

# **CONSTITUTION**

## **PROSTATE & BREAST CANCER FOUNDATION**

***A company limited by guarantee***

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## CONSTITUTION

### 1. GENERAL

#### 1.1 Definitions

The following definitions apply in this Constitution unless the context otherwise requires:

**Company** means the Prostate & Breast Cancer Foundation of Australia

**Deductible Gift Recipient** has the meaning given to that term in the Income Tax Act

**Income Tax Act** means the Income Tax Administration Act 1997

**Law** means the Corporations Law

**Member Present** means, in connection with a meeting, the member present in person at the venue or venues for the meeting or by proxy, by attorney and, where the member is a body corporate, by representative.

**Seal** means any common seal or duplicate common seal of the Company.

**Special Resolution** means a resolution of the Company that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

#### 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) A *gender* includes all genders.
- (b) The *singular* includes the plural and conversely.
- (c) Where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *paragraph* or *sub-paragraph* is to a paragraph or sub-paragraph, as the case may be, of the Article or paragraph, respectively, in which the reference appears.
- (e) A reference to any *legislation* or to any *provision* of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (f) Except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Law, the same meaning as in that provision of the Law.

- (g) A mention of anything after *include*, *includes* or *including* does not limit what else might be included.

### 1.3 Replaceable Rules

The replaceable rules contained in the Law do not apply to the Company.

### 1.4 Company Limited by Guarantee

- (a) The Company is a company limited by guarantee.
- (b) Each member undertakes to contribute to the property of the Company if the Company is wound up while he, she or it is a member or within one year after he, she or it ceases to be a member, for payment of the Company's debts and liabilities contracted before he, she or it ceases to be a 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, but not exceeding \$50.

### 1.5 Actions Authorised Under the Law

Where the Law authorises or permits a Company to do any matter or thing if so authorised by its constitution, the Company is and shall be taken by this Article to be authorised or permitted to do that matter or thing, despite any other provisions of this Constitution.

## 2. PRIMARY PURPOSE AND OBJECTS

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### 2.1 Primary Purpose and Objects

- (a) The primary purpose of the Company is to promote the prevention and control of prostate and breast cancer and to provide support for people suffering from such cancers.
- (b) The objects for which the Company have been established are to:
- (i) provide direct assistance to the sufferers of prostate and breast cancer, including those people from low socio-economic areas, members of minority groups including indigenous Australians; and
  - (ii) within the field of prostate and breast cancer, fund or assist with the funding of a position or positions of a health care professional (and / or research assistant) in any University or like facility; and
  - (iii) within the field of prostate and breast cancer, fund or assist with the funding of a position or positions of a health care professional or health care worker in any facility where such sufferers are cared for; and

- (iv) promote awareness within the community of all matters directly related to prostate and breast cancer; and
- (v) conduct fundraising activities to raise money for sufferers of prostate and breast cancer, including those people from low socio-economic areas, members of minority groups including indigenous Australians;

and to act in any other way that is ancillary to the primary purpose of the Company to the extent that the primary purpose is charitable under the laws of the Commonwealth of Australia and each State or Territory of Australia.

### **3. MEMBERSHIP**

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#### **3.1 Members**

- (a) The members who have signed this Constitution and any other person admitted to membership in accordance with this Constitution shall be members of the Company and shall be entered in the register of members accordingly.
- (b) Unless otherwise determined in accordance with Article 3.3, membership of the Company shall be limited to such persons or entities that are working in or involved within the field of prostate and breast cancer.

#### **3.2 New Members**

- (a) The Members may by Special Resolution admit a person who is not a Member as a Member and determine in their discretion any changes to the rights, privileges and obligations which would otherwise apply to that new Member under this Constitution. In no case shall any person or persons, including the directors be required to give any reason for the admission or non-admission of a person as a Member.
- (b) When a person is admitted to membership, the Company secretary (or other person who the directors may appoint) shall notify the person of the admission at which time the applicant shall be registered in the Company's register of members and shall immediately become a member of the Company.
- (c) If a person who is admitted to Membership does not pay any designated subscription within 3 weeks after the date on which the person is admitted the directors may, in their absolute discretion, cancel the admission of the person to Membership in the Company.

