



**ARTHRITIS FOUNDATION OF AUSTRALIA  
(ARTHRITIS AUSTRALIA)  
ABN 67 002 598 594**

**CONSTITUTION**

As Amended 26th November 2021

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# ARTHRITIS FOUNDATION OF AUSTRALIA

ABN 67 002 598 594

## A COMPANY LIMITED BY GUARANTEE

### 1. INTERPRETATION

#### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**Affiliate Member** means any organisation accepted for membership as an affiliate member in accordance with clause 4.4;

**ASIC** means the Australian Securities and Investments Commission;

**Board** means the Board of Directors of the Company;

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales;

**Chairperson** means the Chairperson of the Company elected in accordance with clause 18.4;

**Chief Executive** means any person engaged by the directors under clause 24 to perform the office of "Chief Executive ";

**Commencement Date** means the date of adoption of this Constitution;

**Committee** means a Committee of Directors or a Committee of Directors and other persons appointed to such Committee by the Board formed under clause 18.6;

**Company** means Arthritis Foundation of Australia, a company limited by guarantee and registered without the word "Limited" in its name under section 150 of the Corporations Act;

#### **Confidential Information:**

- (a) means information (whether or not in material form) given to or gained by a Director or Officer before, during or after that person's term of Directorship, employment or engagement that relates to:
- (i) the Company; or
  - (ii) Consumers or suppliers of the Company; or
  - (iii) any funding, sponsorship or donation arrangements in respect of the Company; and
- (b) includes, but is not limited to:
- (i) trade secrets;
  - (ii) information relating to the business affairs, accounts work, marketing plans, prospects, price information, supplier lists,

- research, management, financing, business strategies, products, inventions, designs or processes;
- (iii) computer data bases and computer software; and
- (iv) data surveys, Consumer lists, specifications, drawings, records, reports and statements;

**Constitution** means this Constitution as amended from time to time;

**Consumer** means a person who has been directly affected by arthritis or any other musculoskeletal disease or condition and their carers;

**Consumer Director** means a person who is appointed to the Board to represent Consumers, who must also be a Consumer;

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

**Council of Advice** means the body established in accordance with clause 19.1;

**Default Notice** has the meaning given in clause 4.8;

**Director** means any person occupying the position of a Director of the Company, being an Independent Director, Consumer Director or Medical Director;

**Duties** includes, in any particular case where the Board considers 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;

**Gift** means a gift to the Company pursuant to the provisions of subdivision 30-A of the *Income Tax Assessment Act 1997* (Cth) and which is either a gift of cash or a gift of an asset made or transferred or given to the Company;

**Gift Fund** means the gift fund established under clause 26;

**Independent Director** means a Director who is not a Consumer Director or a Medical Director;

**Insolvency Event** means:

- (a) in relation to any entity:
  - (i) a receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity;
  - (ii) the entity suspending payments of its debts generally;
  - (iii) the entity being or becoming unable to pay its debts when they fall due or being unable to pay its debts within the meaning of the Corporations Act;
  - (iv) the entity entering into or resolving to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them; or

- (v) an application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to the entity; or
  - (vi) a resolution being passed or steps taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction, and
- (b) in relation to any natural person, that person:
- (i) being unable to pay his or her debts when due, or an application being made to declare that person bankrupt.
  - (ii) committing an act of bankruptcy or compounding with his or her creditors;
  - (iii) bringing his or her estate within the operation of any law relating to bankrupts;
  - (iv) becoming the subject of a sequestration order or entering into a composition, deed of assignment or deed of arrangement with his or her creditors; or
  - (v) taking the benefit of any Act that may be available for bankrupt or insolvent debtors;

**Instantaneous Communication Device** includes telephone, television, fax, email, videoconference or any other audio, visual or data device which permits instantaneous communication between Directors;

**Liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending an action for a liability incurred as an Officer;

**Medical Director** means a qualified medical practitioner who is appointed to the Board to provide expertise in the treatment of arthritis and/or any other musculoskeletal disease or condition;

**Members** means persons that are, or who are admitted as, members of the Company under clause 4;

**MOU** means any Memorandum of Understanding between the Company and an Affiliate Member setting out the roles, responsibilities and obligations of each party;

**Objects** means the objects for which the Company is established set out in clause 3;

**Office** means the registered office from time to time of the Company;

**Office Bearers** has the meaning given in clause 17.1;

**Officer** means:

- (a) a Director or Secretary or a director or secretary of a subsidiary of the Company; or
- (b) a person:



- (i) who makes or participates in making decisions that affect the whole, or a substantial part, of the business of the Company or a subsidiary of the Company;
- (ii) who has the capacity to affect significantly the Company's or a subsidiary of the Company's financial standing; or
- (iii) in accordance with whose instructions or wishes the Directors or the directors of a subsidiary of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attached to the person's professional capacity or as part of their business relationship with the Directors or the directors of a subsidiary of the Company or the Company or a subsidiary of the Company),

and includes a person who formerly held any of the above positions;

**Ordinary Member** means a member of the Company other than an Affiliate Member;

**Present** in connection with a meeting of Members, means present in person, by video conference, by teleconference, by corporate representative or by proxy (but not by attorney) at the meeting;

**Register** means the register of Members to be kept pursuant to the Corporations Act;

**Related Body Corporate** has the meaning given in the Corporations Act;

**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 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;

**Secretary** means any person appointed to perform all or any of the Duties of a Secretary of the Company or any person appointed to act temporarily as such;

**Special Resolution** has the meaning given to that term in the Corporations Act; and

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax Assessment Act 1936* (Cth).

## 1.2 Construction

In this Constitution unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other gender;

- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;
- (e) a reference to:
  - (i) a person includes a natural person 18 years or over, a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (iv) a right includes a benefit, remedy, discretion or power;
  - (v) time is to local time in New South Wales;
  - (vi) “\$” or “dollars” is a reference to Australian currency;
  - (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
- (f) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

## **2. NAME**

The name of the Company is: “Arthritis Foundation of Australia” or such other name as the members may approve in accordance with this Constitution and the Corporations Act.

## **3. OBJECTS**

- (a) The Company’s objects are:
  - (i) to initiate, carry out, co-ordinate or support on a national basis various activities providing direct relief from the distress and suffering of Consumers living with arthritis and other musculoskeletal diseases and conditions;
  - (ii) to improve the lives of Consumers suffering distress from arthritis and other musculoskeletal diseases and conditions through the direct and indirect provision of support services throughout Australia and providing leadership in the prevention, control and cure of these conditions;
  - (iii) to engage with physicians and other health professionals to increase their knowledge and understanding of arthritis and other musculoskeletal diseases and conditions so that they can better assist Consumers who suffer from and are caused distress by these conditions;

- (iv) to directly assist Consumers with their distress and suffering associated with arthritis and other musculoskeletal diseases and conditions through the provision of a national telephone helpline and website information services that directly assist Consumers to manage their condition and alleviate their suffering;
- (v) to institute or assist in the institution in any part of Australia of research into the cause and the means of cure or alleviation of distress or suffering caused by any form of arthritis or any other musculoskeletal disease or condition;
- (vi) to affiliate with or grant affiliation to any organisation upon such terms as the Company may in each case determine where in the opinion of the Company such affiliation would assist in the promotion or attainment of any of the Objects;
- (vii) to act as the federal organisation responsible for representing and communicating the views of Members and Consumers to the Australian Federal Government, relevant Federal Government Departments and where there is no Affiliate Member which has its principal place of business in a State or Territory, to the government of that State or Territory, as determined by the Board;
- (viii) to secure affiliation with organisations whether within or outside Australia having objects in whole or in part similar to the Objects and to collaborate with and secure an exchange of information with those organisations conducting research of the nature referred to above;
- (ix) to procure the Company to be registered as a body corporate or recognised in any city or territory of the Commonwealth of Australia and to establish, maintain and conduct branch offices in any town, city or region in the Commonwealth of Australia;
- (x) to act as the central body for the allocation of research funding in relation to the cause and means of cure or alleviation of distress or suffering caused by arthritis and other musculoskeletal diseases and conditions including endowing chairs, lectureships or fellowships at appropriate university medical schools for the purpose of conducting research; and
- (xi) to take a principal role in providing directly, and through other organisations, education in relation to arthritis and other musculoskeletal diseases and conditions;
- (xii) to establish or assist in the establishment, extension to, or conduct of special hospitals, special wards in general hospitals, clinics or other facilities for the investigation, management, treatment of, or alleviation of distress or suffering caused by, arthritis and other musculoskeletal diseases and conditions;
- (xiii) to establish or assist in the establishment of organisational structures relating to any aspect of therapy for, the support of, or the relief of distress and suffering of Consumers; and
- (xiv) to do all such things as are incidental to the attainment of any of the above Objects.

- (b) For the purposes of these Objects, the phrase “arthritis and other musculoskeletal diseases and conditions” is to be construed in its widest sense and encompasses all diseases and conditions of the joints, bones, muscles and nerves and associated or related structures of functions of the body.

