

CONSTITUTION

OF

The Australian and New Zealand Head and Neck Cancer Society Limited

Australian Company Number - 617606587

Australian Business Number - 51056424184

A company limited by guarantee

9 November 2020

TABLE OF CONTENTS

	Page No.
PRELIMINARY	4
1 NAME OF THE COMPANY	4
2 TYPE OF COMPANY	4
3 LIMITED LIABILITY OF MEMBERS	4
4 THE GUARANTEE	4
5 DEFINITIONS	4
CHARITABLE PURPOSES AND POWERS	4
6 PRINCIPAL OBJECTS	4
7 ANCILLARY OBJECTS	5
8 POWERS	5
9 ESTABLISHMENT AND OPERATION OF THE FOUNDATION	6
10 NOT-FOR-PROFIT	7
11 SOURCES OF FUNDS	8
12 MANAGEMENT OF FUNDS	8
13 AMENDING THE CONSTITUTION	8
MEMBERS	8
14 MEMBERSHIP AND REGISTER OF MEMBERS	8
15 WHO CAN BE A MEMBER	9
16 HOW TO APPLY TO BECOME A MEMBER	9
17 DIRECTORS DECIDE WHETHER TO APPROVE MEMBERSHIP	9
18 WHEN A PERSON BECOMES A MEMBER	10
19 WHEN A PERSON STOPS BEING A MEMBER	10
20 MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE	10
21 RESIGNATION OF MEMBERSHIP	10
DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES	10
22 DISPUTE RESOLUTION	10
23 DISCIPLINING MEMBERS	11
GENERAL MEETINGS OF MEMBERS	12
24 GENERAL MEETINGS CALLED BY DIRECTORS	12
25 GENERAL MEETINGS CALLED BY MEMBERS	12
26 ANNUAL GENERAL MEETING	13
27 NOTICE OF GENERAL MEETINGS	13
28 QUORUM AT GENERAL MEETINGS	14
29 AUDITOR'S RIGHT TO ATTEND MEETINGS	15
30 USING TECHNOLOGY TO HOLD MEETINGS	15
31 CHAIRPERSON FOR GENERAL MEETINGS	15

32	ROLE OF THE CHAIRPERSON	15
33	ADJOURNMENT OF MEETINGS	15
	MEMBERS' RESOLUTIONS AND STATEMENTS	15
34	MEMBERS' RESOLUTIONS AND STATEMENTS	15
35	COMPANY MUST GIVE NOTICE OF PROPOSED RESOLUTION OR DISTRIBUTE STATEMENT	16
36	CIRCULAR RESOLUTIONS OF MEMBERS	16
	VOTING AT GENERAL MEETINGS	17
37	HOW MANY VOTES A MEMBER HAS	17
38	CHALLENGE TO MEMBER'S RIGHT TO VOTE	17
39	HOW VOTING IS CARRIED OUT	17
40	WHEN AND HOW A VOTE IN WRITING MUST BE HELD	18
41	PROXIES	18
	DIRECTORS	19
42	NUMBER OF DIRECTORS	19
43	ELECTION AND APPOINTMENT OF DIRECTORS	19
44	TERM OF OFFICE	20
45	WHEN A DIRECTOR STOPS BEING A DIRECTOR	20
	POWERS OF DIRECTORS	21
46	POWERS OF DIRECTORS	21
47	DELEGATION OF DIRECTORS' POWERS	21
48	BOARD CHARTER AND PROCEDURES	21
49	PAYMENTS TO DIRECTORS	21
50	EXECUTION OF DOCUMENTS	21
	DUTIES OF DIRECTORS	22
51	DUTIES OF DIRECTORS	22
52	CONFLICTS OF INTEREST	22
	DIRECTORS' MEETINGS	23
53	WHEN THE DIRECTORS MEET	23
54	CALLING DIRECTORS' MEETINGS	23
55	CHAIRPERSON FOR DIRECTORS' MEETINGS	23
56	QUORUM AT DIRECTORS' MEETINGS	23
57	USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS	23
58	PASSING DIRECTORS' RESOLUTIONS	24
59	CIRCULAR RESOLUTIONS OF DIRECTORS	24
	SECRETARY	24
60	APPOINTMENT AND ROLE OF SECRETARY	24
	MINUTES AND RECORDS	24
61	MINUTES AND RECORDS	24
62	FINANCIAL AND RELATED RECORDS	25

