

CONSTITUTION OF Australian and New Zealand Children's Haematology/Oncology Group[^]

Australian Company Number (ACN) 626 874 673
Australian Business Number (ABN) 78 550 982 409

A public company limited by guarantee

(formerly Australian and New Zealand Children's Haematology/Oncology Group Inc.)

As adopted by a special resolution of the Members on 13 May 2022.

[^] Which name omits the word "Limited" where the Company is permitted to do so under the Corporations Act.

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Preliminary

1. Name of the company

The name of the **company** is Australian and New Zealand Children's Haematology/Oncology Group[^] (the **company**).

2. Type of company

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

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each **ordinary member** must contribute an amount not more than the amount, if any, unpaid by a member in respect of the member's membership of the **company**^{^^} (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being an **ordinary member**, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the member stopped being an **ordinary member**, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 73 and 75.

Charitable purposes and powers

6. Object

The **company**'s object is to pursue the following charitable purpose(s)^{^^^}:

- (a) To be a primary advocacy body for children's cancer and blood diseases;
- (b) To undertake an educational and advisory role and provide information in connection with children's cancer and blood diseases;
- (c) To provide leadership in the field of children's cancer and blood diseases;
- (d) To facilitate the conduct of clinical trials in the furtherance of research related to children's cancer and blood diseases;

[^] Which name omits the word "Limited" where the **company** is permitted to do so under the Corporations Act.

^{^^} The method in clause 4 for calculating the amount to be contributed is preserved from the constitution of the **company** which took effect upon conversion to a public company limited by guarantee on 18 June 2018, and in turn from the constitution of the Australian and New Zealand Children's Haematology/Oncology Group Inc.

^{^^^} The purposes in clause 6 are as were provided for in the constitution of the **company** which took effect upon conversion to a public company limited by guarantee on 18 June 2018, and in turn as adapted from the constitution of the Australian and New Zealand Children's Haematology/Oncology Group Inc.

- (e) Such other objects as the members entitled to vote may determine which are relevant to the advancement of the treatment of children's cancer and blood diseases;
- (f) Providing a forum in which stakeholders can share ideas, identify areas for further development or activity, and seek to advance the purposes of the **company**;
- (g) Doing all things that are or may be incidental, ancillary or conducive to the advancement, promotion, and/or attainment of all or any of the purposes of the **company**.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 72.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
 - (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
 - (b) making a payment to a member in carrying out the **company's** charitable purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2, the members entitled to vote may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

10. Membership and register of members

- 10.1 The members of the **company** may be:
 - (a) **ordinary members**,
 - (b) **associate members**,
 - (c) **community members**
 - (d) **honorary members**, or
 - (e) any other person that the directors allow to be a member, in accordance with this constitution (who unless otherwise designated at the time of being admitted as a member or as subsequently varied by agreement with the member shall be deemed to be an **associate member**).
- 10.2 Subject to the discretion of the directors to designate a person as being eligible for a category of membership despite not necessarily meeting all the criteria for that category, the designation and qualification of membership classes (categories of membership) and rights of members shall be:

