26.8 When an Executive Member is treated as present

If an Executive meeting is held by audio or audio-visual technology:

- (a) a member is treated as present if that member is able to hear and be heard by all others attending; and

- (b) unless the Chairperson is notified that a member is leaving the meeting, that member will be assumed to have been present for the duration of the meeting.

If a meeting is held using any other technology consented to by all members of the Executive, the Executive must determine the basis on which members are treated as present.

26.9 Chairperson

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Executive. If:

- (a) there is no Chairperson or Deputy Chairperson;
- (b) neither the Chairperson nor the Deputy Chairperson is present within 30 minutes after the time appointed for holding the meeting; or
- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the members present and entitled to vote will elect a member of the Executive to chair the meeting.

26.10 Decisions

A resolution of the Executive must be passed by a majority of votes cast by members of the Executive entitled to vote. If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson has a casting vote in addition to the chairperson's vote as a member of the Executive; and
- (b) the resolution is passed or not passed as the case may be.

26.11 Too few Executive Members

The Executive may continue to act even if there are vacancies on the Executive.

26.12 Written resolutions passed by multiple Executive Members

The Executive may pass a resolution without holding an Executive meeting if all the Executive members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Executive member if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last member of the Executive signs.

26.13 Signing written resolutions

For the purposes of clause 26.12, the Company may accept a copy of a signed document sent by facsimile or electronic means.

26.14 Valid proceedings

Each resolution passed or other thing done by or with the participation of a person acting as a member of the Executive is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
the person was disqualified from continuing in office, voting on the resolution or doing that thing.

27 Minutes

27.1 Board must keep minutes

The Board must cause minutes to be kept of:

- (a) the proceedings and resolutions of meetings of Members, Directors, Executive and committees of Directors;
- (b) the names of each Executive member and Director present at each meeting of the Directors, Executive or committees of Directors;
- (c) any resolutions passed by Members, Directors or Executive without a meeting;
- (d) any disclosures or notices of Directors' interests; and
- (e) any other matters for which the Applicable Act requires minutes to be kept.

27.2 Minutes must be signed

Minutes must be signed in accordance with the Applicable Act. Minutes of a meeting must be signed within a reasonable time after the meeting by:

- (a) the Chairperson or the chair of that meeting; or
- (b) the Chairperson or the chair of the next meeting.

27.3 Minutes as evidence

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

27.4 Access to minutes

The Company must ensure that the minute books for meetings of Members and for resolutions passed by Members without meetings are open for inspection by Members in accordance with the Applicable Act.

28 Seal and execution of documents

28.1 Common seal

The Board may decide whether or not the Company has a common seal. The Board is responsible for the safe custody of a common seal and any duplicate seals.

28.2 Use of seals

A common seal or duplicate seal may only be used with the authority of the Board.

28.3 Executing documents

Every document to which a common seal or duplicate seal is affixed must be signed by:

- (a) two Directors or a Director and a Secretary; or
- (b) any other person or combination of persons appointed by the Board to attest to the fixing of the seal.

If a document is not required at law to be executed under seal, it will be binding on the Company if signed by two Directors or a Director and a Secretary or some other person or combination of persons appointed by the Board for that purpose.

29 Accounts

29.1 Obligations

In accordance with the Applicable Act the Company must:

- (a) keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance;
 - (ii) enable true and fair financial statements to be prepared and to be audited; and
- (b) prepare any reports required.

29.2 Inspection

A Member who is not a Director does not have any right to inspect the Company's financial records except:

- (a) as authorised by the Board on terms determined by the Board; or
- (b) as required by the Applicable Act.

30 Audit

The Board must appoint an auditor unless the Members at a general meeting have appointed an auditor or unless otherwise required or permitted by the Applicable Act.

31 Notices

31.1 Method

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature); and
- (b) either:
 - (i) delivered personally;
 - (ii) sent by post to that person's registered address or an alternative address nominated by that person; or
 - (iii) sent electronically or by fax to an electronic address or fax number nominated by that person.

31.2 Receipt

A notice given in accordance with clause 31.1 is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post either:
 - (i) on the day on which the relevant postal service estimates delivery will occur; or
 - (ii) on the first day of the period during which the relevant postal service estimates delivery will occur,

based on the most recent estimate published by the relevant postal service as at the date on which the Notice is sent.

- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a business day or is after 5.00pm (recipient's time) on a business day, the notice is taken to be received at 9.00am (recipient's time) on the next business day.

31.3 Evidence of service

A certificate in writing signed by a Director or Secretary that a notice was sent is conclusive evidence of service.

32 Winding up

32.1 Distribution of Company's assets

On the first to occur of:

- (a) the winding up or deregistration of the Company; or
- (b) if the Company is endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act, revocation of the Company's endorsement as a deductible gift recipient; or
- (c) if the Company is endorsed as an income tax exempt charity under subdivision 50-B of the Tax Act, revocation of the Company's endorsement as an income tax exempt charity,

all surplus assets of the Company, after satisfaction of all debts and liabilities of the Company, must be paid, distributed or transferred to:

- (d) one or more Eligible Charities; or
- (e) to the extent required or permitted by the Tax Act, funds, charitable at law, which comply with the requirements of item 2 of the table in section 30-15 of the Tax Act,

but if the Company is never endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act, paragraph 1.1(b) of the definition of Eligible Charity will not apply.

32.2 Distribution of Gift Fund assets

If the Company maintains a Gift Fund, on the first to occur of:

- (c) the winding up or dissolution of the Gift Fund; or
- (d) the revocation of the endorsement of the Gift Fund as a deductible gift recipient under subdivision 30-BA of the Tax Act,

the remaining money or property (if any) forming part of the Gift Fund must be transferred to one or more Eligible Charities.

32.3 Conditions of distribution to Eligible Charities

Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the Tax Act are satisfied, a transfer under this clause 32 must be made in accordance with those conditions.

32.4 Identity of Eligible Charities

The identity of an Eligible Charity for the purposes of this clause 32 will be determined by the Board and (if applicable) approved by the Commissioner and, in default, will be determined by the Supreme Court of Victoria.

33 Indemnity and insurance

33.1 Indemnity and insurance

Subject to and to the maximum extent permitted under the law, the Company:

- (a) indemnifies each of its officers; and
- (b) may enter into and pay premiums on a contract insuring any of its officers, against any liability incurred by an officer in that capacity, including any legal costs incurred in defending an action for such a liability.

33.2 Survival of indemnity

The indemnity in clause 33.1 will continue notwithstanding that an officer ceases to be an officer of the Company.

33.3 Indemnity and insurance subject to law

For the avoidance of doubt:

- (a) the indemnity in clause 33.1 does not apply so as to indemnify an officer from any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act; and
- (b) the Company may not insure an officer against any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act.