BY-LAWS	25
63 BY-LAWS	25
NOTICE 25	
64 WHAT IS NOTICE	25
65 NOTICE TO THE COMPANY	26
66 NOTICE TO MEMBERS	26
67 WHEN NOTICE IS TAKEN TO BE GIVEN	26
FINANCIAL YEAR	27
68 COMPANY'S FINANCIAL YEAR	27
INDEMNITY, INSURANCE AND ACCESS	27
69 INDEMNITY	27
70 INSURANCE	27
71 DIRECTORS' ACCESS TO DOCUMENTS	27
WINDING UP	27
72 SURPLUS ASSETS NOT TO BE DISTRIBUTED TO MEMBERS	27
73 DISTRIBUTION OF SURPLUS ASSETS	28
DEFINITIONS AND INTERPRETATION	28
74 DEFINITIONS	28
75 READING THIS CONSTITUTION WITH THE CORPORATIONS ACT	29
76 INTERPRETATION	29

PRELIMINARY

1 NAME OF THE COMPANY

- 1.1 The name of the Company is The Australian and New Zealand Head and Neck Cancer Society Limited (the Company).

2 TYPE OF COMPANY

- 2.1 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3 LIMITED LIABILITY OF MEMBERS

- 3.1 The liability of Members is limited to the amount of the guarantee in clause 4.

4 THE GUARANTEE

- 4.1 Each Member must contribute an amount not more than \$10 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the Member stopped being a Member, or
- (b) costs of winding up.

5 DEFINITIONS

- 5.1 In this Constitution, words and phrases have the meaning set out in clauses 74 to 76.

CHARITABLE PURPOSES AND POWERS

6 PRINCIPAL OBJECTS

- 6.1 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 multidisciplinary 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.

6.2 The Company has established the Foundation and has registered it as a charity under the ACNC Act for the promotion of the Company's objects. The Company is the Trustee to the Foundation.

6.3 Decisions made by the Foundation must be passed through the Board of the Company for either discussion or noting.

7 ANCILLARY OBJECTS

7.1 To achieve the principal objects set out in clause 6 the Company has and will continue to:

- (a) administer one or more funds for the promotion of the Company's objects into which all gifts, contributions, donations and bequests to the fund 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; and
- (h) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company and its Members.
- (i) The objects of the Company will be pursued principally in Australia and New Zealand.

8 POWERS

8.1 Subject to clause 9 and any applicable laws, the Company has the following non exhaustive list of powers, which may only be used to carry out its objects/purpose(s) set out in clause 6:

- (a) the powers of an individual;
- (b) all the powers of a company limited by guarantee under the Corporations Act;

-
- (c) to 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;
 - (d) to make available (whether in writing or in any other form and whether by sale or otherwise) information relating to the Company and its functions;
 - (e) to occupy, use and control any land or building owned or held under lease by any other person made available to the Company;
 - (f) to acquire, hold and dispose of real and personal property;
 - (g) to lease the whole or any part of any land or building for the purpose of the Company;
 - (h) to occupy, use and control any other land or building owned or held under lease by any other person and made available to the Company;
 - (i) to enter into contracts;
 - (j) to erect buildings;
 - (k) to 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;
 - (l) to 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;
 - (m) to act as trustee of moneys or other property vested in the Company on trust; and
 - (n) to do anything incidental to any of the Company's objects.

8.2 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.

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

9 ESTABLISHMENT AND OPERATION OF THE FOUNDATION

9.1 The Company has established and must maintain the Foundation as public gift fund for the promotion of one or more of the Company's objects.

9.2 The following contributions may be made to the Foundation:

- (a) gifts of money or property from the public for the promotion of the objects of the Foundation;
- (b) deductible contributions made by the public to a fundraising event staged to raise funds for the promotion of the objects of the Foundation; and
- (c) money received by the Company because of those gifts and deductible contributions.

