
Corporations Act
A Company limited by guarantee

Constitution of Epilepsy Society of Australia Limited (ACN 602 950 318)



Level 16, MLC Centre, 19 Martin Place Sydney NSW 2000
Tel: 61 2 9228 9200 Fax: 61 2 9228 9299 DX 123 Sydney

Level 9, 469 La Trobe Street Melbourne VIC 3000
Tel: 61 3 9602 9444 Fax: 61 3 9642 0382 DX 402 Melbourne

Level 4, 40 Creek Street Brisbane QLD 4000
Tel: 61 7 3004 3500 Fax: 61 7 3004 3599 DX 248 Brisbane

Level 1, 88-96 Bunda Street Canberra ACT 2601
Tel: 61 2 6156 4332 Fax: 61 2 9228 9299 DX 123 Sydney

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1. Name of Corporation

The name of the company is Epilepsy Society of Australia Limited.

2. Status of the Constitution

2.1. Constitution of the Company

This is the constitution of the Company.

2.2. Replaceable rules

This Constitution displaces the replaceable rules, accordingly, none of the replaceable rules apply.

3. Interpretation

3.1. Definitions

In this Constitution:

- (a) *ATO* means the Australian Taxation Office;
- (b) *ATO Endorsed Entity* means an entity which is endorsed by the ATO as a deductible gift recipient in accordance with Subdivision 30-B of the *Tax Act*;
- (c) *Auditor* means the person appointed for the time being as the auditor of the Company;
- (d) *Board* means the Directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present;
- (e) *Business Day* means a day which is not a Saturday, Sunday or bank or public holiday in Brisbane;
- (f) *Company* means Epilepsy Society of Australia Limited;

- (g) *Constitution* means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document;
- (h) *Corporations Act* means the *Corporations Act 2001 (Cth)*;
- (i) *Department* means a department of the federal government;
- (j) *Director* means a person who is a director for the time being of the Company and *Directors* means more than 1 Director, and in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include alternates;
- (k) *Gift Fund* has the meaning given to that term by clause 5.2(a);
- (l) *Managing Director* means any person appointed for the time being as a managing director of the Company;
- (m) *Member* means a person who is, or who is registered as, a member of the Company and *Members* means more than 1 Member;
- (n) *Members Guarantee Amount* means \$10;
- (o) *Membership* means being a Member of the Company;
- (p) *Register of Members* means the register of Members maintained pursuant to the *Corporations Act*;
- (q) *Replaceable Rules* means the replaceable rules applicable to a public company limited by guarantee set out in the *Corporations Act*;
- (r) *Seal* means the common seal for the time being of the Company;
- (s) *Secretary* means any person appointed for the time being as, or to perform the functions of, secretary of the Company; and
- (t) *Tax Act* means *Income Tax Assessment Act 1997 (Cth)*.

3.2. Interpretation

In this Constitution:

- (a) the words *including*, *include* and *includes* are to be construed without limitation;

- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a *person* includes a corporate representative appointed pursuant to Section 250D of the *Corporations Act*;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the *Corporations Act* and used, but not defined, in this Constitution has the same meaning given to it in the *Corporations Act* when used in this Constitution.

4. Objects and purpose

4.1. Objects and purpose

The Company is established to:

- (i) study all aspects of epilepsy;
- (ii) promote improved standards of medical management of epilepsy in Australia;
- (iii) foster investigation and research in all aspects of epilepsy;
- (iv) disseminate and promote the exchange of information about epilepsy within Australia, and with similar bodies overseas;
- (v) solicit and enlist financial support from any source to fund and promote scientific work within the field of epilepsy;
- (vi) make grants or donations of financial aid to whomsoever the Board deems appropriate to further the purposes of the Company in the field of epilepsy;
- (vii) without limiting the foregoing, use such means to achieve its purposes in the fields of epilepsy as determined by the Board.

The assets and income of the Company shall be applied solely in furtherance of its above-mentioned objects.