### **3.3 Classes of Members**

The directors may determine and admit different classes of members as defined by them, including non voting members and may vary or cancel any rights of members in any class.

### **3.4 Annual Subscriptions**

- (a) The directors may from time to time prescribe annual subscriptions for any class of members and the terms of payment of such subscriptions.
- (b) The directors may in their absolute discretion increase or reduce the amount of any such subscriptions and determine that a different amount is payable by difference classes of members.

## **4. CESSATION OF MEMBERSHIP**

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### **4.1 Resignation of a Member**

- (a) A member may at any time, by giving notice in writing to the Company secretary, resign as a member of the Company.
- (b) The resignation shall be effective from the date of receipt of the notice by the Company secretary. That member's name shall be removed from the register of members.

### **4.2 Non-payment of Subscriptions**

- (a) If the subscription of a member remains unpaid for a period of 30 days after it becomes due, the directors shall direct the Company secretary to give notice to the member of that fact.
- (b) If the subscription remains unpaid on the expiration of 21 days after the date of the notice, the directors may expel the member from membership of the Company and remove the member's name from the register of members.
- (c) If a member is expelled as a member of the Company under this Article then that member also ceases to be a director of the Company (where the member holds such position) on the date of expulsion.

### **4.3 Misconduct of a Member**

- (a) If any member:
  - (i) is in breach of the provisions of this Constitution; or
  - (ii) is guilty of any act or omission which, in the opinion of the directors is unbecoming of a member, or detrimental or prejudicial to the interest of the Company,



the directors may expel the member from the Company and remove the member's name from the register of members and require the member to resign from the position of director.

- (b) The directors shall not expel a member under Article 4.3(a) unless at last seven days' notice has been given to the member stating the date, time and place at which the question of expulsion of that member is to be considered by the directors, and the nature of the alleged misconduct.
- (c) If the directors resolve to expel a member, the Company secretary shall immediately give notice of this to the member. The member then has the right, exercisable by notifying the Company secretary within seven 7 days after receipt of the notice (the *Notice Period*), to have the issue dealt with by the Company in general meeting. In that event, an extraordinary general meeting of the Company shall be called for that purpose, having the same powers as the directors have under Article 4.3(a). If a resolution to expel the member is passed at the meeting by a simple majority of those present and voting, the member shall cease to be a member and his or her name will be removed from the register of members.
- (d) If the member does not notify the Company secretary on or before the expiration of the Notice Period that it wishes to have the issue dealt with by the Company in general meeting, the member shall cease to be a member on the expiration of the Notice Period and his or her name shall be removed from the register of members.

#### **4.4 Other Grounds for Cessation of Membership**

A member's membership of the Company shall automatically cease:

- (a) in the case of a member who is a natural person on the date that the member:
  - (i) dies
  - (ii) becomes of unsound mind or person whose estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (iii) is convicted of a felony; or
- (b) in the case of a member which is a body corporate on the date that:
  - (i) a liquidator is appointed in connection with the winding up of the member; or
  - (ii) an order is made by a court for the winding up or deregistration of the member; or

#### **4.5 Liability for Subscription Fees and other Amounts Following Cessation**

Notwithstanding that the member ceases to be a member of the Company, the member shall continue to be liable for:

- (a) all annual subscription fees or other amounts owing by the member to the Company which are due and unpaid as at the date that the member ceases to be a member; and
- (b) amounts which the member is or may become liable to pay the Company under Article 1.4.

### **5. GENERAL MEETINGS**

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#### **5.1 Powers of Directors to Convene**

- (a) A majority of directors may convene a general meeting of members.
- (b) The chairperson of directors shall convene an annual general meeting once each calendar year, in accordance with the Law.

#### **5.2 Notices of Meetings**

- (a) A notice of a general meeting shall:
  - (i) specify the place, the day and the hour of meeting and shall state the general nature of the business to be transacted at the meeting; and
  - (ii) the information required by the Law.
- (b) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice shall not invalidate the proceedings or any resolution passed at that meeting.