-
- 9.3 Other than the contributions in clause 9.2, the Foundation may not receive any other money or property.
- 9.4 The Company must only use the finances of the Foundation for the promotion of the objects for which the Foundation was established.
- 9.5 Receipts for gifts to the Foundation must state:
- (a) the name of the Foundation and that the receipt is for a gift made to the Foundation;
 - (b) the Australian Business Number of the Foundation;
 - (c) the fact that the receipt is for a gift; and
 - (d) any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997* (Cth).
- 9.6 The Company must maintain a separate bank account for the Foundation.
- 9.7 The Company must maintain clear accounting procedures for the Foundation.
- 9.8 Investment of any finances of the Foundation must be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.
- 9.9 The Foundation is administered by a committee delegated to administer the Foundation pursuant to clause 47, a majority of which must be Responsible Persons. The Foundation committee will have the sole responsibility for decisions regarding the use and application of all gifts or contributions made to the Foundation.
- 9.10 Upon the winding up or dissolution of the Foundation, whether due to:
- (a) a decision of the Company and/or the Board; or
 - (b) the deductible gift recipient status of the Foundation or entitlement to income tax exemptions or GST concessions being revoked; or
 - (c) the deductible gift recipient status of the Company or entitlement to income tax exemptions or GST concessions being revoked and deductible gift recipient status being unavailable or undesirable for the Foundation,
- any property remaining after satisfaction of all the Foundation's debts and liabilities must not be distributed to Members, but must be given or transferred to some other deductible gift recipient fund, authority or institution having objects similar to the objects for which the Foundation was established and rules prohibiting the distribution of its income to its members.

10 NOT-FOR-PROFIT

- 10.1 The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 10.2 and 73.
- 10.2 Clause 10.1 does not stop the Company from doing the following things, provided they are done in good faith:
- (a) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or
 - (b) making a payment to a Member in carrying out the Company's charitable purpose(s).

11 SOURCES OF FUNDS

- 11.1 The funds of the Company shall be derived from membership fees, conference fees, donations, government grants and such other sources as the Board may determine.
- 11.2 Funds received by way of donations and/or grants must be used according to the conditions specified by the funding body.
- 11.3 All money received by the Company must be deposited as soon as practicable and without deduction to the credit of the Company's bank or other authorised deposit taking institution account.
- 11.4 The Company must, as soon as practicable after receiving any money, issue an appropriate receipt.

12 MANAGEMENT OF FUNDS

- 12.1 Subject to any resolution passed by the Company in General Meeting, the funds of the Company are to be used solely in pursuance of the objects of the Company in the manner that the Board determines.
- 12.2 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by 2 authorised signatories.

13 AMENDING THE CONSTITUTION

- 13.1 Subject to clause 13.2, the Members may amend this Constitution by passing a Special Resolution.
- 13.2 The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

MEMBERS

14 MEMBERSHIP AND REGISTER OF MEMBERS

- 14.1 The Members of the Company are:
- (a) initial Members, and
 - (b) any other person that the Directors allow to be a Member, in accordance with this Constitution.
- 14.2 Membership categories and rights attaching to different categories shall be established and/or changed by the Board. Membership categories will be divided into voting and non-voting memberships as determined by the Board.
- 14.3 The Company must establish and maintain a register of Members. The register of Members must be kept by the secretary and must contain:
- (a) for each current Member:
 - (i) name,
 - (ii) address,
 - (iii) any alternative address nominated by the Member for the service of notices, and
 - (iv) date the Member was entered on to the register.

-
- (b) for each person who stopped being a Member in the last 7 years:
 - (v) name,
 - (vi) address,
 - (vii) any alternative address nominated by the Member for the service of notices, and
 - (viii) dates the membership started and ended.

14.4 The Company must give current Members access to the register of Members.

14.5 Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members, and in accordance with section 177 of the Corporations Act.

15 WHO CAN BE A MEMBER

15.1 A natural person who supports the purposes of the Company is eligible to apply to be a Member of the Company under clause 16.

15.2 In this clause, 'person' means an individual.

16 HOW TO APPLY TO BECOME A MEMBER

A person (as defined in clause 15.2) may apply to become a Member of the Company by writing to the secretary stating that they:

- (a) want to become a Member,
- (b) support the purposes of the Company, and
- (c) agree to comply with the Company's Constitution, including paying the guarantee under clause 4 if required.

17 DIRECTORS DECIDE WHETHER TO APPROVE MEMBERSHIP

17.1 The Directors must consider an application for membership within a reasonable time after the secretary receives the application.

17.2 If the Directors approve an application, the secretary must as soon as possible:

- (a) enter the new Member on the register of Members, and
- (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 18).

17.3 If the Directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

17.4 For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clauses 16(a), 16(b) or 16(c). In that case, by applying to be a Member, the applicant agrees to those three matters.

17.5 A Member of the Company must, on admission to membership, pay to the Company a fee as determined by the Board.

17.6 A Member of the Company must pay to the Company an annual membership fee as determined by the Board.

17.7 The Board may make rules relating to the collection and payment of any membership fees imposed in accordance with this clause 17.

18 WHEN A PERSON BECOMES A MEMBER

Other than Initial Members, an applicant will become a Member when they are entered on the register of Members.