4.2. **Limitation of powers**

- (a) The Company:
 - (i) is prohibited from making distributions to Members;
 - (ii) is prohibited from paying fees or other remuneration to the Directors (other than as permitted by rule 5.1(b)); and
 - (iii) must exercise its powers conferred on it under Section 124(1) of the *Corporations Act* in a manner which is consistent with the objectives of the Company set out in **rule 4.1**.
- (b) The Board must approve all other payments the Company makes to Directors.

5. Income and property of Company

5.1. **Income and property**

- (a) The income, property and profit of the Company will only be applied towards the promotion of the objects of the Company set out in **rule 4.1**.
- (b) No income or property may be paid or transferred directly or indirectly to any Member of the Company both while it is operating and on winding up except:
 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Company, or to any Member or the Board of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
 - (ii) the payment of interest at the rate not exceeding interest at the minimum rate for the time being charged by the Company's bankers for overdrawn accounts of a similar amount on money borrowed from a Director or a Member; or
 - (iii) payment of reasonable and proper rent for premises let by any Director or Member to the Company; or

(iv) the payment, in good faith, of reasonable travelling and other expenses properly incurred by any Director of the Company:

(A) in attending and returning from:

(I) meetings of the Directors;

(II) meetings of any committee of the Directors; or

(III) general meetings of the Company,

in accordance with any travel guidelines the Board may establish; or

(B) otherwise in connection with the business of the Company.

5.2. **Gift Fund**

(a) The Association will establish and maintain a gift fund (*Gift Fund*).

(b) Gifts of money will be deposited into a Gift Fund. These monies will be kept separate from other funds of the Company and will only be used to further the principal purpose of the Company. Investment of monies in this fund will be made in accordance with guidelines for gift funds as specified by the Australian Taxation Office.

(c) No monies or assets in this fund will be distributed to members or office bearers of the Company, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.

(d) Receipts for gifts to the Gift Fund must state:

(i) the name of the Gift Fund and that the receipt is for a gift made to the Gift Fund;

(ii) the name of the Company;

(iii) the name of the donor;

(iv) the Australian Business Number of the company;

(v) the date the donation was received;

(vi) the signature of a person authorised to act on behalf of the fund;

(vii) the type of donation (money or property) and value; and

- (viii) any other matter required to be included on the receipt pursuant to the requirements of the *Income Tax Assessment Act 1997*.

5.3. Winding up of the Gift Fund

If upon:

- (a) the winding up or dissolution of the Gift Fund; or
- (b) the Company ceasing to be an ATO Endorsed Entity;

there remains after satisfaction of all its debts and liabilities, any property or funds in the Gift Fund, the property or funds shall not be paid to or distributed among the Members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of the Company, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B of Tax Act.

6. Modification or repeal of this Constitution

6.1. Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.

6.2. Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

7. Member's liability

7.1. Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

7.2. **Limited liability**

The amount that each Member or past Member is liable to contribute is limited to the amount of the Member's Guarantee Amount.

8. Members

8.1. **Initial membership**

On the date of adoption of this Constitution, the persons named in Annexure 1 to this Constitution will be the initial Members. The Board may admit further persons as Members in accordance with this Constitution.

8.2. **Number of Members**

The Company must have at least 1 Member.

8.3. **Pre-condition to Membership**

A person is entitled to become a Member if:

- (a) that person is nominated by a Director or an existing Member;
- (b) that person agrees to assume the liability to pay the Member's Guarantee Amount;
- (c) that person agrees to contribute to the fulfilment of the Company's objects and purpose; and
- (d) the Board has approved that person as a Member.

8.4. **Becoming a Member**

Subject to the *Corporations Act*, a person becomes a Member on the registration of that person's name in the Register of Members.