## **4. MEMBERS**

### **4.1 Categories of Membership**

- (a) As at the Commencement Date, there are three classes of Members.
- (b) The three classes of Members are:
  - (i) Ordinary Member, being a person that is listed as an Ordinary Member in the Register at the Commencement Date;
  - (ii) Life Member, being a person that has given a sum of money or rendered a level of services in-kind to the Company of such magnitude as the Board from time to time determines worthy of a grant of Life Membership and is listed as a Life Member in the Register at the Commencement Date; and
  - (iii) Affiliate Members.
- (c) The Directors may establish classes of Members and prescribe and vary the qualifications, rights, privileges and obligations of all classes of Membership of the Company.
- (d) Where classes of Members have been established, the Directors may, subject to any approval requirement in the Corporations Act by resolution, reclassify or convert Members from one class to another.

### **4.2 Ordinary Members**

No further persons will be admitted to Ordinary Membership or Life Membership, however, the Board may resolve to award a current Ordinary Member with Life Membership at any time.

### **4.3 Affiliate Members**

Any organisation that:

- (a) forwards to the Secretary a written application for Affiliate Membership (in the form determined by the Board from time to time) agreeing to be bound by the Constitution;
- (b) provides evidence demonstrating that it complies with the criteria for Affiliate Members as set out in regulations made by the Board in accordance with clause 12(b); and
- (c) pays the then applicable Membership fee and pays any other annual or subscription fees payable,

may be admitted as an Affiliate Member by the Board by resolution of the Board in accordance with this Constitution.

#### **4.4 Determination of Application**

As soon as practicable after receipt of an application for Affiliate Membership in accordance with clause 4.3, the Board shall convene a meeting to consider the application. At the meeting the Directors may:

- (a) determine whether the applicant should be admitted to Affiliate Membership; and
- (b) determine whether or not the applicant meets the criteria for Affiliate Membership referred to in clause 4.3(b); or
- (c) postpone the consideration of the application and request further information to support the application, in which case, as soon as practicable after receipt of the requested information, the Board shall reconvene to consider the application and information supplied by the applicant.

#### **4.5 Notification**

- (a) Upon the Board accepting the application for Affiliate Membership, the Secretary will send to the person confirmation of that organisation's acceptance as an Affiliate Member.
- (b) If an application for Affiliate Membership is rejected, the Secretary must, as soon as practicable, notify the applicant that the application has been rejected and shall refund all application and subscription fees paid by the applicant in accordance with clause 4.2. In no case shall the Board or the Company be required to give any reason for the rejection of the applicant.

#### **4.6 Commencement of Membership**

For the avoidance of doubt, an applicant's Affiliate Membership commences upon the making of a Board resolution to that effect.

#### **4.7 Fees**

- (a) The Membership fee payable by each class of Member and the period for which such fee entitles Membership, will be determined by the Board from time to time. The Board may grant any concession with regards to Membership fees as it thinks fit, including the full or partial waiver of all or any of such fees, subject to conditions (if any) determined by the Board.
- (b) The annual Membership fee shall be payable annually in advance on the first Business Day of the financial year determined in accordance with clause 27.3 or such other Business Day as the Board determines.
- (c) A Member which ceases to be a Member before any fee becomes due and payable shall not be liable for that fee.
- (d) Subject to clause 4.7(c), resignation or other termination of a Member's Membership of the Company will not relieve a Member of responsibility for any financial obligations under this Constitution, including fees and other amounts due and payable by the Member to the Company, accruing up to the effective date of termination.

#### **4.8 Default in payment of Membership fees**

- (a) Should a Member or an Affiliate Member fail to pay any Membership fee or an Affiliate Member fail to pay any administration fee due and payable under an MOU within thirty (30) days of the due date for such payment, the

Company may, while any such fee remains unpaid, give notice (**Default Notice**) to that Member requiring payment of the unpaid amount.

- (b) The Default Notice given by the Company must:
  - (i) name a further day (not earlier than fourteen (14) days from the date of the notice) by which the payment required by the Default Notice is to be made; and
  - (ii) state that if there is no payment by that time the Membership of that person may be forfeited.
- (c) If:
  - (i) a Member or an Affiliate Member does not comply with any Default Notice in respect of a Membership fee within the period specified, the Board may declare the person's Membership forfeited and the member thereupon ceases to be a Member of the Company; and
  - (ii) if an Affiliate Member does not comply with any Default Notice in respect of an administration fee within the period specified, that Affiliate Member will cease to be entitled to the Affiliate Members' benefits provided in the relevant MOU.

#### **4.9 Cessation of Membership**

A person ceases to be a Member if:

- (a) the Member resigns his or her Membership by giving one month's written notice to the Secretary or such lesser notice period as may be accepted by the Board;
- (b) an Insolvency Event occurs in relation to that Member;
- (c) the Member becomes a person liable, or a person whose assets are liable, to any control or administration under any law relating to physical or mental health;
- (d) the Member is expelled from Membership in accordance with clauses 4.10 and 4.11;
- (e) the Member dies; or
- (f) their Membership is forfeited in accordance with clause 4.8.

#### **4.10 Expulsion from Membership**

- (a) Subject to clause 4.11, if in the opinion of the Board:
  - (i) a Member's conduct is detrimental or prejudicial to the welfare, interests, character or Objects of the Company;
  - (ii) a Member wilfully refuses or neglects to comply with this Constitution or any regulations made pursuant to this Constitution;
  - (iii) a Member ceases to satisfy the criteria for admission to Membership of the class to which the Member has been admitted,

the Board may by Special Resolution determine to expel such person from Membership of the Company.

- (b) A Member expelled from the Company does not have any claim on the Company, its funds or property.

#### **4.11 Expulsion Procedure**

- (a) At least twenty-one (21) days before the Board holds a meeting to pass a resolution pursuant to clause 4.10, the Board must give a written notice to the Member (**Expulsion Notice**) which includes:
  - (i) a description of the allegations against the Member;
  - (ii) the proposed resolution for the Member's expulsion; and
  - (iii) a statement that the Member has a right to address the allegations either orally at the meeting or by giving the Secretary a written statement for circulation to the Directors.
- (b) Either prior to or at the meeting of the Board, the person may request the Board to elaborate upon any of the particulars set forth in the Expulsion Notice. The Board must use all reasonable endeavours to comply with such a request.
- (c) A Member who appears at a Board meeting to address the allegations referred to in clause 4.11(a)(i) shall be entitled to speak for a reasonable time, such time to be determined by the Chairperson; and
- (d) A statement given under paragraph 4.11(a)(iii) must be circulated to the Board before the meeting or, if there is insufficient time, read out at the meeting before the resolution is considered, unless the statement is more than 1,000 words or is considered defamatory by the Chairperson.

### **5. REGISTER OF MEMBERS**

- (a) The Secretary must keep the Register at the Office and must enter in the Register in respect of each Member:
  - (i) the full name and address of that person or Affiliate;
  - (ii) the category of Membership of the person; and
  - (iii) the date on which that person becomes and ceases to be a Member.
- (b) Each Member must notify the Company in writing of any change in that Member's name, address, facsimile number or email address, within one (1) month after the change.

### **6. GENERAL MEETINGS**

#### **6.1 Annual general meeting**

An annual general meeting of the Company must be held in accordance with the Corporations Act.

## **6.2 Holding of general meetings**

- (a) General meetings are to be held at the times and places resolved by the Company in general meetings or, if no time or place is resolved, as resolved by the Board.
- (b) The Company may hold a meeting of its members at two or more venues using any technology that gives the members a reasonable opportunity to participate.

## **6.3 Convening of general meetings**

- (a) The Directors may at any time and must upon a written requisition made by at least five percent (5%) the total Membership in accordance with section 249D of the Corporations Act, convene a general meeting of the Company.
- (b) The written request for a general meeting by the Members must:
  - (i) state the resolution/s to be proposed at the meeting;
  - (ii) be signed by all the Members requesting the meeting;
  - (iii) be given to the Company at the Office; and
  - (iv) may consist of several documents in similar form, each signed by one or more of the Members making the requisition.
- (c) The Board may by notice not later than seventy-two (72) hours prior to the time of the meeting, change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the Members or the Court under the Corporations Act. Any meeting so postponed shall be taken to have been duly convened under the first notice.
- (d) If a general meeting is called and arranged to be held under section 249D of the Corporations Act, the Directors may not:
  - (i) postpone it beyond the date by which section 249D requires it to be held; or
  - (ii) cancel it without the consent of the requisitioning Members.

## **6.4 Notice of meetings**

- (a) At least twenty-one (21) days prior notice must be given of a meeting of Members unless the Corporations Act provides otherwise. The notice must specify the place, date and time of the meeting and in the case of special business, the general nature of that business and any other information required by the Corporations Act.
- (b) A notice convening a general meeting may be given to each Member, each Director, the auditor for the time being of the Company and each other person to whom notice is required to be given pursuant to the Corporations Act, either personally, by post, courier, facsimile, email or any other form of wire or wireless communication.
- (c) Except as required by the Corporations Act, no other person is entitled to receive notices of general meetings.
- (d) A notice of meeting sent by post is taken to be delivered on the Business Day after it is posted.