19 WHEN A PERSON STOPS BEING A MEMBER

19.1 A person immediately stops being a Member if they:

- (a) die;
- (b) resign, by writing to the secretary;
- (c) are expelled under clause 23; or
- (d) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a Member.

20 MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

20.1 A right, privilege or obligation which a person has by reason of being a Member of the Company:

- (a) Is not capable of being transferred or transmitted to another person, and
- (b) Terminates on cessation of the person's membership.

21 RESIGNATION OF MEMBERSHIP

21.1 A Member of the Company may resign from membership of the Company by first giving to the secretary written notice of at least 1 month (or any other period that the Board determines) of the Member's intention to resign and, on the expiration of the period of notice, the Member ceases to be a Member.

21.2 If a Member of the Company ceases to be a Member under clause 21.1, and in every other case where a Member ceases to hold membership, the secretary must make an appropriate entry in the register of Members recording the date on which the Member ceased to be a Member.

DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES**22 DISPUTE RESOLUTION**

22.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:

- (a) one or more Members,
- (b) one or more Directors, or
- (c) the Company.

22.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 23 until the disciplinary procedure is completed.

22.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

-
- 22.4 If those involved in the dispute do not resolve it under clause 22.3, they must within 10 days:
- (a) tell the Directors about the dispute in writing,
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 22.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - (i) for disputes between Members, a person chosen by the Directors, or
 - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.
- 22.6 A mediator chosen by the Directors under clause 22.5(b)(i):
- (a) may be a Member or former Member of the Company,
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 22.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.

23 DISCIPLINING MEMBERS

- 23.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:
- (a) the Member has breached this Constitution, or
 - (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 23.2 At least 14 days before the Directors' meeting at which a resolution under clause 23.1 will be considered, the secretary must notify the Member in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the Member,
 - (b) that this resolution will be considered at a Directors' meeting and the date of that meeting,
 - (c) what the Member is said to have done or not done,
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the Member may provide an explanation to the Directors, and details of how to do so.

-
- 23.3 Before the Directors pass any resolution under clause 23.2, the Member must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Directors' meeting, and/or
 - (b) speaking at the meeting.
- 23.4 After considering any explanation under clause 23.3, the Directors may:
- (a) take no further action,
 - (b) warn the Member,
 - (c) suspend the Member's rights as a Member for a period of no more than 12 months,
 - (d) expel the Member,
 - (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause), or
 - (f) require the matter to be determined at a General Meeting.
- 23.5 The Directors cannot fine a Member.
- 23.6 The secretary must give written notice to the Member of the decision under clause 23.4 as soon as possible.
- 23.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 23.8 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

GENERAL MEETINGS OF MEMBERS

24 GENERAL MEETINGS CALLED BY DIRECTORS

- 24.1 The Directors may call a General Meeting.
- 24.2 If 10 percent or more Members who are entitled to vote make a written request to the Company for a General Meeting to be held, the Directors must:
- (a) within 21 days of the Members' request, give all Members notice of a General Meeting, and
 - (b) hold the General Meeting within 2 months of the Members' request.
- 24.3 The Members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting,
 - (b) sign the request, and
 - (c) give the request to the Company.
- 24.4 Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

25 GENERAL MEETINGS CALLED BY MEMBERS

- 25.1 If the Directors do not call the meeting within 21 days of being requested under clause 24.2, five or more of the Members who made the request may call and arrange to hold a General Meeting.

-
- 25.2 To call and hold a meeting under clause 25.1 the Members must:
- (a) as far as possible, follow the procedures for General Meetings set out in this Constitution,
 - (b) call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Members making the request at no cost, and
 - (c) hold the General Meeting within three months after the request was given to the Company.
- 25.3 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.

26 ANNUAL GENERAL MEETING

- 26.1 A General Meeting, called the annual General Meeting, must be held:
- (a) within 18 months after registration of the Company, and
 - (b) after the first annual General Meeting, at least once in every calendar year.
- 26.2 Even if these items are not set out in the notice of meeting, the business of an annual General Meeting may include:
- (a) a record of the previous annual General Meeting,
 - (b) a review of the Company's activities,
 - (c) a review of the Company's finances,
 - (d) any auditor's report,
 - (e) the election of Directors, including in the form of voting prior to the annual General Meeting, held using technology that allows all voting Members to vote to elect Directors, with results declared at the annual General Meeting, and
 - (f) the appointment and payment of auditors, if any.
- 26.3 Before or at the annual General Meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual General Meeting.
- 26.4 The chairperson of the annual General Meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

27 NOTICE OF GENERAL MEETINGS

- 27.1 Notice of a General Meeting must be given to:
- (a) each Member entitled to vote at the meeting or attend the meeting,
 - (b) each Director, and
 - (c) the auditor (if any).
- 27.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.