- (a) **Ordinary members:**
subject to clause 10.2(e) ordinary membership is limited to **health and associated professionals** primarily resident in Australia or New Zealand who are primarily engaged in the field of paediatric cancer and/or blood diseases. An **ordinary member** may attend meetings of members including annual **general meetings**, vote and be a candidate for an elected office. An **ordinary member** shall pay annually such membership fees as determined by the directors (which as at the date of adoption of this constitution is \$0).
- (b) **Associate members:**
associate members may be **health and associated professionals** primarily engaged in the field of paediatric cancer and/or blood diseases who are not fully qualified (for example students or trainees), and **health and associated professionals** not primarily engaged in the field of paediatric cancer and/or blood diseases or who are not primarily resident in Australia or New Zealand and who demonstrate significant interest in paediatric cancer and/or blood diseases. A person who meets the criteria for ordinary membership may instead request that he or she be admitted to membership as an **associate member**. An **associate member** may attend meetings of members including annual general meetings and participate in discussions but shall not have voting rights and (other than in the case of re-election of a **board appointee**) cannot be a candidate for elected office. An **associate member** shall annually pay such membership fees as determined by the directors (which as at the date of adoption of this constitution is \$0).
- (c) **Community members:**
community members may be anyone who does not meet the criteria for ordinary or associate membership but who would like to maintain an active interest in the activities of the ANZCHOG. A person who meets the criteria for ordinary membership or associate membership may instead request that he or she be admitted to membership as a **community member**. A **community member** may attend meetings of members including annual general meetings and may be invited to participate in other ANZCHOG activities but cannot be a candidate for elected office (other than in the case of re-election of a **board appointee**) and shall not have voting rights. There is no membership fee.
- (d) **Honorary members:**
honorary membership is limited to **ordinary members** who have been invited by resolution of the directors to be admitted as an **honorary member**. An **honorary member** has the same rights as **ordinary members** but shall not have voting rights and (other than in the case of re-election of a **board appointee** or if he or she was a director at the time of becoming an **honorary member**) cannot be a candidate for elected office.
- (e) **Initial members**
All **initial members** (members of the **company** as at the date of adoption of this constitution) are deemed to be **ordinary members** notwithstanding that they may not otherwise meet the criteria for ordinary membership. **Initial members** shall remain **ordinary members** until the earlier of ceasing to be a member (unless that membership is renewed at the invitation of or with the consent of the directors within one year of cessation) or the member agrees to

a change of his or her membership category.

- 10.3 The **company** must establish and maintain a register of members. The register of members must be kept by the company secretary and must contain:
- (a) for each current member:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices
 - iv. date the member was entered on to the register,
 - v. the applicable membership class (category).
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices
 - iv. dates the membership started and ended,
 - v. the membership classes (category(ies)) that applied to that member (and if more than one, the relevant dates).
- 10.4 The **company** must give current **ordinary members** access to the register of members. The **company** may give other classes (categories) of members access to the register of members.
- 10.5 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11. Who can be a member

- 11.1 Eligibility for membership (**ordinary member**)
- (a) the application for ordinary membership has been proposed by an existing **ordinary member**;
 - (b) in the opinion of the directors the applicant meets the criteria for ordinary membership as provided for in clause 10.2(a) (subject to the discretion of the directors to designate a person as being eligible for ordinary membership despite not necessarily meeting all the criteria for that category); and
 - (c) in the opinion of the directors, the person supports the objects of the **company** as set out in clause 6.
- 11.2 Eligibility for membership (**associate member**)
- (a) The application for associate membership has been proposed by an existing **ordinary member** and seconded by another existing **ordinary member**;
 - (b) in the opinion of the directors the applicant meets the criteria for associate membership as provided for in clause 10.2(b) or meets the criteria for ordinary membership as provided for in clause 10.2(a) but has applied for associate membership instead (subject in each case to the discretion of the directors to designate a person as being eligible for the applicable category of membership despite not necessarily meeting all the criteria for that category); and
 - (c) in the opinion of the directors, the person supports the objects of the **company** as set out in clause 6.
- 11.3 Eligibility for membership (**community member**)
- (a) the application for community membership has been proposed by an existing **ordinary member** and seconded by another existing **ordinary member**;

- (b) in the opinion of the directors the person meets the criteria for community membership as provided for in clause 10.2(c) or meets the criteria for ordinary or associated membership as provided for in clause 10.2(a) or 10.2(b) but has applied for community membership instead (subject in each case to the discretion of the directors to designate a person as being eligible for the applicable category of membership despite not necessarily meeting all the criteria for that category); and
 - (c) in the opinion of the directors, the person supports the objects of the **company** as set out in clause 6.
- 11.4 Eligibility for membership (**honorary member**)
- (a) The individual is a **member** who has been an ordinary **member** for at least ten (10) years and has retired from clinical practice; or
 - (b) in the opinion of the directors, the individual is a person who has rendered special service to children's cancer and/or blood diseases and who supports the objects of the **company** as set out in clause 6; and
 - (c) (in either case) the individual has consented in writing to being admitted to membership as an **honorary member** and, if not already a member, has agreed to comply with the **company's** constitution including paying the guarantee under clause 4 if required.
- 11.5 In this clause, 'person' means an individual natural person.