8.5. **Classes of Member**

The following classes of membership shall apply to Members:

- (a) **Ordinary Members:** Ordinary Members are elected from clinical, scientific or technical personnel working in the field of epilepsy or ion kindred fields, who have an active interest in the work and aims of the Company. Membership shall be

confined to clinical, scientific or technical personnel working in Australia, and Australian citizens or permanent residents working abroad. Members will pay subscriptions as set by the Board and ratified by the Members at a General Meeting, a discounted rate being applicable to special groups as determined by the Board. Each Ordinary Member shall be entitled to vote on each matter at every Meeting of the members.

- (b) **Honorary Members:** This status is awarded to a person who has made outstanding scientific contributions to the field of epilepsy and whom the Company wishes to honour for same. Honorary membership will be exempt from subscriptions but will receive Company journals and information free.
- (c) **Senior Members:** This membership will be awarded to members of the Company who have retired from active work in the medical aspects of epilepsy. Senior membership will be awarded for life and confers exemption from the payment of subscriptions but will still confer eligibility to receive all Company information and literature as circulated to all other classes of members.
- (d) **Associate Members:** Associate Members may be elected to the Company from other ILAE or IBE chapters. Associate Members may be entitled to receive all of the Company's information and discounts, but are ineligible to vote at meetings of members. Associate Members will pay reduced or no subscriptions at the discretion of the Board.
- (e) **Other Members:** In exceptional circumstances, the Board may choose to award membership to a professional from a country other than Australia and New Zealand, such as a physician working in a developing neighbour country without an ILAE chapter, or a distinguished professional who has made a significant contribution to the Company.

8.6. **Application for Membership**

The Board may prescribe the form of the application for Membership.

8.7. **Consideration for application for Membership**

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept or reject the application.

8.8. **Registration as Member**

If the Board accepts an application for Membership, as soon as practicable:

- (a) the Secretary shall send to the applicant written notice of the acceptance and a request for payment of the first annual subscription; and
- (b) upon payment of the first annual subscription, the applicant shall become a Member of the Company, however, if such payment has not been made within 2 months after the date of the notice of acceptance of the application, the Board may in its discretion cancel its acceptance of the application for membership of the Company.

8.9. Subscriptions

The Board shall from time to time determine the fees and annual subscriptions payable by Members (or any particular class of Members) and may in its absolute discretion vary or waive fees and subscriptions, prescribe pro-rata fees and subscriptions for part-year Memberships. All annual subscriptions shall become due and payable in advance on 1 July in each year or any other date determined by the Board. The Board may require Members to pay fees, charges and interests in respect of any late or overdue subscriptions.

8.10. Unpaid Fees

If the subscription of a Member is unpaid after it becomes due, the Board may cease the Member's Membership and the Member shall lose all rights and privileges of Membership.

9. Rights of Members are non-transferable

The rights and obligations of a Member are personal and are not transferable.

10. Cessation of Membership

10.1. Cessation of Membership of a natural person

A person ceases to be a Member:

- (a) if the person resigns as a Member in accordance with this Constitution;
- (b) if the person is expelled as a Member in accordance with this Constitution;
- (c) if the person dies;
- (d) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Member;

- (e) if the person's whereabouts are unknown for more than 12 months and the Board resolves that the person should cease to be a Member; or
- (f) if the person becomes a bankrupt or insolvent.

10.2. **Cessation of Membership of a body corporate**

A body corporate ceases to be a Member:

- (a) if the body corporate resigns as a Member in accordance with this Constitution;
- (b) if the body corporate is expelled as a Member in accordance with this Constitution;
- (c) if the body corporate is placed under external administration or makes any composition or arrangement with its creditors; or
- (d) if the body corporate is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

10.3. **Resignation of Member**

A Member may resign from the Company by giving the Board at least 30 days' written notice.

10.4. **Expulsion of Member**

If the Board resolves that it is not in the best interests of the Company for a person to remain as a Member, that person is automatically expelled as a Member. The Board must give notice to a Member of a meeting at which the resolution for the Member's expulsion is proposed:

- (a) setting out the place, date and time of the meeting;
- (b) setting out the proposed resolution and the grounds for the proposed expulsion; and
- (c) informing the Member that the Member may submit written submissions to the Board before the resolution is put to vote.