-
- 27.3 Subject to clause 27.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual General Meeting, all the Members entitled to attend and vote at the annual General Meeting agree beforehand, or
 - (b) for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 27.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director,
 - (b) appoint a Director in order to replace a Director who was removed, or
 - (c) remove an auditor.
- 27.5 Notice of a General Meeting must include:
- (a) 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) the general nature of the meeting's business,
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution, and
 - (d) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - (i) the proxy does not need to be a Member of the Company,
 - (ii) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.

28 QUORUM AT GENERAL MEETINGS

- 28.1 For a General Meeting to be held, at least five voting Members (a quorum) must be present in person (see clause 30 – using technology) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one Member).
- 28.2 No business may be conducted at a General Meeting if a quorum is not present.
- 28.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week,
 - (b) if the time is not specified – the same time, and
 - (c) if the place is not specified – the same place.
- 28.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

29 AUDITOR'S RIGHT TO ATTEND MEETINGS

- 29.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 29.2 The Company must give the auditor (if any) any communications relating to the General Meeting that a Member of the Company is entitled to receive.

30 USING TECHNOLOGY TO HOLD MEETINGS

- 30.1 The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole, a reasonable opportunity to participate, including to hear and be heard.
- 30.2 Anyone using this technology is taken to be present in person at the meeting.

31 CHAIRPERSON FOR GENERAL MEETINGS

- 31.1 The elected chairperson is entitled to chair General Meetings.
- 31.2 The Members Present and entitled to vote at a General Meeting may choose a Director or Member to be the chairperson for that meeting if:
- (a) there is no elected chairperson, or
 - (b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

32 ROLE OF THE CHAIRPERSON

- 32.1 The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 32.2 The chairperson does have a casting vote.

33 ADJOURNMENT OF MEETINGS

- 33.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.
- 33.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

MEMBERS' RESOLUTIONS AND STATEMENTS

34 MEMBERS' RESOLUTIONS AND STATEMENTS

- 34.1 At least 10 per cent or more Members who are entitled to vote may give:
- (a) written notice to the Company of a resolution they propose to move at a General Meeting (Members' resolution), and/or,
 - (b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (Members' statement).

-
- 34.2 A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- 34.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.
- 34.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 34.5 If the Company has been given notice of a Members' resolution under clause 34.1(b), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 34.6 This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.

35 COMPANY MUST GIVE NOTICE OF PROPOSED RESOLUTION OR DISTRIBUTE STATEMENT

- 35.1 If the Company has been given a notice or request under clause 34:
- (a) in time to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, it must do so at the Company's cost, or
 - (b) too late to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members' resolution or a copy of the Members' statement. However, at a General Meeting, the Members may pass a resolution that the Company will pay these expenses.
- 35.2 The Company does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:
- (a) it is more than 1,000 words long,
 - (b) the Directors consider it may be defamatory,
 - (c) clause 35.1(b) applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' resolution or a copy of the Members' statement to Members, or
 - (d) in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Members.

36 CIRCULAR RESOLUTIONS OF MEMBERS

- 36.1 Subject to clause 36.3, the Directors may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).
- 36.2 The Directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.

-
- 36.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a Director or remove a Director,
 - (b) for passing a Special Resolution, or
 - (c) where the Corporations Act or this Constitution requires a meeting to be held.
- 36.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 36.5 or clause 36.6.
- 36.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 36.6 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

VOTING AT GENERAL MEETINGS

37 HOW MANY VOTES A MEMBER HAS

- 37.1 Subject to this Constitution, a Member who is present at a General Meeting and entitled to vote is entitled to one deliberative vote.

38 CHALLENGE TO MEMBER'S RIGHT TO VOTE

- 38.1 A Member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 38.2 If a challenge is made under clause 38.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

39 HOW VOTING IS CARRIED OUT

- 39.1 Voting must be conducted and decided by:
- (a) a show of hands,
 - (b) a vote in writing, or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 39.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 39.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 39.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

40 WHEN AND HOW A VOTE IN WRITING MUST BE HELD

- 40.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five Members Present who are entitled to vote, or
 - (b) the chairperson.
- 40.2 A vote in writing must be taken when and how the chairperson directs, unless clause 40.3 applies.
- 40.3 A vote in writing must be held immediately if it is demanded under clause 40.1:
- (a) for the election of a chairperson under clause 31.2, or
 - (b) to decide whether to adjourn the meeting.
- 40.4 A demand for a vote in writing may be withdrawn.