12. How to apply to become a member

A person (as defined in clause 11.5) may apply to become a member of the **company** by writing to the company secretary stating that they:

- (a) want to become a member (and the class (category) of membership applied for)
- (b) support the purpose(s) of the **company**, and
- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

13. Directors decide whether to approve membership

- 13.1 If the directors approve an application, the company secretary must as soon as possible:
- (a) enter the new member on the register of members in the applicable class (category), and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.2 If the directors reject an application, the company secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.3 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters.

14. When a person becomes a member

Other than **initial members**, an applicant will become a member in the applicable class (category) when they are entered on the register of members.

15. Application fee and annual subscription

- 15.1 The directors may, in their sole discretion, determine the amount of the **application fee** (which, without limitation, may be a nil or nominal amount, and may be different for different classes (categories) of membership). No application fee will be payable by **honorary members**. Application fees (if any) are not refundable unless the directors, at their discretion, determine otherwise.
- 15.2 The directors may, in their sole discretion, determine the amount of the **annual subscription** for each financial year (which, without limitation, may be a nil or a nominal amount, and may be different for different classes (categories) of membership) and the time for payment of the annual subscription. No annual subscription will be payable by **honorary members**.
- 15.3 The directors may reduce the annual subscription (if any) payable for the balance of a year by a successful applicant if admitted to membership after the commencement of any year, in such a manner as they think fit.
- 15.4 An **ordinary member**, **associate member** or **community member** must pay the applicable **annual subscription** (if any) to the **company** within the time specified by the directors.

16. When a person stops being a member

A person immediately stops being a member if they:

- (a) die
- (b) resign, by writing to the company secretary
- (c) are expelled under clause 18, or
- (d) have not responded within three months to a written request from the company secretary that they confirm in writing that they want to remain a member.

Dispute resolution and disciplinary procedures

17. Dispute resolution

- 17.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
 - (b) one or more directors, or
 - (c) the **company**.
- 17.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 18 until the disciplinary procedure is completed.
- 17.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 17.4 If those involved in the dispute do not resolve it under clause 17.3, they must within 10 days:
- (a) tell the directors about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 17.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors, or

- ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 17.6 A mediator chosen by the directors under clause 17.5(b)(i):
- (a) may be a member or former member of the **company**
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 17.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.

18. Disciplining members

- 18.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:
- (a) the member has breached this constitution, or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 18.2 At least 14 days before the directors' meeting at which a resolution under clause 18.1 will be considered, the company secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 18.3 Before the directors pass any resolution under clause 18.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
 - (b) speaking at the meeting.
- 18.4 After considering any explanation under clause 18.3, the directors may:
- (a) take no further action
 - (b) warn the member
 - (c) suspend the member's rights as a member for a period of no more than 12 months
 - (d) expel the member
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - (f) require the matter to be determined at a **general meeting**.
- 18.5 The directors cannot fine a member.
- 18.6 The company secretary must give written notice to the member of the decision under clause 18.4 as soon as possible.
- 18.7 Disciplinary procedures must be completed as soon as reasonably practical.

- 18.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of members

19. General meetings called by directors

- 19.1 The directors may call a **general meeting**.
- 19.2 If **ordinary members** with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 19.3 The percentage of votes that members have (in clause 19.2) is to be worked out as at midnight before the members request the meeting.
- 19.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **company**.
- 19.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

20. General meetings called by members

- 20.1 If the directors do not call the meeting within 21 days of being requested under clause 19.2, 50% or more of the **ordinary members** who made the request may call and arrange to hold a **general meeting**.
- 20.2 To call and hold a meeting under clause 20.1 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 20.3 The **company** must pay the **ordinary members** who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