#### **5.3 Quorum**

- (a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, 50% of members plus one (1) shall constitute a quorum, one of whom must be:
  - (i) the chairperson of directors; or
  - (ii) a person appointed to act as chairperson under Article 5.5(b)(ii).

#### **5.4 If Quorum not Present**

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

- (a) where the meeting was convened on the requisition of members, the proposed meeting shall be dissolved (subject to Article 5.6(a));
- (b) in any other case:
  - (i) the meeting stands adjourned to a day and at a time and place as the directors decide or, if no decision is made by the directors, to the same day in the next week at the same time and place; and
  - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting shall be dissolved.

#### **5.5 Chairperson of Meetings**

- (a) Subject to paragraph (b), the Chairperson shall preside as chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no chairperson; or
  - (ii) the chairperson is not present within 30 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting, the directors present shall choose one of their number or, in the absence of all directors or if none of the directors present wish to act, the Members Present shall elect one of their number to be chairperson of the meeting.

#### **5.6 Adjournments**

- (a) The chairperson may and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided by paragraph (c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## 5.7 Voting at General Meetings

- (a) Any resolution to be considered at a meeting shall be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the chairperson that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recoded in favour of or against the resolution.
- (c) Despite the Law, a poll for a resolution may be demanded by at least 2 members present and entitled to vote on the resolution or members with at least 2% of the votes that may be cast on the resolution on a poll.
- (d) A poll may not be demanded on the election of a chairperson or on a resolution for adjournment.
- (e) The demand for a poll may be withdrawn.

## 5.8 Procedure for Polls

- (a) A poll when demanded shall be taken in the manner and at the time the chairperson directs.
- (b) The result of the poll shall be a resolution of the meeting at which the poll was demanded.
- (c) The demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

## 5.9 Chairperson's Casting Vote

In the case of an equality of votes on a show of hands or on a poll the chairperson of the meeting has a casting vote in addition to any vote to which the chairperson may be entitled as a member.

## 5.10 Representation and voting of Members

Subject to this Constitution:

- (a) at meetings of members or classes of members each member entitled to attend and vote may attend and vote in person or by proxy or attorney and (where the member is a body corporate) by representative;
- (b) on a show of hands, every member present having the right to vote at the meeting has one vote; and

- (c) on a poll, every member present having the right to vote at the meeting has one vote.

### **5.11 Restriction on voting Rights – Unpaid Amounts**

A member is not entitled to vote at a general meeting unless all sums presently payable by the member in respect of membership in the Company have been paid.

### **5.12 Objections to Qualification to Vote**

- (a) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- (b) Any objection shall be referred to the chairperson of the meeting, whose decision shall be final.
- (c) A vote allowed after an objection shall be valid for all purposes.

### **5.13 Proxies**

- (a) A member of the Company who is entitled to attend and cast a vote at a meeting of the Company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- (b) The appointment may specify the manner in which the proxy may exercise its vote.
- (c) An instrument appointing a proxy must:
  - (i) be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing; or
  - (ii) if the appointor is a corporation, be either under seal or under the hand of a duly authorised officer or attorney.
- (d) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (e) An instrument appointing a proxy shall be in any form and contain information that the directors accept or stipulate.

### **5.14 Lodgement of Proxies**

- (a) The documents to be received under the Law for an appointment of a proxy to be effective may be received by the Company at any time before the meeting commences or resumes (as the case may be).
- (b) For an instrument appointing an attorney to act on behalf of a member at all meetings of the Company or at all meetings for a specified period to be effective the following documents must be received by

the Company at any time before commencement of the meeting or adjournment meeting at which the attorney proposes to vote:

- (i) the power of attorney or a certified copy of that power of attorney; and
- (ii) any evidence that the directors may require of the validity and non-revocation of that power of attorney.

For the purposes of this paragraph, the Company receives these documents when they are received at any of the following:

- (iii) the Company's registered office;
- (iv) the email address ([office@pbcf.org.au](mailto:office@pbcf.org.au)) of the Company's office.