41 PROXIES

41.1 Appointment of proxy

A Member may appoint a proxy to attend and vote at a General Meeting on their behalf.

41.2 Proxy need not be a member

A proxy does not need to be a Member.

41.3 Rights of Proxy same as Member

A proxy appointed to attend and vote for a Member has the same rights as the Member to:

- (a) speak at the meeting,
- (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
- (c) join in to demand a vote in writing under clause 40.1.

41.4 Appointment of Proxy Form

An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:

- (a) the Member's name and address,
- (b) the Company's name,
- (c) the proxy's name or the name of the office held by the proxy, and
- (d) the meeting(s) at which the appointment may be used.

41.5 Appointment in Approved Form

An appointment of a proxy must be in a form approved by the Company.

41.6 Term of Proxy appointment

A proxy appointment may be standing (ongoing).

41.7 Form to be received by the Company

Proxy forms must be received by the Company at the address stated in the notice under clause 27.5(d) or at the Company's registered address at least 48 hours before a meeting.

41.8 Validity of Proxy Vote

- (a) A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- (b) Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
 - (i) dies,
 - (ii) is mentally incapacitated,
 - (iii) revokes the proxy's appointment, or
 - (iv) revokes the authority of a representative or agent who appointed the proxy.
- (c) A proxy appointment may specify the way the proxy must vote on a particular resolution.

41.9 Voting by proxy

- (a) A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a member on a show of hands).
- (b) When a vote in writing is held, a proxy:
 - (i) does not need to vote, unless the proxy appointment specifies the way they must vote,
 - (ii) if the way they must vote is specified on the proxy form, must vote that way, and
 - (iii) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

DIRECTORS

42 NUMBER OF DIRECTORS

42.1 The Board is to comprise:

- (a) not less than seven and not more than fifteen Board Members elected by the Members; and
- (b) may include up to two Board Members appointed by the elected Board Members under clause 43.6.

43 ELECTION AND APPOINTMENT OF DIRECTORS

43.1 The initial Directors are the people who have agreed to act as Directors and who are named as proposed Directors in the application for registration of the Company.

43.2 Apart from the initial Directors and Directors appointed under clause 43.5, the Members may elect a Director by a resolution passed in a General Meeting.

-
- 43.3 Each of the Directors must be appointed by a separate resolution, unless:
- (a) the Members Present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 43.4 A person is eligible for election as a Director of the Company if they:
- (a) are a Member of the Company,
 - (b) are nominated by two Members (unless the person was previously elected as a Director at a General Meeting and has been a Director since that meeting),
 - (c) give the Company their signed consent to act as a Director of the Company, and
 - (d) are eligible to be a Director under the Corporations Act or the ACNC Act.
- 43.5 The Directors may appoint a person as a Director to fill a casual vacancy or as an additional Director if that person:
- (a) is a Member of the Company,
 - (b) gives the Company their signed consent to act as a Director of the Company, and
 - (c) is not ineligible to be a Director under the Corporations Act or the ACNC Act.
- 43.6 The Board may, where it believes it is in the interests of the Company, appoint under clause 42.1(b) up to two non-health professionals as Board Members on such terms and for such period as the Board decides. The appointed Board Members may or may not be Members of the Company.
- 43.7 If the number of Directors is reduced to fewer than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to that required for a quorum, or calling a General Meeting, but for no other purpose.

44 TERM OF OFFICE

- 44.1 A Board Members' term of office is three years.
- 44.2 Board Members elected to an Office may not hold the same Office for more than three consecutive terms unless the Members agree to further term/s at the annual General Meeting.

45 WHEN A DIRECTOR STOPS BEING A DIRECTOR

- 45.1 A Director stops being a Director if they:
- (a) give written notice of resignation as a Director to the Company,
 - (b) die,
 - (c) are removed as a Director by a resolution of the Members,
 - (d) stop being a Member of the Company,
 - (e) are absent for 3 consecutive Directors' meetings without approval from the Directors, or
 - (f) become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.

POWERS OF DIRECTORS

46 POWERS OF DIRECTORS

- 46.1 The Directors are responsible for managing and directing the activities of the Company to achieve the purposes set out in clause 6.
- 46.2 The Directors may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by Members.
- 46.3 The Directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under clause 47, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a Members' resolution at a General Meeting.