21. Annual general meeting

- 21.1 A **general meeting**, called the annual **general meeting**, must be held at least once in every calendar year (unless postponement due to exceptional external circumstances is permitted by law). This clause does not require a second annual **general meeting** to be held in the calendar year in which this constitution takes effect if an annual **general meeting** has already been held in that calendar year.
- 21.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:

- (a) a review of the **company's** activities
 - (b) a review of the **company's** finances
 - (c) any auditor's report
 - (d) the election of directors (if there are or, but for electing new directors, at the end of the annual **general meeting** there would be any vacancies among the directors provided for in clause 39.1(a) or if any director has been appointed by the directors under clause 40.5), and
 - (e) the appointment and payment of auditors, if any.
- 21.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.
- 21.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

22. Notice of general meetings

- 22.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting (being **ordinary members**)
 - (b) each other member
 - (c) each director (without requiring a second notice to be given to a director who is also a member), and
 - (d) the auditor (if any).
- 22.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 22.3 Subject to clause 22.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the members (being **ordinary members**) entitled to attend and vote at the annual **general meeting** agree beforehand or at the commencement of the meeting, or
 - (b) for any other **general meeting**, members (being **ordinary members**) with at least 95% of the votes that may be cast at the meeting agree beforehand or at the commencement of the meeting.
- 22.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
 - (b) appoint a director in order to replace a director who was removed, or
 - (c) remove an auditor.
- 22.5 Notice of a **general meeting** must include:
- (a) the date and time and, unless the meeting is to be held virtually (if permitted by law, solely using technology), the place for the meeting (and if the meeting is to be held in two or more places or virtually, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business
 - (c) how voting will be conducted (including whether votes are to be cast electronically or by other means before or at the meeting, and if so in what manner and whether votes are to be cast on any or all resolutions solely by pre-meeting voting, with no votes being able to be cast validly on the specified

or all resolutions at the meeting, and, if able to be cast before the meeting, by what date and time)

- (d) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
- (e) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting or, if the proxy is to be authorised to cast votes for the member electronically or by other means before the meeting, at least 48 hours before the last time by which votes may be cast.

22.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

23. Quorum at general meetings

23.1 For a **general meeting** to be held, at least 10 members ordinarily entitled to vote (disregarding any restriction on voting on a particular resolution), at least one of whom must be a director (a quorum) must be present (in person or by proxy) for the whole meeting. A person or proxy is taken as attending and to be present if participating by electronic or other means (see clause 26.2 or if they can and does cast a vote electronically or by other means at or before the meeting). When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy of more than one member).

23.2 No business may be conducted at a **general meeting** if a quorum is not present.

23.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week
- (b) if the time is not specified – the same time, and
- (c) if the place is not specified – the same place.

23.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

24. Auditor's right to attend meetings

24.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

24.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

25. [Not used]

26. Using technology to hold meetings

- 26.1 The **company** may hold a **general meeting** at two or more venues (or, if permitted by law, virtually without a venue) using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 26.2 Anyone using this technology is taken to be present in person at the meeting (regardless of whether they are at a place described as a place of or for the meeting).

27. Chairperson for general meetings

- 27.1 The **elected chairperson** is entitled to chair **general meetings**.
- 27.2 The **members present** and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**, or
 - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

28. Role of the chairperson

- 28.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 28.2 The chairperson does not have a casting vote.

29. Adjournment of meetings

- 29.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** and entitled to vote direct the chairperson to adjourn it.
- 29.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

30. Members' resolutions and statements

- 30.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 30.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 30.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 30.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 30.5 The percentage of votes that members have (as described in clause 30.1) is to be worked out as at midnight before the request or notice is given to the **company**.

- 30.6 If the **company** has been given notice of a members' resolution under clause 30.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 30.7 This clause does not limit any other right (if any) that a member has to propose a resolution at a **general meeting**.