### **5.15 Validity of Proxies**

A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument (or of the authority under which the instrument was executed) or the power,

if no notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at its registered office at least 24 hours (or any shorter period as the directors may permit) before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

### **5.16 Where Proxy is Incomplete**

- (a) No instrument appointing a proxy shall be treated as invalid merely because it does not contain:
  - (i) the address of the appointor or of a proxy;
  - (ii) the proxy's name or the name of the office held by the proxy; or
  - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not specify the name of a proxy, the instrument shall be taken to be given in favour of the chairperson of the meeting.

### **5.17 Right of Officers and Advisers to Attend General Meeting**

- (a) A Company secretary who is not a member shall be entitled to be present and, at the request of the chairperson, to speak at any general meeting.
- (b) Any other person (whether a member or not) requested by the directors to attend any general meeting shall be entitled to be present and, at the request of the chairperson, to speak at that general meeting.

### **5.18 Single Member Resolutions**

- (a) Nothing in this Constitution limits the Company's power, while the Company has only one member, by recording the resolution and signing the record.
- (b) Where the Company has one member only, a document signed by that member which records a decision of the member:
  - (i) constitutes a decision of the Company and is valid and effective as if it were a resolution duly passed at a meeting of members; and
  - (ii) has effect as a minute of that decision.

## **6. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

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### **6.1 Appointment and Removal**

- (a) Subject to the Law, the Company may at any time by resolution passed in general meeting:
  - (i) appoint any person as a director; or
  - (ii) remove any director from office.
- (b) Subject to the Law, the directors may at any time appoint any person as a director.
- (c) A person that is appointed as a director must also become a member of the Company with effect from the date of appointment.
- (d) If the Company is not a single member Company:
  - (i) no director shall hold office for a period in excess of five years, or until the fifth annual general meeting following the director's appointment, whichever is the longer, without submitting themselves for re-election; and
  - (ii) at every annual general meeting one-third of the directors or, if their number is not a multiple of three, then the number nearest to but not exceeding one-third (or such number as is

necessary to ensure compliance with paragraph (d)(i)), shall retire from office and be eligible for re-election.

- (iii) the directors to retire in every year shall be the directors longest in office since last being elected or re-elected. Between directors who were elected on the same day the director to retire shall be decided by lot unless they agree otherwise.
- (iv) A retiring director shall be eligible for re-election without needing to give any prior notice of an intention to submit for re-election and shall hold office as a director until the end of the meeting at which the director retires.
- (v) The Company must have at least 3 directors and not more than 5 directors.

## 6.2 Remuneration

- (a) The directors shall be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the directors, committee of the directors, general meeting of the Company or otherwise in connection with the business or affairs of the Company.
- (b) Subject to paragraph (c), a director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed by the directors.
- (c) Any amount paid under paragraph (a) or (b) must be approved by the directors.

## 6.3 Vacation of Office

- (a) In addition to the circumstances in which the office of a director becomes vacant:
  - (i) under the Law; or
  - (ii) because of a resolution under Article 6.1(a)(ii);
  - (iii) under Article 6.1(c);
 the office of a director becomes vacant if the director:
  - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (v) resigns by notice in writing to the Company;
  - (vi) dies;



- (vii) ceases to be a member of the Company.
- (b) The directors may remove any director from office if that director is absent without the consent of the directors from meetings of the directors held during a continuous period of 6 months.

## **7. POWERS AND DUTIES OF DIRECTORS**

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### **7.1 Powers of Directors**

- (a) Subject to the Law and this Constitution, the business of the Company shall be managed by the directors, who shall pay all expenses incurred in promoting and forming the Company and may exercise all powers of the Company which are not, by the Law or this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the generality of paragraph (a), the directors may exercise all the powers of the Company:
  - (i) to borrow money, to charge any property or business of the Company or all or any of its uncalled capital; and
  - (ii) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **7.2 Appointment of Attorneys**

- (a) The directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes, with the powers, authorities and discretions vested in or exercisable by the directors for any period and subject to any conditions as they think fit.
- (b) Any appointment under paragraph (a) may be made on terms for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **7.3 Negotiable Instruments**

All negotiable instruments of the Company shall be executed by the persons and in the manner that the directors decide from time to time.