- (e) A notice of meeting sent by facsimile or other electronic means is taken to be received on the Business Day that it is sent.

#### **6.5 Omission to give notice**

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

#### **6.6 Ordinary and Special business**

- (a) Other than items of business requiring a Special Resolution pursuant to the provisions of the Corporations Act or this Constitution, all other items of business to be conducted at a meeting of Members will be dealt with as ordinary business and will be passed upon the vote in favour of at least fifty percent (50%) of the votes cast by Members Present and entitled to vote on the resolution.
- (b) Business conducted at an annual general meeting for:
  - (i) the confirmation of the minutes of the preceding meeting;
  - (ii) the receipt and consideration of the annual financial report and the reports of the Directors and the auditors;
  - (iii) the appointment of the auditor of the Company;
  - (iv) the election of Directors; and
  - (v) the transaction of any business which under the Corporations Act or this Constitution is required to be transacted,will be dealt with as ordinary business.

#### **6.7 Resolutions to amend Constitution**

- (a) A resolution to amend this Constitution or this clause 6.7 shall be by Special Resolution of Members Present at the meeting.
- (b) The Company must notify the Australian Taxation Office and ASIC of any amendment to this Constitution.

### **7. PROCEEDINGS AT GENERAL MEETINGS**

#### **7.1 Quorum**

- (a) No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business.
- (b) Six (6) Members Present constitute a quorum for the transaction of the business of a general meeting.

#### **7.2 Lack of quorum**

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

- (a) in the case of a meeting convened upon the request of the Members, the meeting is dissolved; and

- (b) in any other case, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors determine. If a quorum is not present within thirty (30) minutes from the scheduled start of a meeting adjourned in accordance with this clause, the meeting is dissolved.

### **7.3 Departure of Members Affecting Quorum**

If a quorum is present at the time appointed for the meeting (or within thirty (30) minutes after the time appointed) but sufficient Members depart so that there is no longer a quorum, the Members Present may adjourn the meeting until a quorum is present, at which time any business may be transacted that would have been transacted at the meeting as originally called.

### **7.4 Chairing Members' Meetings**

- (a) The Chairperson of the Board shall preside over every meeting of Members.
- (b) If there is no Chairperson or if the Chairperson is not present within thirty (30) minutes after the time appointed for the meeting or is unable or unwilling or refuses to chair the meeting, the Deputy Chairperson (if any) must chair the meeting.
- (c) If there is no Deputy Chairperson, or if the Deputy Chairperson is not present within thirty (30) minutes after the time appointed for the meeting or is unable or unwilling or refuses to chair the meeting, the Members Present and entitled to vote at the meeting must choose another Director to chair the meeting.
- (d) If no Director is so chosen or if none of the Directors present are willing to assume the chair, the Members Present must choose one of their own number to chair the meeting.

### **7.5 Adjournment**

The chair of a general meeting may, with the consent of the meeting (and must if directed by the meeting), adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **7.6 Notice of adjourned meeting**

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned general meeting, unless the meeting is adjourned for twenty-one (21) days or more, in which case new notice of the adjourned meeting must be given in accordance with clause 6.4.

### **7.7 Decision on resolutions**

- (a) Subject to clause 7.7(c), a resolution put to the vote at a general meeting of the Company, is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chair of the meeting (other than a resolution for the election of the chair of a meeting or a resolution for the adjournment of a meeting) or by not less than three (3) Members Present and having the right to vote at the meeting.
- (b) In the event of an equality of votes on a show of hands or on a poll the chair of the meeting shall have a casting vote in addition to any vote to which the chair may be entitled as a Member.

- (c) A question arising at a general meeting of the Company relating to the order of business, the entitlement of any person to attend or vote at the meeting, any procedure or the conduct of the meeting must be referred to the chair of the meeting, whose decision is final.

#### **7.8 Minutes as evidence of result**

Unless a poll is duly demanded in accordance with clause 7.7(a), a declaration by the chairperson of the meeting that a resolution has, on the show of hands, been carried or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company signed by the chair of the meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

#### **7.9 Taking of poll**

- (a) If a poll is duly demanded it must be taken before the close of the meeting in the manner and at the time and place, as the chair of the meeting may direct. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded provided that a poll on the election of a chair of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.
- (b) The demand for a poll does not prevent the meeting continuing for the transaction of any business other than the question on which a poll has been demanded.
- (c) A poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.
- (d) The demand for a poll may be withdrawn.
- (e) In the case of a dispute as to the admission or rejection of a vote on a show of hands or on a poll, the chair of the meeting must determine the dispute and the determination made in good faith will be final and conclusive.

#### **7.10 Rights of Officers and Advisers to attend General Meetings**

- (a) Any Director and the Company Secretary shall be entitled to attend and to speak at any general meeting.
- (b) The Company's auditor (or auditor's representative) is entitled to attend and speak at any general meeting, on any part of the business of the meeting that concerns the auditor in their capacity as auditor. The auditor's right to attend and speak at any meeting is not affected by the auditor retiring at the meeting or a resolution being passed removing the auditor from office.
- (c) Any other person (whether a Member or not) requested by the Board to attend any general meeting shall be entitled to be present and, at the request of the chair of the meeting, to speak at that general meeting.

#### **7.11 Circulating resolutions**

Nothing in this Constitution limits the Company's power under the Corporations Act to pass a resolution as a circulating resolution, including a resolution circulated by email signifying assent to the resolution.

## **8. REPRESENTATION AND VOTING OF MEMBERS**

### **8.1 Representation**

Members shall have the right to attend and vote at meetings of Members, provided they have paid all fees due and payable at the date of the notice of meeting on or before the date of the meeting.

### **8.2 Entitlement to vote**

Subject to this Constitution and any rights or restrictions attached to any class of Membership, at a general meeting every Member Present has one (1) vote, whether on a show of hands or on a poll.

## **9. PROXIES**

### **9.1 Appointment of proxy**

Subject to section 249X(3) of the Corporations Act, a Member may appoint one (1) proxy only, who may but need not be a Member of the Company, and that proxy is entitled to vote on a show of hands or on a poll.

### **9.2 Instrument of proxy**

The instrument appointing a proxy must be in writing signed by the appointor. An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution. Where an instrument contains such direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated. The instrument appointing a proxy is valid for any adjournment of the meeting as well as for the meeting to which it relates, unless the contrary is stated.

### **9.3 Proxy to be deposited at the Office**

- (a) The instrument appointing a proxy and the authority (if any) under which it is signed, or a certified copy of the authority, must be received by the Company not later than 5.00 pm on the Business Day before the general meeting or adjourned meeting or taking of the poll, at which the person named in the instrument proposes to vote. If this clause 9.3 is not complied with, the instrument of proxy will be invalid.
- (b) An instrument appointing a proxy is received when it is received at any of the following:
  - (i) the Office;
  - (ii) a facsimile number at the Office; or
  - (iii) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

### **9.4 Form of proxy**

- (a) The Board shall from time to time determine the form of the instrument of proxy, which will be valid, if it is signed by the Member making the appointment.

- (b) An instrument of proxy in which the name of the appointee is not filled in is taken to be given in favour of the chair of the meeting to which it relates.

#### **9.5 Proxy's Authority**

A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting, unless the Member directs otherwise.

#### **9.6 Power to demand poll**

The instrument appointing a proxy is taken to confer authority to demand, or join in demanding, a poll.

#### **9.7 Identification of proxy**

The chair of a meeting may require a person acting as a proxy to establish to the satisfaction of the chair that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person does not comply, that person may be excluded from voting either upon a show of hands or upon a poll.

### **10. CORPORATE REPRESENTATIVES**

#### **10.1 Power to appoint**

- (a) An Affiliate Member may appoint an individual from their board to exercise all or any of the powers the Affiliate Member may exercise:
  - (i) at meetings of the Company's members;
  - (ii) at meetings of creditors of the Company; and
  - (iii) relating to resolutions to be passed without meetings.
- (b) An Affiliate Member may appoint more than one corporate representative however, only one representative may exercise the Affiliate Member's powers at any one time.

#### **10.2 Form and scope of appointment**

- (a) The instrument appointing a corporate representative under clause 10.1 shall be in writing under the name of the Affiliate Member, and must be signed by an authorised representative of the Affiliate Member.
- (b) If the instrument is intended to be relied upon by the Affiliate Member for the purposes of a general meeting of the Company, the instrument appointing the corporate representative must be given to the Secretary not less than one (1) week before the date fixed for that meeting.
- (c) The appointment may set out restrictions on the corporate representative's powers.
- (d) Unless otherwise specified in the appointment, the corporate representative may exercise all the powers that the Affiliate Member is entitled to exercise at a Members' meeting or in voting on a resolution.
- (e) If the appointment is to be by reference to the position held, the instrument appointing the corporate representative must specify the position.