11. Maintenance of Register

11.1. Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member; and
- (c) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

11.2. Inspection of Register of Members

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of Members between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

12. General meetings

12.1. Annual general meetings

The Company shall hold an annual general meeting in accordance with this clause 12 and must hold its first annual general meeting within 18 months after its incorporation.

12.2. Business at annual general meeting

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report (and where appropriate, the auditor's report);
- (b) the election of the directors;
- (c) the appointment of the auditor; and
- (d) (where appropriate), determination of auditor's remuneration.

12.3. Director convening a general meeting

Any Director may convene a general meeting.

12.4. Meetings requested by Members

- (a) If the Board receives a request from a Member or Members with at least 5% of the votes that may be cast at any general meeting or at least 100 Members who are entitled to vote at that general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than 1 document.
- (c) A general meeting requested by the Members must be held no later than 2 calendar months after the request is received.

12.5. Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and where appropriate, Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

12.6. Shorter notice of general meeting

Shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting,

and accordingly, any such general meeting will be treated as having been duly convened.

12.7. Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and where appropriate, Auditor, of the day, time and place (or places) for the resumption of the adjourned general meeting.

12.8. General meetings at 2 or more places

A general meeting may be held in 1 place or 2 or more places. If a general meeting is held in 2 or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

12.9. Postponement or cancellation of general meeting

- (a) Subject to this Constitution, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

12.10. Notice of change, postponement or cancellation of meeting

- (a) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (b) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (c) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

12.11. Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;

- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

13. Proceedings at general meetings

13.1. Quorum

- (a) A quorum at a general meeting is 5% or more of all Members holding voting rights at the time 48 hours prior to the meeting, present in person or by proxy. The quorum must be present at all times during the general meeting.
- (b) If a Member has appointed more than 1 proxy and 2 or more proxies attend a general meeting, only 1 proxy will be counted for the purposes of determining whether there is a quorum.

13.2. Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
 - (I) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (II) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (III) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.

- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

13.3. **Chairing general meetings**

- (a) The chair for the time being of the Board will serve as chair at each meeting of Members.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

13.4. **Conduct of general meetings**

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

13.5. **Adjournment**

- (a) The chair of a general meeting at which a quorum is present may, with the consent of the Members present in person or by proxy, adjourn the general meeting.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of the adjourned general meeting other than the business left unfinished at the adjourned general meeting.

14. Proxy

14.1. Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy must be a Member.
- (c) An appointment of a proxy may be a standing one.
- (d) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.
- (e) If a Member is entitled to cast 2 or more votes at a meeting, the Member may appoint 2 proxies. If the Member appoints 2 proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.

14.2. Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

14.3. Proxy to be received by Company

The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office;
- (b) a facsimile number at the registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

14.4. Power to demand poll

A proxy may demand, or join in demanding, a poll.

14.5. Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

14.6. Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned general meeting, before the resumption of the adjourned general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

14.7. No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

15. Body corporate representative

15.1. Appointment of corporate representative

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

15.2. Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

15.3. Instrument to be received by Company

- (a) An instrument purporting to appoint the corporate representative is not valid unless it is received by the Company at least 48 hours before the general

meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.

- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
 - (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

15.4. **Revocation and appointment of corporate representative**

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

15.5. **Validity of votes of corporate representative**

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case on an adjourned general meeting, before the resumption of the adjourned general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member;
or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative;
or
 - (ii) the appointment of a new corporate representative.

15.6. **No liability**

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

16. Voting

16.1. Entitlement to vote

Each Member entitled to vote at a general meeting may vote in person or by proxy. Each Member has 1 vote, whether on a show of hands, or on a poll.

16.2. Casting vote

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair has a casting vote.

16.3. Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

16.4. Voting on resolution

At any general meeting, a resolution put to a vote must be decided by a show of hands unless a poll is demanded in accordance with this Constitution. Where Members participate by use of technology in accordance with clause 12.8 then the Chairman shall determine a method for the votes of those Members to be counted (which may include electronic means).