## **8. PROCEEDINGS OF DIRECTORS**

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### **8.1 Proceedings**

- (a) The directors may meet for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A director may at any time, and on the request of a director or a Company secretary shall, convene a meeting of the directors.

- (c) Reasonable notice must be given to every director of the place, date and time of every meeting of the directors. Where any director is for the time being outside of Australia, notice need only be given to that director if contact details have been given, but notice shall always be given to any alternate director in Australia whose appointment by that director is for the time being in force.

## **8.2 Meetings by Technology**

- (a) For the purposes of the Law, each director, on becoming a director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a directors meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each director to communicate with every other director; or
  - (v) any combination of the technologies described in the above paragraphs.

A director may withdraw the consent given under this Article in accordance with the Law.

- (b) Where the directors are not all in attendance at one place and are holding a meeting using technology and each director can communicate with the other directors:
  - (i) the participating directors shall, for the purpose of every provision of this Constitution concerning meetings of the directors, be taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

## **8.3 Quorum at Meetings**

At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is a majority of directors entitled to vote.

## **8.4 Chairperson of Directors**

- (a) The directors may elect one of their number as their chairperson and may decide the period for which the chairperson is to hold office as chairperson.

- (b) Where a meeting of directors is held and:
  - (i) a chairperson has not been elected as provided by paragraph (a); or
  - (ii) the chairperson is not present at the time appointed for the holding of the meeting or does not wish to chairperson the meeting,

the directors present shall elect one of their number to be a chairperson of the meeting.

## **8.5 Proceedings at Meetings**

Subject to this Constitution, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be taken to be a decision of the directors.

## **8.6 Disclosure of Interests**

- (a) A director is not disqualified by the director's office from contracting with the Company in any capacity.
- (b) A contract or arrangement made by the Company with a director or in which a director is in any way directly or indirectly interested shall not be avoided merely because the director is a party to or interested in it.
- (c) A director is not liable to account to the Company for any profit derived in respect of a matter in which the director has a material interest, merely because of the director's office or the fiduciary relationship it entails, if the director has:
  - (i) declared the director's interest in the matter as soon as practicable after the relevant facts have come to the director's knowledge; and
  - (ii) not contravened this Constitution or the Law in relation to the matter.
- (d) A general notice that the director is an officer or member of a specified body corporate or firm stating the nature and extent of the director's interest in the body corporate or firm shall, in relation to a matter involving the Company and that body corporate or firm, be a sufficient declaration of the director's interest, provided the extent of that interest is no greater at the time of first consideration of the relevant matter by the directors than was stated in the notice.
- (e) Subject to Law, a director may vote in respect of a matter in which that director has a material interest.
- (f) If the provisions of this Article and the Law have been observed by any director with regard to any contract or arrangement in which the

director is in any way interested, the fact that the director signed the document evidencing the contract or arrangement shall not in any way affect its validity.

- (g) A director may hold any office of employment or profit in the Company (other than auditor) in addition to holding office as a director.

## **8.7 Committees**

- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of them and/or other persons as they think fit. A committee may consist of one or more persons.
- (b) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors. A power so exercised shall be taken to have been exercised by the directors.
- (c) Articles 8.1, 8.2, 8.4 and 8.5 shall apply to any committee as if each reference in those Articles to the directors was a reference to the members of the committee and each reference to a meeting of directors was to a meeting of the committee.
- (d) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the directors and, if not so determined, is 2. Unless the directors determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- (e) Minutes of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the directors are required by the Law to be made, entered and signed.

## **8.8 Written Resolutions**

- (a) If a document:
  - (i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
  - (ii) contains a statement that the signatories to it are in favour of that resolution;
  - (iii) the terms of the resolution are set out or identified in the document; and
  - (iv) has been signed by a majority of the directors entitled to vote on that resolution,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of directors and the document has effect as a minute of the resolution.

- (b) For the purposes of paragraph (a):
  - (i) 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be taken to constitute one document containing a statement in those terms signed by those directors at the time at which the last of those documents to be signed was signed by a director;
  - (ii) a reference to a majority of the directors does not include a reference to an alternate director whose appointer has signed the document, but an alternate director may sign the document in the place of the alternate director's appointer; and
  - (iii) a fax which is received by the Company or an agent of the Company and is sent for or on behalf of a director or alternate director shall be taken to be signed by that director or alternate director not later than the time of receipt of the fax by the Company or its agent in legible form.