### **10.3 Duration of appointment**

- (a) The appointment of a corporate representative may be a standing appointment.
- (b) An appointment of a corporate representative may be revoked by the appointing Affiliate Member at any time by notice in writing to the Company.

## **11. DIRECTORS**

### **11.1 Number of Directors**

Subject to clauses 11.2 and 13.1, the Board shall consist of a minimum of six (6) and a maximum of eight (8) Directors, of whom:

- (a) one is a Medical Director;
- (b) one is a Consumer Director; and
- (c) the remainder are Independent Directors.

### **11.2 Change to the Number of Directors**

The Company in general meeting may by resolution increase or reduce the number, or alter the composition, of Directors specified in clause 11.1 and may determine the number of Directors to retire by rotation in accordance with clause 14.

### **11.3 Directors as Members**

Directors may, but need not be, Members.

### **11.4 No remuneration**

Except as provided for in clause 33, no Director may receive any remuneration for his or her services as a Director.

### **11.5 Vacancies**

- (a) If any Director's position is vacated, that vacancy may be filled by a person appointed by the Board.
- (b) A person appointed by the Board to fill a casual vacancy remains in office for the balance of the tenure of the Director whom they replaced. A person retiring in accordance with this clause may be elected as a Director for up to two (2) further terms of up to three (3) years.
- (c) The appointment of a person to fill a casual vacancy will not be taken into account in determining the Directors whose tenure is to expire by rotation at that meeting under clause 13.

## **12. MANAGEMENT OF THE COMPANY**

- (a) Subject to the Corporations Act and any other provision of this Constitution, the business and affairs of the Company shall be managed by the Board which may exercise all the powers and do everything that the Company may exercise or do and which is not required to be exercised or done by the Company in general meeting. Without limitation, the Board may exercise all the Company's powers to:
  - (i) borrow or otherwise raise money;

- (ii) charge Company property; and
  - (iii) issue debentures or give any other security for a debt, Liability or obligation of the Company or (subject to clause 33) any other person.
- (b) The Board may from time to time make regulations (not being inconsistent with this Constitution) for the proper control, administration and internal management of the Company and such other matters as the Board thinks fit, provided that such regulations are not inconsistent with this Constitution.
- (c) The Board may:
  - (i) appoint or employ a person to be an Officer, agent or attorney of the Company with powers, authorities, discretions and Duties, including those vested in or exercisable by the Board for such period and subject to such conditions as the Board thinks fit;
  - (ii) authorise an Officer to delegate powers and Duties vested in that Officer; and
  - (iii) subject to clause 14.3, dismiss or remove any agent, Officer or attorney with or without cause.

## **13. APPOINTMENT OF DIRECTORS**

### **13.1 Current Directors**

- (a) Subject to clause 13.1(b), each Director in office at the Commencement Date shall remain in office subject to this Constitution until the Directors are appointed in accordance with clause 13.5 at the first annual general meeting following the Commencement Date.
- (b) Each Director must retire at the end of the first annual general meeting held after the Commencement Date and, subject to clauses 13.3(c) and 13.3(d), is eligible to be nominated as a Director in accordance with clause 13.3(b), and if elected or appointed in accordance with clause 13.5(a) shall remain in office notwithstanding clause 13.1(a).

### **13.2 Director Nominations**

- (a) The Directors shall, at least forty-five (45) days prior to each annual general meeting, call for nominations for election as Directors from Members.
- (b) Subject to clauses 13.3(c) to (e), and provided that the position of Medical Director, Consumer Director and/or Independent Director (as the case may be) is to be vacated at the upcoming Annual General Meeting in accordance with clause 13.1(b) or 14.1 (as the case may be), each Member may nominate up to a total of three (3) persons in aggregate to be elected to the following positions:
  - (i) Medical Director;

- (ii) Consumer Director; and
  - (iii) Independent Director.
- (c) A person may not be appointed as a Director and if appointed, must not remain as a Director, if that person is or becomes an officer or employee of:
- (i) an Affiliate Member; or
  - (ii) any Related Body Corporate of any Affiliate Member.

or holds any of the above positions at the date on which the candidate is elected or appointed as a Director in accordance with clause 13.5(a). For avoidance of doubt, a candidate may be nominated as a Director under clause 13.2(b) without complying with this clause but must resign from the relevant position immediately upon the candidate being appointed or elected to the Board.

- (d) Each candidate nominated by a Member in accordance with clause 13.3(b) must have expertise or relevant experience in one or more of the following categories:
- (i) personal or professional experience or expertise in the treatment of arthritis or in the provision of health services generally;
  - (ii) a Chartered Accountant or Certified Practising Accountant with at least five (5) years experience in practice;
  - (iii) a person with a relevant tertiary qualification in law with at least five (5) years experience in practice and/or appropriate experience in the not for profit sector;
  - (iv) a person with a relevant tertiary qualification in business studies, marketing, finance, human resources and/or management:
    - (1) with at least five (5) years general management experience in either the not for profit sector or the for profit sector; or
    - (2) at least five (5) years experience in their chosen field; or
  - (v) a person meeting one or more of skills or relevant experience requirements agreed by a majority of Directors at the time to be required for a person to be nominated for appointment as a Director of the Company.

- (e) In addition to the criteria specified in clause 13.3(d), each candidate for:
- (i) the position of Medical Director must satisfy the criteria for Medical Directors; and
  - (ii) the position of Consumer Director must satisfy the criteria for Consumer Directors,

specified in regulations made in accordance with clause 12(b) or as otherwise advised by the Board to Members from time to time.



- (f) All nominations of candidates for election as Directors must be received in writing at least twenty-eight (28) days before the relevant annual general meeting (**Nominations Closing Date**).
- (g) The nominations must be duly signed by an authorised representative of the Affiliate or by two (2) Ordinary Members (as the case may be) and include a consent to act as a Director signed by the candidate and any other information required by the Board. The nomination must include particulars of the candidate, provided that such particulars shall not exceed one A4 page.

### **13.3 Director Candidate List**

- (a) The Secretary must compile a list of candidates (**Director Candidate List**) from all duly completed nominations received by the Secretary before the Nominations Closing Date.
- (b) The Board may nominate such additional candidates for inclusion in the Directors Candidate List as it thinks fit.
- (c) The Secretary must provide the Director Candidate List to all Members not less than twenty-one (21) days (or such lesser period as is from time to time permitted by the Corporations Act) prior to the annual general meeting at which an election is to take place.
- (d) No person except a Director whose tenure has expired, a person nominated in accordance with clause 13.3 or recommended by the Board for election in accordance with clause 13.4(b) is eligible to be included in the Director Candidate List.

### **13.4 Election of Directors by Members**

- (a) In the event that more candidates have been nominated than vacancies exist on the Board, the election of Directors by Members shall take place by ballot in accordance with clause 13.5(c).
- (b) In any other case, the appointment of Directors shall take place by way of resolution of Members Present at the annual general meeting.
- (c) Any ballot to elect Directors in accordance with clause 13.5(a), will be supervised by the Secretary or such other person as may be appointed by the Board to act as returning officer. Voting cast in any such ballot is to be in order of preference, by the Member ranking a maximum of ten (10) candidates in order from the most preferred candidate to least preferred candidate. In the case of an equality of votes for two or more candidates for the same position, a further ballot will be taken to determine the successful candidate.

## **14. DIRECTOR RETIREMENT AND REMOVAL**

### **14.1 Director's retirement by rotation**

- (a) Subject to clause 14.1(c) to (f), the tenure of at least two (2) Directors holding office prior to each annual general meeting less the number of Directors who have retired or been removed since the last annual general meeting, will automatically expire. For avoidance of doubt, this provision shall not apply to Directors in office at the Commencement Date, all of whom must retire at the first annual general meeting following the Commencement Date.

- (b) For the purpose of clause 14.1(a), the Directors whose tenure will automatically expire shall be determined in the following order:
- (i) firstly, those Directors that must resign due to the expiration of their three (3) year term of office under clause 14.1(d); then
  - (ii) secondly, and subject to clause 14.1(c), those Directors who have held the office of Director of the Company for the longest continuous period of time. If two (2) or more Directors have held office for an equal continuous period of time, then the selection between them shall be determined by lot administered by the Secretary.
- (c) No Director will have his or her tenure automatically expire due to the operation of clause 14.1(a) more than once in every three (3) year period.
- (d) Subject to the operation of clause 13, each Director is elected for a term of three (3) years expiring upon the commencement of the third annual general meeting held after the Director was last appointed.
- (e) Subject to clause 14.1(f), a Director whose tenure expires is eligible for re-election without needing to give any prior notice of his or her intention to submit himself or herself for re-election, provided that no Director shall serve for more than three (3) consecutive terms in office.
- (f) A Chairperson who would otherwise compulsorily retire under clause 13.2 or under this clause may seek nomination for an extension of his or her office as Chairperson (and Director):
- (i) until a term of not more than three (3) years as Chairman is completed, in the case of retirement pursuant to clause 13.2; and
  - (ii) in any other case, for a further term of three (3) years, provided however that a Chairperson may serve up to, but not more than, six (6) consecutive years in office, from the first date on which he or she was appointed Chairperson in accordance with clause 17.2, and
- in either case, such an extension of office shall be approved by both a resolution of Directors voting in a secret ballot at a Directors' meeting to be held immediately prior to the relevant Annual General Meeting and by a resolution of Members at the relevant Annual General Meeting.
- (g) A retiring Director shall be entitled to act as a Director throughout the meeting at which he or she retires.