47 DELEGATION OF DIRECTORS' POWERS

- 47.1 The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as a contracted service provider) or any other person, as they consider appropriate.
- 47.2 The delegation must be recorded in the Company's minute book.

48 BOARD CHARTER AND PROCEDURES

- 48.1 The Board may from time to time establish a Board Charter and policies and procedures regarding its operation and the operation and management of the Company and its internal affairs and may modify and change these from time to time in accordance with the changing needs and requirements of the Company.

49 PAYMENTS TO DIRECTORS

- 49.1 The Company may:
- (a) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- 49.2 Any payment made under clause 49.1(a) or (b) must be approved by the Directors.
- 49.3 The Company must pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this Constitution.

50 EXECUTION OF DOCUMENTS

- 50.1 The Company may execute a document without using a common seal if the document is signed by:
- (a) two Directors of the Company, or
 - (b) a Director and the secretary.

DUTIES OF DIRECTORS

51 DUTIES OF DIRECTORS

The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company,
- (b) to act in good faith in the best interests of the Company and to further the charitable purposes of the Company set out in clause 6,
- (c) not to misuse their position as a Director,
- (d) not to misuse information they gain in their role as a Director,
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 52,
- (f) to ensure that the financial affairs of the Company are managed responsibly, and
- (g) not to allow the Company to operate while it is insolvent.

52 CONFLICTS OF INTEREST

52.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the other Directors, or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

52.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

52.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clauses 52.4:

- (a) be present at the meeting while the matter is being discussed,
- (b) or vote on the matter.

52.4 A Director may still be present and vote if:

- (a) their interest arises because they are a Member of the Company, and the other Members have the same interest,
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 70),
- (c) their interest relates to a payment by the Company under clause 69 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act,

-
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter, or
 - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

DIRECTORS' MEETINGS

53 WHEN THE DIRECTORS MEET

- 53.1 The Directors may decide how often, where and when they meet.
- 53.2 The Board must meet at least 4 times in each period of 12 months at the place and time that the Board may determine.

54 CALLING DIRECTORS' MEETINGS

- 54.1 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- 54.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

55 CHAIRPERSON FOR DIRECTORS' MEETINGS

- 55.1 The elected chairperson is entitled to chair Directors' meetings.
- 55.2 The Directors at a Directors' meeting may choose a Director to be the chairperson for that meeting if the elected chairperson is:
 - (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chairperson of the meeting.

56 QUORUM AT DIRECTORS' MEETINGS

- 56.1 Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority (more than 50%) of Directors.
- 56.2 A quorum must be present for the whole Directors' meeting.

57 USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS

- 57.1 The Directors may hold their meetings by using any technology (such as audio-visual or teleconferencing) which enables the participating members of the Board to simultaneously hear each other and participate in discussion, that is agreed to by all of the Directors.
- 57.2 The Directors' agreement may be a standing (ongoing) one.
- 57.3 A Director may only withdraw their consent within a reasonable period before the meeting.

58 PASSING DIRECTORS' RESOLUTIONS

58.1 A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

59 CIRCULAR RESOLUTIONS OF DIRECTORS

59.1 The Directors may pass a circular resolution without a Directors' meeting being held.

59.2 A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 59.3 or clause 59.4.

59.3 Each Director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

59.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

59.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 59.3 or clause 59.4.

SECRETARY**60 APPOINTMENT AND ROLE OF SECRETARY**

60.1 The Company must have at least one secretary, who may also be a Director.

60.2 A secretary must be appointed by the Directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the Directors.

60.3 The Directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

60.4 The role of the secretary includes:

- (a) maintaining a register of the Company's Members, and
- (b) maintaining the minutes and other records of General Meetings (including notices of meetings), Directors' meetings and circular resolutions.

MINUTES AND RECORDS**61 MINUTES AND RECORDS**

61.1 The Company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of General Meetings,
- (b) minutes of circular resolutions of Members,
- (c) a copy of a notice of each General Meeting,
- (d) a copy of a Members' statement distributed to Members under clause 34.1(b), and
- (e) any other matters for which any applicable Act requires minutes to be kept.

-
- 61.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of Directors.
- 61.3 To allow Members to inspect the Company's records:
- (a) the Company must give a Member access to the records set out in clause 61.1, and
 - (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in clause 61.1 and clause 61.2.
- 61.4 The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 61.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.