## **8.9 Defects in Appointments**

- (a) All acts done by any meeting of the directors, committee of directors, or person acting as a director are as valid as if each person was duly appointed and qualified to be a director or a member of the committee.
- (b) Paragraph (a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of a committee or to act as a director or that a person so appointed was disqualified.

## **9. COMPANY SECRETARY AND OTHER OFFICERS**

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### **9.1 Company Secretary**

- (a) A Company secretary holds office on the terms and conditions, as to remuneration and otherwise, as the directors decide.
- (b) The directors may at any time terminate the appointment of a Company secretary.

### **9.2 Other Officers**

- (a) The directors may from time to time:

- (i) create any position or positions in the Company with the powers and responsibilities as the directors may from time to time confer; and
  - (ii) appoint any person, whether or not a director, to any position or positions created under paragraph (a)(i).
- (b) The directors may at any time terminate the appointment of a person holding a position created under paragraph (a)(i) and may abolish the position.
  - (c) A Company secretary is not an officer of the Company.

## **10. SEALS AND EXECUTING DOCUMENTS**

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### **10.1 Seals and their use**

- (a) The Company may have a common seal. If the Company has a common seal, it may also have a duplicate common seal.
- (b) A Seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by:
  - (i) 2 directors; or
  - (ii) a director and a Company secretary; or
  - (iii) another person appointed by the directors to countersign that document or a class of documents in which that document is included.
- (c) This Article does not limit the ways in which the Company may execute a document.

## **11. FINANCIAL RECORDS**

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### **11.1 Keeping of Accounting and Financial Records**

- (a) The directors shall cause to be kept proper books of account and financial records in which shall be kept full true and complete accounts of the affairs and transactions of the Company in compliance with the Law.
- (b) The books of account shall be kept at the office or at such place or places as the directors think fit.
- (c) The directors shall subject to the provisions of the Law from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and

books of the Company or any of them shall be open to inspection of the members.

- (d) No member shall have any right of inspecting any account or book or document of the Company unless and except as conferred by statute or authorised by the directors or by a resolution of the Company in general meeting.

## **11.2 Appointment of Auditor**

The Company must appoint and retain a properly qualified auditor to audit the Company's financial statements whose duties are to be determined in accordance with the Law.

## **11.3 Inspection of Records**

- (a) The directors may authorise a member to inspect books of the Company (to the extent, at the time and places and under the conditions the directors consider appropriate).
- (b) A member (other than a director) does not have the right to inspect any document of the Company except as provided by the Law or authorised by the directors.

## **12. APPLICATION OF INCOME AND PROPERTY**

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### **12.1 Application of Income and Property**

- (a) Subject to paragraph (b), the profits (if any) or other income and property of the Company shall be applied solely towards the promotion of the primary purpose of the Company as set out in Article 2.1 and no portion of it shall be paid or transferred, directly or indirectly, to any member of the Company whether by way of dividend, bonus or otherwise.
- (b) Nothing in paragraph (a) shall prevent any payment in good faith by the Company of:
  - (i) reasonable and proper remuneration to any member, officer or employee of the Company (whether or not such a person is a director) for any services actually rendered to the Company;
  - (ii) moneys to any member for bona fide expenses incurred by or on behalf of the Company;
  - (iii) reasonable and proper rent for premises let or demised by any member of the Company to the Company;
  - (iv) moneys to any director for out-of-pocket expenses paid under Article 6.2; or

- (v) moneys to any director, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer in connection with the promotion of the Company's primary purpose.

## **13. WINDING UP**

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### **13.1 Notices of Meetings**

If, on the winding up or dissolution of the Company by any means and for any reason, there remains any property after the satisfaction of all the Company's debts and liabilities, the property shall not be paid to or distributed among the members of the Company, but shall be given or transferred to one or more organisations with the status of Health Promotion Charity and Deductable Gift Recipient selected by the members of the Company at or before the dissolution of the Company, having a primary purpose similar to the Company and whose rules prohibit the distribution of its or their income and property among its members or if there are no organisations meeting this requirement, to one or more organisations, being a charity registered with ACNC and a Deductable Gift Recipient.