## **14.2 Director Resignation**

Any Director may resign from office upon giving notice in writing to the Secretary of the Director's intention to do so and such resignation takes effect upon the expiration of the notice or its earlier acceptance by the Board.

## **14.3 Removal of Directors**

- (a) Subject to clause 14.3(b), the Company in general meeting may, by resolution, remove any Director from office by special resolution.
- (b) No resolution for the removal of a Director from office is to be put to a general meeting, unless notice signed by a Member duly qualified to vote at

that meeting and signifying the intention of that Member to propose that resolution is received by the Company not less than two (2) months before the date appointed for holding the meeting.

- (c) The Director who is the subject of the notice referred to in clause 14.3(b) may give the Company a written statement for circulation to members and may request and must be granted permission to speak to the motion at the meeting (whether or not the Director is a member of the Company).
- (d) A statement given under paragraph 14.3(c) must be circulated to the Board before it is despatched to Members or, if there is insufficient time for the statement to be despatched to Members, read out at the meeting before the resolution is considered by the Members Present, unless the statement is more than 1,000 words or is considered defamatory by the Chairperson.

#### **14.4 Disqualification Of Directors**

- (a) The office of a Director becomes vacant if:
  - (i) the Director becomes of unsound mind or a person liable, or whose assets are liable, to any control or administration under any law relating to physical or mental health;
  - (ii) an Insolvency Event occurs in relation to that Director;
  - (iii) the Director is removed or is prohibited from continuing in office pursuant to this Constitution or the Corporations Act;
  - (iv) the Director resigns by notice in writing to the Secretary or refuses to act;
  - (v) the Director is absent from two (2) consecutive meetings of the Board without leave of absence from the Chairperson and the Board resolves that the Director's office be vacated;
  - (vi) the period for which the Director is appointed expires; or
  - (vii) the Director dies.
- (b) No proceedings of the Board, or any resolution passed at any meeting, will be invalidated by reason of any Director taking part or concurring in such meeting or resolution being then disqualified until an entry is made in the minutes of the Board of the Director's office having been so vacated.

### **15. DIRECTOR'S OBLIGATIONS**

#### **15.1 Confidentiality**

A Director shall:

- (a) keep confidential all Confidential Information; and
- (b) not disclose any Confidential Information to any person, except:
  - (i) as required by law;
  - (ii) with the prior written consent of the Company; or
  - (iii) to the Company's agents, employees or advisers in the proper performance of the Director's responsibilities and Duties under

this Constitution and as may be determined from time to time by the Board.

**15.2 Use**

No Director shall use any Confidential Information for the benefit of any person except the Company.

**15.3 Confidential Information in the public domain**

If any Confidential Information is lawfully within the public domain then to the extent that the Confidential Information is public, and subject to clause 15.4, a Director's obligations under clause 15.1 shall cease in respect of that Confidential Information.

**15.4 Uncertainty**

If there is uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any Confidential Information is lawfully within the public domain,

that information shall be deemed to be Confidential Information and not within the public domain, unless the Director is advised by the Board in writing to the contrary.

**15.5 Security**

A Director shall:

- (a) maintain proper and secure custody of all Confidential Information; and
- (b) use his or her best endeavours to prevent the use or disclosure of the Confidential Information by third parties.

**15.6 Delivery or destruction of Confidential Information**

- (a) A Director shall immediately deliver to the Company all Confidential Information that is physically capable of delivery:
  - (i) at the end of that person's term as a Director; and
  - (ii) at any time at the request of a person authorised by the Board.
- (b) Instead of delivering Confidential Information, the Board may direct the Director to destroy Confidential Information and certify in writing to the Company that the Confidential Information has been destroyed.
- (c) The Board may direct that Confidential Information contained in computer software or data be destroyed by erasing it from the magnetic media on which it is stored so that the information cannot be recovered or reconstructed.

**15.7 Director must not make copies**

- (a) A Director must not make any copy or summary of any Confidential Information, except if required to do so in the course of his or her Duties as a Director.

- (b) If a Director is required to make a copy or summary of Confidential Information in the course of the Director's Duties and functions as a Director, the copy or summary belongs to the Company.

#### **15.8 Obligations to continue**

- (a) A Director shall comply with the obligations under this clause 15 at all times during and after that person's term as a Director.
- (b) The Company may enforce the obligations under this clause 15 at any time.

#### **15.9 No limitation**

Nothing in this clause 15 shall limit any other duty of confidentiality of a Director at law or in equity.

### **16. DIRECTOR'S INTERESTS**

#### **16.1 Disqualification**

Subject to the Corporations Act and clause 33:

- (a) a Director is not disqualified by the Director's office from contracting with the Company in any capacity and may enter into any arrangement, contract or dealing with the Company in any capacity;
- (b) no Director or proposed Director is disqualified by that office from becoming or remaining a director of any company in which the Company is in any way interested or which is in any way interested in the Company;
- (c) provided that the Corporations Act and this clause have been complied with by a Director, no contract, agreement or arrangement in which the Director is in any way interested, entered into by or on behalf of the Company can be avoided merely because of that Director's interest and the fact that the Director signed the document evidencing the contract, agreement or arrangement shall not in any way affect its validity;
- (d) a Director shall not, and shall procure that any company in relation to which he or she is a director shall not, without the Board's prior approval, directly or indirectly supply goods or services to the Company for valuable consideration where such goods or service can be satisfactorily obtained elsewhere; and
- (e) no Director who:
  - (i) enters into a contract, agreement or arrangement in which the Director has an interest; or
  - (ii) is a director of the other company with which the Company has entered into the contract, agreement or arrangement,

is liable to account to the Company for any profits or remuneration realised by that Director as a result of him or her being interested or being a director of the other company, if the Director has declared the Director's interest in the matter in accordance with clause 16.2 and not contravened this Constitution or the Corporations Act in relation to the matter.

#### **16.2 Declaration of interest**

- (a) The nature of a Director's interest in any contract, agreement or arrangement must be declared by that Director at a meeting of the Directors in accordance

with the Corporations Act as soon as practicable after the relevant facts have come to his or her knowledge.

- (b) A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation is a sufficient declaration under this clause as regards the Director and the transactions, provided that the extent of that interest is not materially greater at the time of first consideration of the relevant matter by the Board than was stated in the Notice and the Director has complied with section 192 of the Corporations Act.
- (c) After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation.
- (d) The Secretary must record in the minutes any declaration made or any general notice given by a Director under this clause.

### **16.3 Votes by interested Directors**

Subject to the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:

- (a) must not vote on the matter unless:
  - (i) the Directors have passed a resolution that the interest does not disqualify the Director from considering or voting on the matter;
  - (ii) the interested Director is entitled to be present and vote as a result of a declaration or order made by the ASIC under the Corporations Act; or
  - (iii) the interested Director is otherwise permitted by the Corporations Act to be present and vote; and
- (b) may not be present while the vote is taken.

### **16.4 Director's Conflicts of Interest**

If a Director holds any office or possesses any property such that he or she might have Duties or interests which directly or indirectly conflict with his or her Duties or interests as Director, that Director must declare at a meeting of the Directors the fact, nature, character and extent of the conflict.

## **17. OFFICE BEARERS**

### **17.1 Office Bearers**

The Office Bearers of the Company shall consist of a Chairperson, a Deputy Chairperson and a Treasurer, each of whom shall be a Director of the Company and such number of Emeritus Directors as the Board may from time to time appoint in accordance with clause 22.

### **17.2 Appointment and Termination of Office Bearers**

- (a) At the first meeting of the Board following each annual general meeting, the Board shall appoint Directors to be the Chairperson, the Deputy Chairperson and the Treasurer of the Company.

- (b) If the position of any Office Bearer becomes vacant, the Board must elect from its members a new Office Bearer to fill that vacancy.
- (c) Each appointment, whether pursuant to clause 17.2(a) or (b), shall expire on the commencement of the first Board meeting following the next annual general meeting.
- (d) Office Bearers will be eligible for re-election at such Board meeting and may serve an unlimited number of times.
- (e) The Board shall determine the powers and Duties of each Office Bearer and may terminate a Director's appointment as an Office Bearer at any time.

### **17.3 Chairperson to preside at annual general meeting**

Despite clause 13 and subject to clause 7.4, the person holding the office of Chairperson of the Board immediately before the commencement of an annual general meeting shall preside as Chairperson of that annual general meeting.