31. Company must give notice of proposed resolution or distribute statement

- 31.1 If the **company** has been given a notice or request under clause 30:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 31.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1,000 words long
 - (b) the directors consider it may be defamatory
 - (c) clause 31.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

32. Circular resolutions of members

- 32.1 Subject to clause 32.3, the directors may put a resolution to the **ordinary members** to pass a resolution without a **general meeting** being held (a circular resolution).
- 32.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to **ordinary members**, and set out the wording of the resolution.
- 32.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
 - (b) for passing a **special resolution**, or
 - (c) where the **Corporations Act** or this constitution requires a physical meeting to be held.
- 32.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 32.5 or clause 31.6.

- 32.5 Members eligible to vote may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 32.6 The **company** may send a circular resolution by email to members eligible to vote and such a member may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

33. How many votes a member has

Each **ordinary member** has one vote. In a ballot for the election of directors, a member has one vote for each vacant position for which an election is to be held, but may only cast one vote in respect of a candidate in that ballot (that is, a member cannot cast multiple votes for the same candidate in the same ballot).

*Note: By way of example, only, if there are five candidates for three vacant positions, each **ordinary member** can vote for up to 3 of the candidates in the ballot. The member cannot vote more than once for any one of the candidates in that ballot. The member cannot vote for 4 or all of the candidates, only up to 3 of the candidates.*

34. Challenge to member's right to vote

- 34.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 34.2 If a challenge is made under clause 34.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

35. How voting is carried out

- 35.1 Voting must be conducted and decided by:
- (a) a show of hands,
 - (b) a vote in writing,
 - (c) a ballot for the election of directors if there is more than one eligible candidate for a vacant position or more eligible candidates than vacant positions after allocation of any eligible candidates to positions for which they are the sole eligible candidate,
 - (d) pre-meeting voting (which may be by electronic or other means, may be the sole method of voting on a resolution or for any business of any meeting, or be in addition to or in combination with any other form of voting, and may take the form a vote in writing, a ballot or a method chosen under the following paragraph 35.1(e)), or
 - (e) another method chosen by the chairperson that is fair and reasonable in the circumstances (which may be an alternative method of electing directors having regard to the number and type of positions to be elected and eligible candidates),
- and need not be the same for all resolutions to be considered at a **general meeting**.
- 35.2 Before a vote is taken on a resolution at a **general meeting**, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

- 35.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 35.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

36. When and how a vote in writing must be held

- 36.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands (but not where a vote is to be or has been conducted by ballot) by:
- (a) at least five **members present** who are eligible to vote on the resolution
 - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
 - (c) the chairperson.
- 36.2 A vote in writing must be taken when and how the chairperson directs, and other business of the meeting may continue, unless clause 36.3 applies.
- 36.3 A vote in writing must be held immediately if it is demanded under clause 36.1:
- (a) for the election of a chairperson under clause 27.2, or
 - (b) to decide whether to adjourn the meeting.
- 36.4 A demand for a vote in writing may be withdrawn before the vote in writing is taken.
- 36.5 A vote in writing cannot be validly demanded where all voting is by way of pre-meeting voting.

37. Appointment of proxy

- 37.1 A member may appoint a proxy to attend and (if the member is eligible to vote) vote at a **general meeting** on their behalf.
- 37.2 A proxy does not need to be a member.
- 37.3 A proxy appointed to attend and (if the member is eligible to vote) vote for a member has the same rights as the member to:
- (a) speak at the meeting
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 36.1.
- 37.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **company's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- The appointment of proxy (proxy form) may, if the appointing member is eligible to vote, also state whether the proxy is authorised to cast votes for the member electronically or by other means before the meeting where pre-meeting voting is available or required. The appointing member and the proxy (and expressly not the **company**) shall be responsible for having appropriate and effective processes in place for the proxy to cast votes effectively and validly for the member electronically or by other means before the meeting in the way specified by the appointing member (if specified).
- 37.5 A proxy appointment may be standing (ongoing).
- 37.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 22.5(e) or at the **company's** registered address at least 48 hours before

a meeting or if the proxy is to be authorised to cast votes for the member electronically or by other means before the meeting, at least 48 hours before the last time by which votes may be cast.