## **14. NOTICES**

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### **14.1 Notices Generally**

- (a) Any member who has not left at or sent to the registered office a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the Company may be served or sent shall not be entitled to receive any notice.
- (b) A notice may be given by the Company to any member by:
  - (i) serving it on the member personally;
  - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Company for the giving of notices;
  - (iii) serving it in any manner contemplated in this paragraph (b) on a member's attorney as specified by the member in a notice given under paragraph (c);
  - (iv) fax to the fax number supplied by the member to the Company for the giving of notices; or
  - (v) transmitting it electronically to the electronic mail address given by the member to the Company for giving notices.



- (c) A member may by written notice to the Company secretary left at or sent to the registered office require that all notices to be given by the Company or the directors be served on the member's attorney at an address specified in the notice.
- (d) Notice to a member whose address for notices is outside Australia shall be sent by airmail, fax or electronic mail.
- (e) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
  - (i) in the case of a notice of a meeting, on the day after the date of its posting; and
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (f) Where a notice is sent by fax or electronic transmission, service of the notice shall be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

## **14.2 Notices of General Meeting**

- (a) Notice of every general meeting shall be given:
  - (i) in the manner authorised by Article 14.1:
    - (A) to every member and to each director; and
    - (B) to the auditor to the Company (if any).
- (b) No other person is entitled to receive notice of general meetings.

## **15. INDEMNITY**

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### **15.1 Indemnity of Officers, Insurance and Access**

- (a) The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- (b) Where the directors consider it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company or a subsidiary.
- (c) Where the directors consider it appropriate, the Company may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an

officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and

- (ii) bind itself in any contract or deed with any officer of the Company to make the payments
- (d) Where the directors consider it appropriate, the Company may:
- (i) give a former director access to certain papers, including documents provided or available to the directors and other papers referred to in those documents; and
  - (ii) bind itself in any contract with a director or former director to give the access.
- (e) In this Article:
- (i) ***officer*** means:
    - (A) a director or Company secretary; or
    - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company.

and includes a former officer.
  - (ii) ***duties of the officer*** includes, in any particular case where the directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, the subsidiary of the Company to any other corporation.
  - (iii) ***to the relevant extent*** means:
    - (A) to the extent the Company is not precluded by law from doing so;
    - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
    - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government or other body.

## **16. GIFT FUND**

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### **16.1 Establishment of a Gift Fund**

- (a) The Company may establish and maintain a fund (“Gift Fund”) for the primary purpose of the Company.
- (b) The Company will maintain a separate bank account for any Gift Fund so established.

### **16.2 Restrictions on activity of Gift Fund**

- (a) A Gift Fund may receive:
  - (i) gifts of money or property;
  - (ii) any money received by the Company because of those gifts.
- (b) A Gift Fund may not receive:
  - (i) income from sponsorship; or
  - (ii) income from commercial activities; or
  - (iii) proceeds of raffles, auctions or any other fundraising activities; or
  - (iv) the proceeds of any other activity of the Company.

### **16.3 Limits on use of Gift Fund**

The Company will use the following only for the primary purpose of the Company:

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

### **16.4 Disposition of the Gift Fund on winding up**

If:

- (a) the Gift Fund is wound up; or
- (b) the Company ceases to be a Deductible Gift Recipient pursuant to the Income Tax Act; or

- (c) the Company is wound up;

then any surplus assets of the Gift Fund will be transferred to one or more Deductable Gift Recipients as approved by the Australian Taxation Office pursuant to the Income Tax Act as the Company decides.

## **17. AMENDMENT**

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### **17.1 Amendment to Constitution**

- (a) Subject to Article 16.3(b), this Constitution cannot be amended, varied or replaced without a Special Resolution of members.
- (b) Despite any other provision of this Constitution, no amendment to Article 6.1 may be made by or in respect of the Company except as authorised in accordance with:
  - (i) a resolution by a majority of the Board; and
  - (ii) a Special Resolution of the members.