16.5. Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A decision made by the chair in relation to a challenge to a right to vote is final.

16.6. Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document (including an electronic document with either a duly authorised electronic signature or scanned signature) containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than 1 document.

16.7. Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,

is conclusive evidence of the fact declared. An entry to that effect made in the minute book of the Company signed by the chair is evidence of that fact unless the contrary is proved.

- (b) Within 1 month after each general meeting, the Directors must record or cause to be recorded in the minute book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within 1 month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

17. Poll

17.1. Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

17.2. Right to demand poll

A poll may be demanded on any resolution at a general meeting by:

- (a) at least 5 Members entitled to vote on the resolution; or
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll.

17.3. Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) A demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.

18. Appointment and removal of Directors

18.1. Initial Directors

On the date of adoption of this Constitution:

- (a) Dr Andrew Bleasel;
- (b) Dr Daniel McLaughlin;
- (c) Dr Cecilie Lander; and
- (d) Dr Stephen Malone

will be the initial Directors of the Company.

18.2. Number of Directors

The number of Directors (not counting alternates) must not be less than 3 or more than 10 (including ex-officio directors). At least 2 Directors must reside ordinarily in Australia.

18.3. Appointment of Directors

- (a) Subject to this Constitution, the Company may by resolution at a general meeting appoint a person as a Director.
- (b) Subject to this Constitution, the Board may by resolution at a Board meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director. The Board shall, in appointing such Directors, attempt to ensure that the Board includes representatives that reside in each State in Australia.
- (c) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

18.4. Confirmation of appointment

If a person is appointed as a Director by the Board, the Company must confirm the appointment at the next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

18.5. Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) At least 2 months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.
- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, a Director must be given a copy of the notice as soon as practicable.

- (d) The Director must be informed that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

18.6. **Cessation of Directorship**

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the *Corporations Act*, or
- (f) is absent from Board meetings for a continuous period of 12 months without leave of absence from the Board and the Board does not resolve that the Director should not cease to be a Director.

18.7. **Resignation of Directors**

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

19. **Powers and duties of Board**

- (a) Subject to this Constitution and the *Corporations Act*, the activities of the Company are to be managed by, or under the direction of, the Board.

- (b) Subject to this Constitution and the *Corporations Act*, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The Board may delegate any of its powers to:
 - (i) a Director;
 - (ii) a committee of Directors;
 - (iii) an employee of the Company; or
 - (iv) any other person.

20. Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

21. Managing Director

- (a) The Board may appoint 1 or more of the Directors to the office of Managing Director for such period, and on such terms, as the Board determines.
- (b) The Board may confer on the Managing Director any of the powers that the Board may exercise.
- (c) The Board may vary or revoke a conferral of any power on the Managing Director.
- (d) The Board may at any time vary or revoke an appointment of a Managing Director.
- (e) The appointment of a Managing Director is automatically revoked if the Managing Director ceases to be a Director.

22. Alternate Directors

22.1. Appointment and terms of appointment

- (a) If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
 - (i) the name, experience and qualifications of the person;
 - (ii) the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms of the notified; and
 - (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend.
- (b) The Board may ask for further information in relation to the alternate's qualifications and experience.
- (c) If the alternate is a Director, the appointment will take effect immediately.
- (d) If the alternate is not a Director, at the first meeting of the Board after the notice of the proposed appointment has been received by the Board, the Board must consider the proposed appointment and either accept or reject the appointment. If the Board accepts the appointment of the alternate, the Director may appoint the person on the terms of appointment.
- (e) Where the alternate is not a Director, an appointment of a person as an alternate is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.
- (f) An alternate is not an agent of the Director appointing the alternate.

22.2. No liability

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

22.3. Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

22.4. Notice and attendance at Board meetings

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate.