- 37.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 37.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes (or in respect of which votes are cast electronically or by other means before the meeting), a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
 - (b) is mentally incapacitated
 - (c) revokes the proxy's appointment, or
 - (d) revokes the authority of an agent who appointed the proxy.
- 37.9 A proxy appointment may specify the way the proxy must vote on a particular resolution or in a ballot (which may include to abstain from voting on a resolution or in a ballot).

38. Voting by proxy

- 38.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy for another member from voting as a member on a show of hands).
- 38.2 When a vote in writing or a ballot is held, or pre-meeting is specified as the only method of voting on a resolution, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

39. Composition of Board

- 39.1 The board of directors of the **company** is, subject to any vacancies, to consist of:
- (a) up to seven elected directors as provided for in clause 39.6 including at least two **medically qualified** directors, at least one director who is not **medically qualified**, and at least one **New Zealand resident** director[^], each of whom will hold office as a director for up to three years (but may be required by this constitution to retire at an earlier annual **general meeting**, and subject to being eligible may be re-elected for a new term)

[^] A director who is **medically qualified** and is a **New Zealand resident**, or who is not **medically qualified** and is a **New Zealand resident**, will count toward satisfying both applicable categories (that is, being a **New Zealand resident** director and either a **medically qualified** director or a not **medically qualified** director). See clause 39.6(d).

- (b) up to two directors appointed by the then directors (referred to in this constitution as “**board appointees**”), each of which appointees shall hold office as a director until the earlier of (in respect of each of them separately):
 - (i) expiry of a fixed term, or
 - (ii) an event or events (which may include the non-occurrence of any thing),
which fixed term or event(s) or both shall be specified at the time of, and in the terms of, their respective appointments and need not be the same for both of them. The directors must seek to ensure that appointments of **board appointees** under this clause 39.1(b) promote the objective of the directors (as the board of directors is constituted from time to time) possessing an appropriate and desirable range of skills, expertise, experience and qualifications. A person appointed to the office of director under this clause 39.1(b) may but need not be a member of the **company**
- (c) ANZCHOG Medical Director, ex-officio, who shall hold office as a director until they cease to be the ANZCHOG Medical Director, and
- (d) an Immediate Past Chair, ex-officio, who shall hold office (as a director) if they were the **elected chairperson** at the time their most recent term of office as a director (other than as Immediate Past Chair) without being re-elected or re-appointed by the directors, until the earlier of the second annual **general meeting** after they became the Immediate Past Chair or the term of office as a director ends for another person who was the **elected chairperson** as at the date their term of office ended without being re-elected or re-appointed by the directors. An Immediate Past Chair is not an elected director and is not able to be re-elected as Immediate Past Chair (but subject to clause 39.2 and to otherwise being eligible), may be elected or appointed as a director upon or after their term as Immediate Past Chair ending. The office of Immediate Past Chair may be vacant from time to time, and if vacant is not a casual vacancy.

Transition: For the avoidance of doubt, directors other than *ex-officio* directors (the ANZCHOG Medical Director and Immediate Past Chair, if any) are not elected or appointed to specific office holder positions. Upon this constitution taking effect, any director other than the then chairperson or an *ex-officio* director (if any) will be deemed to be an ordinary director (and not to be the holder of a specific office). The chairperson as at the time this constitution takes effect will be deemed to have been elected by the directors as the **company's elected chairperson** for the purposes of clause 41, but will not otherwise be subject to or hold any limits or additional powers other than as provided for in this constitution or any applicable law.

39.2 At all times, subject to clause 39.3, the **company** must have:

- (a) at least three directors, and
- (b) no more than eleven directors in total

39.3 The **company** may, by resolution, increase or reduce (but not so as to reduce the number below three, unless permitted by law at that time) the number of directors, the minimum number of **medically qualified** directors, the minimum number of directors who are not **medically qualified** and the minimum number of **New**

Zealand resident directors, and may also determine in what rotation the increased or reduced number or the directors in the respective categories is or are to go out of office.