## **18. PROCEEDINGS OF DIRECTORS**

### **18.1 Procedure generally**

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time by written notice to the Secretary request that a meeting of the Board be convened, and the Secretary shall forthwith on the requisition of a Director, convene a Board meeting.

### **18.2 Quorum**

- (a) The quorum for a Board meeting shall be the presence of more than one-half of the number of Directors (or their alternate) entitled to vote and then holding office.
- (b) No business may be conducted unless a quorum is present.
- (c) If the number of Directors in office at any time is not sufficient to constitute a quorum at a Board meeting, the remaining Directors must act as soon as possible to:
  - (i) increase the Directors to a number sufficient to constitute a quorum required under the Constitution;
  - (ii) convene a general meeting of the Company for that purpose; or
  - (iii) appoint additional Directors,

and until that has happened the Directors may only act if and to the extent that there is an emergency requiring them to act.

### **18.3 Notice of Board meetings**

- (a) Reasonable notice of a Board meeting is to be given to all Directors except to a Director whom the Secretary when giving notice to the other Directors reasonably believes to be outside Australia.
- (b) A notice of meeting must:

- (i) specify the date, time and place of the meeting;
  - (ii) indicate the general nature of the business to be conducted; and
  - (iii) be given at least ten (10) days before the date of the meeting (or such shorter period as the Directors may agree).
- (c) Non-receipt of notice of a Board meeting by, or a failure to give notice of a Board meeting to, a Director does not invalidate any act matter or thing done by or resolution passed at the meeting if such non-receipt or failure occurred by accident or error.

#### **18.4 Chair of Board meetings**

The Chairperson shall preside at every Board meeting, or if no Chairperson has been elected, or if at any Board meeting the Chairperson is not present within thirty (30) minutes after the appointed time for holding the meeting, or if being present the Chairperson is unwilling to preside, the Deputy Chairperson (if any) shall preside or if no Deputy Chairperson has been elected, or if the Deputy Chairperson is not present or is unwilling to preside at the meeting, then the Directors who are present may choose one of their number to chair the Board meeting.

#### **18.5 Determinations**

- (a) Subject to this Constitution, questions arising at any Board meeting are to be decided by a majority of votes of Directors present and voting and such decision shall for all purposes be taken as a decision of the Board.
- (b) Each Director has one (1) vote and a determination by a majority of the Directors will for all purposes be deemed a determination of the Directors.
- (c) If there is an equality of votes at a meeting at which a quorum is present, the motion is lost and the person presiding shall have a second or casting vote in addition to his or her deliberative vote.

#### **18.6 Delegation to Committees**

- (a) The Board may delegate any of its powers to one or more Committees consisting of one or more Directors or other persons as the Board thinks fit.
- (b) Any Committee formed by the Board must comply with this Constitution, the Corporations Act and the regulations that may be imposed on it by the Board in exercising the Committee's delegated power. A power so exercised will be taken to have been exercised by the Board.

#### **18.7 Procedure of Committees**

- (a) Meetings of Committees consisting of more than one person are governed by the clauses of this Constitution regulating the meetings of the Directors so far as they are applicable.
- (b) The number of persons whose presence at a meeting of a Committee is necessary to constitute a quorum is the number determined by the Board, and if not so determined is two (2).
- (c) 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 Board are required by the Corporations Act to be made, entered and signed.



- (d) Committees will regularly advise and report to the Board. The Board will give due consideration, and respond, to the recommendations of the Committees.

#### **18.8 Validation of irregular acts**

Any act done at any Board meeting or by a Committee or by any person acting as a Director will be valid even if it is later discovered:

- (a) that there was some defect in the appointment or continuance in office of a Director or such other person; or
- (b) that any of them was disqualified or had vacated office or were not entitled to vote.

#### **18.9 Board Meetings by Instantaneous Communication Device**

- (a) For the purposes of this Constitution and the Corporations Act, each Director, on becoming a Director (or the Commencement Date) consents to the use of an Instantaneous Communication Device for calling or holding a Board meeting.
- (b) The contemporaneous linking together by Instantaneous Communication Device of a number of Directors not less than the quorum provided in clause 18.2, whether or not any one or more of the Directors is out of Australia, is deemed to constitute a Board meeting and all the provisions of this Constitution as to the Board meetings will apply to such meetings so long as the following conditions are met:
  - (i) all the Directors for the time being entitled to receive notice of the Board meeting receive notice that the meeting will be held using an Instantaneous Communication Device. Notice of any such meeting may be given by the Instantaneous Communication Device or in any other manner permitted by this Constitution;
  - (ii) at the commencement of the Board meeting each Director taking part in the meeting by Instantaneous Communication Device is able to hear each of the other Directors taking part;
  - (iii) at the commencement of the Board meeting each Director must acknowledge his or her presence for the purpose of the Board meeting to all the other Directors taking part;
  - (iv) a minute of the proceedings of a meeting by Instantaneous Communication Device is sufficient evidence of those proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson, and

all proceedings of the Board shall be as valid and effective as if conducted at a meeting at which all of the Directors were present.

- (c) A Director may withdraw the consent given under this clause in accordance with the Corporations Act, provided that such withdrawal is notified to the Company within a reasonable period before the meeting at which an Instantaneous Communication Device is proposed to be used.

#### **18.10 Written resolutions**

- (a) If a document:

- (i) is sent to all those entitled to receive notice of a Board meeting at which a resolution could be put;
- (ii) contains a statement that the signatories to it are in favour of that resolution;
- (iii) sets out the terms of the resolution; and
- (iv) has been signed by not less than seventy-five percent (75%) of all Directors of the Company 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 the last of such Directors and the document is as valid and effectual as if it had been passed at a duly held Board meeting.

(b) For the purposes of paragraph 18.10(a):

- (i) “signed” shall include an email from or on behalf of a Director indicating assent to the resolution, provided it reasonably appears to the recipient that the email has been sent by the Director personally or on the Director’s instructions;
- (ii) two 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; and
- (iii) a facsimile or email which is received by the Company or an agent of the Company and is sent by a Director shall be taken to be signed by that Director not later than the time of receipt of the facsimile or email by the Company or its agent in legible form.

## **19. COUNCIL OF ADVICE**

### **19.1 Formation and Constitution**

- (a) Unless otherwise agreed between the Company and the Affiliate Members, a Council of Advice will be established and will operate in accordance with this clause 19.
- (b) The Council of Advice has the following members:
  - (i) the Chairperson (or in the Chairperson’s absence, another Director nominated by the Chairperson); and
  - (ii) a representative nominated by each Affiliate Member provided that the Affiliate Member:
    - (1) is party to an MOU which is in force at all times during which the Affiliate Member has a representative appointed to the Council of Advice; and
    - (2) has paid any Membership fee and the annual administration fee due and payable by the Affiliate Member in accordance with such MOU.

## **19.2 Role**

The business of the Council of Advice is intended to provide advice to the Board including in relation to the following matters:

- (a) the needs of Consumers and issues arising in connection with Consumers;
- (b) delivery of services to Consumers;
- (c) priorities for funding of national initiatives in connection with arthritis and other musculoskeletal diseases or conditions;
- (d) national guidelines for provision of services to Consumers;
- (e) national issues such as strategy, policy, research priorities, advocacy and major initiatives for the treatment and recognition of arthritis and other musculoskeletal diseases or conditions;
- (f) the development and review of national activities such as programs and shared services to Consumers;
- (g) the strategic direction of the Company; and
- (h) major submissions, position papers and significant reports prepared or published by the Company.

## **19.3 Reporting and Board response**

- (a) The Council of Advice must report regularly to the Board.
- (b) The Board will give due consideration to the recommendations of the Council of Advice and provide a written response to each recommendation made by the Council of Advice, however, in performing its obligations and exercising its powers, the Board shall not be bound by any recommendation received from the Council of Advice.

## **19.4 Affiliate Member Representatives**

- (a) Subject to clause 19.1(b)(ii), each Affiliate Member may from time by notice in writing to the Chairperson (such notice to be signed by the Chairperson and Secretary of the relevant Affiliate Member)
  - (i) appoint a person as its representative on the Council of Advice;
  - (ii) remove a person as its representative on the Council of Advice; and
  - (iii) in the event of its representative resigning or a casual vacancy arising in relation to such representative, appoint a person to fill that vacancy,

provided that each person appointed by the Affiliate Member is a member of the governing body of that Affiliate Member.
- (b) Subject to clauses 19.4(c), 19.4(d) and 19.4(e), a representative appointed by an Affiliate Member shall hold office for a term of three (3) years. At the expiry of such term, the Affiliate Member may reappoint the representative for a further term of three (3) years, provided that no representative of an

Affiliate Member shall serve on the Council of Advice for more than three (3) consecutive terms in office.