22.5. Voting of alternate

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

22.6. Termination of appointment of alternate

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

22.7. Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

23. Remuneration and reimbursement for expenses

23.1. Remuneration of Director

The Company must not pay and a Director is not entitled to receive any fee (or other remuneration) from the Company for services performed as a Director.

23.2. Reimbursement of expenses

Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings

of the Board and committees of the Board only if the Board has approved the reimbursement for such costs and expenses.

24. Board meetings

24.1. Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

24.2. Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

24.3. Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

24.4. Use of technology

A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.

24.5. Quorum at meetings

A quorum at a Board meeting is at least one half of the currently appointed Directors at the time of the meeting not counting alternates, rounding upwards. The quorum must be present at all times during the Board meeting.

24.6. Chair of meetings

- (a) The Directors may elect any other Director as chair who will chair subsequent Board meetings for the period determined by the Board.
- (b) If the chair is not present within 15 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

24.7. Passing resolutions at meetings

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person or by alternate is entitled to vote and has 1 vote.

24.8. Casting vote

If on any resolution an equal number of votes is cast for and against the resolution, the chair has a casting vote.

24.9. Conduct of meetings

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

24.10. Written resolutions

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in

favour of the resolution set out in the document. For this purpose, signatures can be contained in more than 1 document.

24.11. **Minutes of meetings**

- (a) Within 1 month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes within 1 month after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

24.12. **Appointment of Committees**

The Board may from time-to-time committees to assist the Board in its duties, and may delegate such powers to committees as it may in its absolute discretion determine. Committees may comprise Directors, non-Director Members and non-Members, provided that at least one Director is appointed to each committee.

24.13. **Committee meetings**

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

25. Director's interests

25.1. **Declaration of interest**

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.

- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

25.2. Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (a) must not vote on the matter at a meeting; and
- (b) must not be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

26. Appointment of Secretary

- (a) The Company must have at least 1 Secretary. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

27. Removal and remuneration of Auditor

27.1. Remuneration of Auditor

Where an Auditor is appointed, the remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

27.2. Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least 2 months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.

- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within 7 days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

27.3. Auditor's attendance at general meetings

Where an Auditor is appointed, the Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

28. Seal

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).
- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the Seal, the fixing of the Seal must be witnessed by 2 Directors or a Director and Secretary.

29. Financial records

29.1. Member's access to financial records

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company may be inspected by Members.

29.2. Directors' access to financial records

Any Director may at any time access and inspect any financial and any other record of the Company.

29.3. Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

30. Notices

30.1. General

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

30.2. How to give a communication

In addition to any other way allowed by the *Corporations Act*, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the person's current fax number for notices; or
- (e) sent by email to the person's current email address for notices.

30.3. Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, 3 Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

30.4. Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

30.5. Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

30.6. After hours communications

If a communication is given:

- (a) after 5pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

31. Indemnity

31.1. Definitions

For the purposes of this Constitution:

- (a) *Officer* means a Director, an alternate Director, a Secretary, an officer as defined by the Act, or the Chief Executive Officer; and
- (b) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company.

31.2. Indemnity

Every Officer and past Officer (with the exception of any auditor) of the Company is hereby indemnified by the Company to the fullest extent permitted by law against a

liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

31.3. **Insurance premiums**

The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by law.

31.4. **Indemnity to employees**

Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

32. **Winding up**

32.1. **Winding up**

The Company may only be wound up if:

- (a) 75% of Members have approved the winding up; and
- (b) a simple majority of Directors have approved the winding up.

32.2. **Company wound up**

If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to **rule 32.1(b)**, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,

such amount as may be required, not exceeding the Members Guarantee Amount.

32.3. **Surplus on winding up**

If any surplus remains following the winding up of the Company other than the Gift Fund (which shall be distributed pursuant to clause 5.3), the property or funds shall not be paid to or distributed among the Members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of the Company, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B of the *Income Tax Assessment Act 1997*. Such fund authority or institution shall be determined by the Board at or before the winding up, and in default, by application to the Supreme Court of Victoria for determination.