39.4 Alternate directors are not to be treated as directors for the purpose of determining the minimum or maximum number of directors holding office, the number of directors to retire at an annual **general meeting**, or whether there is a vacancy in any position or an insufficient number of **medically qualified** directors, directors who are not **medically qualified** or **New Zealand resident** directors.

39.5 Subject to observing the terms of any board charter or governance policy adopted by the directors concerning or in respect of the composition of the directors (as a board) (to the extent consistent with this constitution), and with the objective of at least the minimum number of **medically qualified** directors being replaced with **medically qualified** directors, at least the minimum number of directors who are not **medically qualified** being replaced with directors who are not **medically qualified**, and **New Zealand resident** directors being replaced with **New Zealand resident** directors, and maintaining or enhancing skills, expertise, experience and qualifications of the board, the directors may appoint an individual as a director, either to fill a casual vacancy or as an addition to the existing directors, providing:

- (a) the number of directors does not exceed the maximum number fixed under clause 39.2, and
- (b) before appointing the director, that individual gives the **company** a signed consent to act as a director, and
- (c) the director is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

39.6 Number of elected directors

At, or with effect at, each annual **general meeting** eligible members (being the **ordinary members**) will elect persons to the office of director in accordance with the applicable election process set out in clause 35 with the objective of seven directors holding office as elected directors under clause 39.1(a) and where possible:

- (a) at least two of those directors are **medically qualified** directors
- (b) at least one of those directors is not **medically qualified**, and
- (c) at least one of those directors is a **New Zealand resident**[^].

If there are insufficient nominations to fill the vacancies on the board or insufficient nominations of candidates who upon being elected or appointed would result in at least two directors being **medically qualified** directors, at least one director not being **medically qualified**, and/or at least one director being a **New Zealand resident** director, then all persons nominated (or such number of **medically**

[^] As above, a director who is **medically qualified** and is a **New Zealand resident**, or who is not **medically qualified** and is a **New Zealand resident**, will count toward satisfying both applicable categories (that is being a **New Zealand resident** director and either a **medically qualified** director or a not **medically qualified** director). See clause 39.6(d).

qualified director candidates, candidates who are not **medically qualified**, and/or is a **New Zealand resident** as were nominated) will be deemed to be elected under this clause and any remaining vacancies (including vacancies in respect of the up to two **medically qualified** director positions, one at least one director who is not **medically qualified**, and/or the one **New Zealand resident** director position) will remain vacant (but may be filled as casual vacancy appointment(s) under clause 40.5 after the annual **general meeting**). For the avoidance of doubt:

- (d) a person who is a **medically qualified** director and a **New Zealand resident**, or who is not **medically qualified** and is a **New Zealand resident**, will be counted as satisfying requirements for each applicable category, and neither applicable position will be treated as remaining vacant solely because one person fulfils both requirements, and
- (e) more than two directors may be **medically qualified**, more than one director may be not **medically qualified**, and more than one director may be a **New Zealand resident** however in determining whether a candidate is automatically elected, no candidate will be automatically elected if there are more candidates satisfying the applicable requirement than vacancies to be filled by persons who satisfy that requirement.

40. Election and appointment of directors

- 40.1 The initial directors are the people who are directors as at the date this constitution takes effect. Nothing in this constitution removes a director from office earlier than they would have ceased to hold office (including where being subject to standing for re-election, or being ineligible to hold office by reason of death, removal from office or disqualification other than by being disqualified by the **Corporations Act**, the **ACNC Act** or any other law) under the constitution that applied at the time they were last elected, re-elected or appointed. To the extent this clause results in the composition of the board of directors not being as provided for elsewhere in this constitution, this clause will prevail until the applicable director or directors cease to hold office or are subject to standing for re-election.
- 40.2 Apart from directors appointed under clauses 39.1(b) or 40.5, the members may elect a director by a resolution passed in a **general meeting**. A resolution may be passed by ballot or other means provided for or allowed by this constitution or specified in the applicable notice of **general meeting**.
- 40.3 Each of the directors must be elected or appointed by a separate resolution (with each election or appointment of a director determined by ballot or being treated as elected or appointed where the number of candidates equals or is less than the number of vacancies, or election by a method chosen by the chairperson as provided for in clause 35.1(e), being deemed to be a separate resolution), unless:
 - (a) the **members present** have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 40.4 A person is eligible for election as a director of the **company** if they:
 - (a) are an **ordinary member** of the **company**
 - (b) are nominated by two members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),