- (c) A representative appointed by an Affiliate Member who ceases to be a member of the governing body of that Affiliate Member will be deemed to have resigned as a member of the Council of Advice as at the date on which he or she ceased to hold that position.
- (d) Where the Company has given the Affiliate Member notice terminating its MOU or the MOU in respect of that Affiliate Member otherwise terminates, the representative appointed by that Affiliate Member will cease to be a member of the Council of Advice as at the date of such termination.
- (e) Where the Company has given the Affiliate Member a Default Notice and the Affiliate Member has failed to comply with the Default Notice, the representative appointed by that Affiliate Member will cease to be a member of the Council of Advice as at the date which is five (5) Business Days after the date for payment specified in the Default Notice (**Removal Date**), unless the Affiliate Member has complied with the Default Notice before the Removal Date.
- (f) Clauses 14.2, 14.4 and 15.1 to 15.8 apply *mutatis mutandis* to representatives appointed to the Council of Advice by Affiliate Members.

#### **19.5 Chairperson and Chief Executive Involvement**

- (a) The Chairperson will be an ex officio member of the Council of Advice.
- (b) The Chief Executive will be entitled to attend meetings of the Council of Advice as an observer but shall have no right to vote at such meetings.

#### **19.6 Chair**

- (a) At the first meeting of the Council of Advice each calendar year, the Council of Advice shall appoint one of its members to be the Chairperson of the Council of Advice (**Council Chair**) and another of its members to be the Deputy Chairperson of the Council of Advice (**Deputy Council Chair**).
- (b) If the position of either the Council Chair or the Deputy Council Chair becomes vacant, the Council of Advice must elect from its members a new office bearer to fill that vacancy.
- (c) Each appointment, whether pursuant to clause 19.617.2(a) or 17.2(b), shall expire on the commencement of the first meeting of the Council of Advice each calendar year.
- (d) Office bearers will be eligible for re-election at such meeting of the Council of Advice and may serve an unlimited number of times.
- (e) The Council Chair will preside at every meeting of the Council of Advice, or if no Council Chair has been elected, or if at any meeting of the Council of Advice the Council Chair is not present within thirty (30) minutes after the appointed time for holding the meeting, or if being present the Council Chair is unwilling to preside, the Deputy Council Chair shall preside or if no Deputy Council Chair has been nominated, or if the Deputy Council Chair nominated is not present or is unwilling to preside at the meeting, then the members of the Council of Advice who are present may choose one of their number to chair the meeting.

## **19.7 Meetings**

- (a) The Council Chair will convene meetings of the Council at such times and he or she considers fit, provided that the Council of Advice must meet at least four (4) times in each complete calendar year occurring after the Commencement Date.
- (b) Clauses 18.1, 18.3, 18.5 and 18.7 to 18.9 apply *mutatis mutandis* to meetings of the Council of Advice.

## **19.8 Funding and Support**

- (a) The Board shall allocate Company funds to the Council of Advice to enable it to undertake its functions.
- (b) The Company's Officers and staff must provide secretarial support to the Council of Advice.

## **19.9 Remuneration of Council Members**

No person may receive any remuneration for his or her services as a member of the Council of Advice.

## **20. MINUTES**

The Directors must cause minutes to be kept in accordance with the Corporations Act of:

- (a) the names of the Directors present at each Board meeting and any Committee meeting;
- (b) the names of the members of the Council of Advice present at each meeting of that body;
- (c) all appointments of Officers and members of the Council of Advice;
- (d) all regulations made by the Board;
- (e) all recommendations and determinations of the Council of Advice and of any Committee; and
- (f) of all resolutions and proceedings of general meetings of the Company, Board meetings, meetings of the Council of Advice and meetings of Committees, and

such minutes if signed by the chair of the meeting at which the proceedings were held or by the chair of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minutes. Once signed, all minutes shall be provided to the Secretary for retention at the Office on behalf of the Company as soon as practicable.

## **21. PATRON**

Each Governor General for the time being of the Commonwealth of Australia shall on his or her assumption of that office be invited by the Company to accept the office of the Patron of the Company and on his or her acceptance shall retain such office until his or her term as Governor General of the Commonwealth of Australia is completed.

## **22. EMERITUS DIRECTORS**

- (a) The Board may from time to time appoint one (1) or more eminent persons as an Emeritus Director of the Company.
- (b) Each Emeritus Director is to have such recognition and dignities as may be agreed between that person and the Company.
- (c) For the avoidance of doubt:
  - (i) no appointment is valid unless the person invited has consented to act as an Emeritus Director; and
  - (ii) each Emeritus Director is not a Member or Director of the Company by virtue of their appointment as an Emeritus Director but may otherwise be admitted or appointed as such.

## **23. TREASURER**

- (a) The Treasurer must arrange for the books of the Company to be kept and audited as soon as practicable after the end of the Company's financial year.
- (b) The Treasurer must open an administration account for the payment of the administration expenses of the Company and a general account, together with such other special purpose accounts as the Company requires from time to time, including in respect of the Gift Fund.

## **24. CHIEF EXECUTIVE**

### **24.1 Appointment**

- (a) The Directors may at any time engage a person to perform the office of Chief Executive for any period and on any provisions decided by the Directors.
- (b) The Directors may at any time revoke the engagement of the Chief Executive, subject to the provisions of any applicable engagement agreement.

### **24.2 Remuneration**

The Directors may at any time decide the remuneration of the Chief Executive, subject to the provisions of any applicable engagement agreement.

### **24.3 Powers**

- (a) The Directors may confer upon the Chief Executive any powers exercisable by the Directors, subject to any provisions or restrictions decided by the Directors.
- (b) Any delegated powers may be concurrent with, or exclude, the powers of the Directors.
- (c) The Directors may at any time revoke or vary any delegated powers conferred upon the Chief Executive.

## **25. SECRETARY**

- (a) The Directors shall appoint a Secretary in accordance with the Corporations Act at the remuneration and on the terms and conditions as the Directors think fit.
- (b) A Secretary shall be appointed at the first meeting of the Board after a vacancy in that office occurs.
- (c) Any Secretary so appointed may be removed by the Directors.

## **26. ESTABLISHMENT AND OPERATION OF GIFT FUND**

### **26.1 Establishment and Maintenance of Gift Fund**

- (a) The Board shall cause the Company to establish and maintain a Gift Fund to assist the Company to achieve its Objects.
- (b) All Gifts and any income derived from money, property or other investments arising out of such Gifts shall be paid into or credited to the Gift Fund, and the Gift Fund shall not receive any other money or property.
- (c) A separate bank account shall be opened and maintained for the Gift Fund and all Gifts and income derived from such Gifts or the investment of such Gifts shall be kept separate from the other funds of the Company.
- (d) Receipts for donations of property to the Gift Fund are to be issued in the name of the Gift Fund and show its Australian Business Number.
- (e) The Gift Fund must be invested on an arm's length basis so as to ensure that the use of the funds reflects the Objects and not as a means of excessive accumulation of investment assets.
- (f) The Company must use any Gifts and any money received as a result of the Gifts solely to achieve its Objects.
- (g) Notwithstanding any other provision in this Constitution, if the Company's endorsement as a deductible gift recipient under sub-division 30-B of the Tax Act is revoked or after the winding up of the Gift Fund, there remains, after the satisfaction of all of the debts and liabilities of the Gift Fund, any property or money whatsoever, the surplus assets shall be given or distributed to one or more funds, authorities or institutions determined by the Board, which are charitable at law and which are a named fund, authority or institution known to have been approved under sub division 30 B of the Tax Act or a fund, authority or institution falling under one or more of the items listed in the tables in sub division 30B of the Tax Act.

### **26.2 Future Gifts**

If any person, firm, company or association shall at any future date pay or transfer to the Company any money or any real or personal property and shall direct the Company to hold the same upon like trusts as are contained in this Constitution, the Company will in that event hold that money or property in the Gift Fund and as fully as if it had been paid or transferred to the Company at the Commencement Date.

## **27. FINANCIAL RECORDS**

### **27.1 Financial and other records**

- (a) The Directors must cause proper financial and other records to be kept at the Office and provide annual financial reporting to Members as required by the Corporations Act.
- (b) Directors have the right to access the Company's financial records at any reasonable time.
- (c) The Directors must from time to time determine whether and to what extent and at what times and places and under what conditions or regulations any financial or other records of the Company are to be open to the inspection of Members.
- (d) No Member has the right to inspect any records of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

### **27.2 Time for financial reports**

The interval between the end of a financial year of the Company and the annual financial reporting to Members must not exceed the period (if any) prescribed by the Corporations Act.

### **27.3 Financial Year**

- (a) Subject to the Corporations Act, the financial year of the Company shall run from 1 July to 30 June of the ensuing year.
- (b) In accordance with the Corporations Act, the Company's books of account shall be examined and audited by a properly qualified auditor appointed by the Members at the annual general meeting.

### **27.4 Reporting to Members**

Unless the Corporations Act provides otherwise, the Board shall send Members copies of the financial report for each financial year, the Directors' report for the year and the auditor's report on the financial report, which shall include a profit and loss statement for the year, a balance sheet as at the end of the year and a statement of cash flows for the year and every other document required by law to be attached thereto by the time specified in clause 27.2.