62 FINANCIAL AND RELATED RECORDS

- 62.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 62.2 The Company must also keep written records that correctly record its operations.
- 62.3 The Company must retain its records for at least seven years.
- 62.4 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

BY-LAWS

63 BY-LAWS

- 63.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution.
- 63.2 Members and Directors must comply with by-laws as if they were part of this Constitution.

NOTICE

64 WHAT IS NOTICE

- 64.1 Anything written to or from the Company under any clause in this Constitution is written notice and is subject to clauses 65 to 67 unless specified otherwise.
- 64.2 Clauses 65 to 67 do not apply to a notice of proxy under clause 41.7.

65 NOTICE TO THE COMPANY

- 65.1 Written notice or any communication under this Constitution may be given to the Company, the Directors or the secretary by:
- (a) delivering it to the Company's registered office,
 - (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided,
 - (c) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address, or
 - (d) sending it to the fax number notified by the Company to the Members as the Company's fax number.

66 NOTICE TO MEMBERS

- 66.1 Written notice or any communication under this Constitution may be given to a Member:
- (a) in person,
 - (b) by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the Member for service of notices,
 - (c) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any),
 - (d) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any), or
 - (e) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).
- 66.2 If the Company does not have an address for the Member, the Company is not required to give notice in person.

67 WHEN NOTICE IS TAKEN TO BE GIVEN

- 67.1 A notice:
- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
 - (b) sent by post, is taken to be given on the seventh day after it is posted with the correct payment of postage costs
 - (c) sent by email, fax or other electronic method, is taken to be given on transmission, 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 after it is sent, and
 - (d) given under clause 66.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

FINANCIAL YEAR

68 COMPANY'S FINANCIAL YEAR

- 68.1 The Company's financial year is from 1st July to 30th June unless the Directors pass a resolution to change the financial year.

INDEMNITY, INSURANCE AND ACCESS

69 INDEMNITY

- 69.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 69.2 In this clause, 'officer' means a Director or secretary and includes a Director or secretary after they have ceased to hold that office.
- 69.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 69.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

70 INSURANCE

- 70.1 To the extent permitted by law (including the Corporations Act), and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

71 DIRECTORS' ACCESS TO DOCUMENTS

- 71.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 71.2 If the Directors agree, the Company must give a Director or former Director access to:
- (a) certain documents, including documents provided for or available to the Directors, and
 - (b) any other documents referred to in those documents.

WINDING UP

72 SURPLUS ASSETS NOT TO BE DISTRIBUTED TO MEMBERS

- 72.1 If the Company is wound up or its endorsement as a deductible gift recipient or for income tax exemptions or GST concessions is revoked (whichever occurs first), any Surplus Assets must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is a charity described in clause 73.1.

73 DISTRIBUTION OF SURPLUS ASSETS

- 73.1 Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up or its endorsement as a deductible gift recipient or for income tax exemptions or GST concessions is revoked (whichever occurs first) must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purposes in clause 6,
 - (b) to which income tax deductible gifts can be made (being deductible gift recipient(s) within the meaning of the *Income Tax Assessment Act 1997* (Cth)), and
 - (c) which also prohibit the distribution of any Surplus Assets to its Members to at least the same extent as the Company.
- 73.2 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of the Members at or before the time of winding up or within 14 days of the revocation of endorsement as a deductible gift recipient or for income tax exemptions or GST concessions (whichever occurs first). If the Members do not make this decision, the Company may apply to the Supreme Court in the jurisdiction in which the Company is registered to make this decision.

DEFINITIONS AND INTERPRETATION

74 DEFINITIONS

- 74.1 In this Constitution:

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

Board means the board of Directors.

Company means the company referred to in clause 1.

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

Director means a director of the Company.

Foundation means the Australian and New Zealand Head and Neck (ANZHNC) Research Foundation.

General Meeting means a meeting of Members and includes the annual General Meeting, under clause 26.1.

Initial Member means a person who is named in the application for registration of the Company, with their consent, as a Member of the Company.

Member means any person entered in the register of members for the time being as a Member of the Company and includes a Member Present in person.

Member Present means, in connection with a General Meeting, a Member present in person at the venue or venues for the meeting.

Registered Charity means a charity that is registered under the ACNC Act.

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 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 *Income Tax Assessment Act 1997* (Cth).

Special Resolution means a resolution:

- a) of which notice has been given under clause 27.5(c), and
- b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution, and

Surplus Assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

75 READING THIS CONSTITUTION WITH THE CORPORATIONS ACT

- 75.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 75.2 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.
- 75.3 If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.
- 75.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

76 INTERPRETATION

- 76.1 In this Constitution:
 - (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
 - (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).