### **27.5 Consideration of Accounts at the AGM**

The Board shall cause to be laid before each annual general meeting the financial report, the Directors' report and the auditor's report for the last financial year that ended before the annual general meeting.

## **28. NOTICES**

### **28.1 Entitlement to Notice**

Any Member who has advised the Company of a place of address, facsimile number or an email 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.



## **28.2 Notices to Members**

The Company may give notice to a Member by:

- (a) serving it on the Member personally;
- (b) 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;
- (c) sending it to the fax number or transmitting it to the electronic mail address (if any) supplied by the Member for the giving of notices; or
- (d) in any other way allowed under the Corporations Act.

## **28.3 Deemed service**

Subject to clause 6.4:

- (a) a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post;
- (b) a notice sent by fax shall be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient if produced before 5.00pm on a Business Day, otherwise on the next Business Day;
- (c) a notice sent by electronic mail shall be taken to be effected by properly addressing and sending the notice and to have been effected on the day of transmission, if transmitted before 5.00pm on a Business Day, otherwise on the next Business Day; and
- (d) a notice sent by electronic mail is deemed not to be served only if the computer system used to send it reports that delivery failed.

## **29. DISPUTES AND MEDIATION**

### **29.1 Application**

- (a) The grievance procedure set out in this clause applies to disputes under this Constitution between:
  - (i) a Member and another Member;
  - (ii) a Director and the Company;
  - (iii) a Director and another Director; or
  - (iv) a Member and the Company.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within ten (10) Business Days after the dispute came to the attention of all of the parties.

## 29.2 Mediation

- (a) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend the meeting, then the parties must, within ten (10) Business Days, hold a meeting in the presence of a mediator.
- (b) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (1) in the case of a dispute between two Members, a person appointed by the Board; or
    - (2) in the case of a dispute between either a Director or a Member and the Company or a dispute between two Directors, a person who is a mediator appointed or employed by the Australian Commercial Disputes Centre.
- (c) A mediator may be a Member but must not be a party to the dispute.
- (d) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (e) The mediator, in conducting the mediation must:
  - (i) give the parties to the mediation every opportunity to be heard; and
  - (ii) allow due consideration by all parties of any written statement by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (f) The mediator must not determine the dispute.
- (g) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Corporations Act or otherwise at law.

## 30. WINDING UP OR DISSOLUTION

- (a) In the event of the Company being dissolved, the amount which remains after such dissolution and the satisfaction of all debts and liabilities (**Surplus**) shall not be paid to nor distributed amongst Members but shall be distributed in accordance with clause 30(b) or, if that is not applicable, clause 30(c).
- (b) At or before the winding up or dissolution of the Company, the Members may determine that the Surplus shall be given or transferred to one or more institutions or entities, provided the institution or entity:
  - (i) has objects similar to those of the Company; and
  - (ii) is a public benevolent institution for the purposes of any Commonwealth taxation statute, including the Tax Act; and

- (iii) prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution.

If there is a determination in accordance with this clause 30(b), the Surplus shall be transferred to the institution or entity after the winding up or dissolution of the Company. If there is more than one institution or entity specified in the determination, the Surplus shall be transferred in the proportion specified in the determination or, if there is no such proportion specified, then, in proportions as determined by the Directors.

- (c) If there is no determination made in accordance with clause 30(b), the Surplus shall be given or transferred to another organisation in Australia, as determined by the Board, which has substantially similar objects to those of the Company, is a public benevolent institution for the purposes of any Commonwealth taxation statute, including the Tax Act and which prohibits the distribution of its income or property amongst its members to an extent at least as great as imposed under this Constitution, in such manner as the Directors shall determine.
- (d) If and so far as effect cannot be given to clause 30(c), the Surplus shall be applied in Australia to some charitable object.
- (e) If the Company has been granted deductible Gift Recipient (**DGR**) status by the Australian Taxation Office and the DGR status is revoked, the Company shall transfer all remaining Gifts, deductible contributions and any money received in respect of such Gifts and contributions to another DGR on winding up or on revocation of endorsement, whichever occurs first.

### **31. INDEMNITY OF OFFICERS**

- (a) The Company must indemnify each Officer 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 a subsidiary of the Company or in or arising out of the discharge of the Duties of the Officer, except where the Liability:
  - (i) is owed to the Company or a Related Body Corporate;
  - (ii) arises out of conduct involving a lack of good faith;
  - (iii) is for a pecuniary penalty order under section 1317G of the Corporations Act;
  - (iv) is for a compensation order under section 1317H of the Corporations Act; or
  - (v) is for legal costs.
- (b) To the Relevant Extent, the Company must indemnify each Officer against any Liability for legal costs incurred in defending an action for a Liability incurred as an Officer, except if the costs are incurred:
  - (i) in defending or resisting proceedings in which the person is found to have a Liability for which they could not be indemnified under clause 31(a);
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;

- (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (iv) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

Paragraph (iii) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

- (c) The Company may, to the Relevant Extent:
  - (i) purchase and maintain insurance; or
  - (ii) pay or agree to pay a premium for insurance,
 for any person to whom this clause 31 applies against any Liability incurred by the person as an Officer.
- (d) The Company may give an Officer a loan or advance in respect of legal costs for defending an action for a Liability incurred as an Officer, provided that such loan or advance does not contravene the Corporations Act.
- (e) Subject to the Corporations Act, where the Board considers it appropriate, the Company may execute a documentary indemnity or insurance policy in any form in favour of any Officer.
- (f) Subject to the Corporations Act, where the Board considers it appropriate, the Company may:
  - (i) make payments or agree to make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer against any Liability incurred by the Officer in or arising out of the conduct of the business of the Company or a subsidiary of the Company or in or arising out of the discharge of the Duties of the Officer other than one for legal costs, conduct involving a wilful breach of duty in relation to the Company or contravention of section 182 or 183 of the Corporations Act; and
  - (ii) bind itself and amend any contract or deed with any Officer to make the payments.
- (g) The benefit of each indemnity given in clauses 31(a) and (b) continues, even after its terms or the terms of this clause are modified or deleted, in respect of a Liability arising out of acts or omissions occurring prior to the modification or deletion.

## **32. CAPACITY**

Subject to the Corporations Act and clause 33, the Company has the legal capacity of a natural person including the capacity to exercise the powers set out in section 124 of the Corporations Act.

## **33. NON-PROFIT**

The income and property of the Company must be applied solely towards the promotion of the Objects. In particular, no portion of the income and property of the Company is to be paid or transferred directly or indirectly by way of dividend, bonus or distribution of

profit to Members or paid to Directors as fees for their services as Directors. This does not prevent the payment in good faith:

- (a) of remuneration to any Officers or servants of the Company for any services rendered in a professional or technical capacity to or as an employee of the Company, where:
  - (i) the provision of the services is approved by the Board prior to commencement of the provision of the services; and
  - (ii) the amount payable is not more than an amount that would be commercially reasonable for the service;
- (b) for goods supplied in the ordinary and usual course of business;
- (c) of interest on money borrowed from any Member at a rate not exceeding from time to time the Company's overdraft rates of interest paid for money borrowed from its bankers;
- (d) of reasonable and proper rent for premises leased or licensed by any Member to the Company;
- (e) of out of pocket expenses (including travel and accommodation) incurred by a Director in performing Duties to the Company or otherwise on Company business if such payment is approved by the Board; or
- (f) in connection with the indemnification of, or payment of premiums on contracts of insurance for any Director, to the extent permitted by law and this Constitution.

#### **34. LIMITED LIABILITY**

The Company is a company limited by guarantee and the Liability of the Members is limited as provided by clause 35 of this Constitution.

#### **35. MEMBERS' GUARANTEE**

Every Member undertakes to contribute an amount not exceeding \$100.00 to the property of the Company if the Company is wound up while he or she is a Member or within 1 year after ceasing to be a Member, for:

- (a) payment of the debts and liabilities of the Company contracted before they ceased to be a Member;
- (b) the costs, charges and expenses of winding up the Company; and
- (c) for an adjustment of the rights of contributories among themselves.

#### **36. APPLICATION OF THE CORPORATIONS ACT**

##### **36.1 What parts of the Corporations Act apply**

Unless the contrary intention appears, an expression in a clause of this Constitution that has a defined meaning for the purposes of the Corporations Act has the same meaning when used in this Constitution.

##### **36.2 Actions authorised under Corporations Act**

Where the Corporations Act 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 clause to be

authorised or permitted to do that matter or thing, despite any other provision of this Constitution.

**36.3 Replaceable rules displaced**

- (a) The clauses of this Constitution displace each provision of a section or subsection of the Corporations Act that applies (or would apply but for this clause) to the Company.
- (b) The replaceable rules do not apply to the Company except:
  - (i) where repeated in this Constitution; or
  - (ii) where a rule is specifically made applicable to the Company by a provision of this Constitution;
  - (iii) rules which operate as mandatory rules for public companies limited by guarantee under the Corporations Act.