- (c) give the **company** (or have previously given the **company** and not withdrawn) their signed consent to act as a director of the **company**, and
- (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**. Paragraphs 40.4(a) and (b) do not apply to, and do not prevent, the re-election of a director appointed by the directors where required by this constitution or any law (for example, if a requirement to stand for re-election at the first general meeting after appointment or due to retirement by rotation applies).

40.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

- (a) is an **ordinary member** of the **company**
- (b) gives the **company** their signed consent to act as a director of the **company**, and
- (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

The directors shall have regard to the board charter and governance policies of the **company** (if any) when selecting potential appointees under this clause, but shall not in doing so be prevented from acting to avoid or remedy the **company** having too few directors. A director appointed under this clause 40.5 is not a “**board appointee**” under clause 39.1. The directors may appoint a replacement “**board appointee**” without being restricted to **ordinary members** of the **company** by this clause 40.5.

40.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose. The continuing directors shall seek to have regard to the board charter and governance policies (if any) applying at the time the **company** ceased to have at least 3 directors when selecting or proposing potential appointees or candidates under this clause 40.6, but shall not be prevented from acting to avoid or remedy the **company** having too few directors. Requirements for the board of directors to include minimum numbers of, and distinctions between, **medically qualified** and not **medically qualified** directors and **New Zealand resident** or non-**New Zealand resident** directors are to be disregarded and will not apply to selecting and appointing directors if necessary to ensure there are at least three directors.

41. Election of chairperson

The directors must elect a director who is **medically qualified** as the **company's elected chairperson**.[^] The **elected chairperson** need not necessarily be a director elected by the members and without limitation may be a director who was appointed or re-elected as a **board appointee**.

42. Term of office

42.1 At each annual **general meeting**:

- (a) any director appointed by the directors to fill a casual vacancy or as an additional director (but not a director holding office *ex officio* or a director

[^] *Transition: Clause 39.1 provides that the chairperson as at the time this constitution takes effect will be deemed to have been elected by the directors as the **company's elected chairperson** for the purposes of clause 41.*

appointed under clause 39.1(b), unless their term expires at that annual **general meeting** or it is a term of their appointment that they are subject to re-election at that annual **general meeting**) must retire, and

- (b) at least one-third of the remaining directors (not counting directors holding office *ex-officio* or directors appointed under clause 39.1(b)), rounded down to the nearest whole number (which may be zero), must retire.
- 42.2 The directors who must retire at each annual **general meeting** under clause 42.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected or appointed on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 42.3 Other than a director appointed under clause 40.5, directors holding office *ex-officio* or directors appointed under clause 39.1(b), a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire. A reference to a year in connection with the term of a director other than directors appointed under clause 39.1(b) includes such additional period as is required to extend the year to end at the next annual **general meeting** if the third year of that director's then current term would end before the third annual **general meeting** after they were last elected or appointed.
- 42.4 Each director (other than a director holding office *ex officio* or a director appointed under clause 39.1(b)) must retire at least once every three years or every third annual general meeting (having regard to the preceding clause 42.3. The term of appointment of a director appointed under clause 39.1(b) must not exceed three years without that director being reappointed under clause 39.1(b) or being elected (and if elected, they cease to be a director appointed under clause 39.1(b)).
- 42.5 A director who retires under clause 42.1 may nominate himself or herself for election or re-election, (and is deemed to have done so in the absence of advising the **company** in writing that they do not wish to stand for election or re-election), subject to clause 42.6.
- 42.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution** unless the directors (with the applicable director not participating in and being absent during the deliberations and decision) resolve by a majority vote that a certain director be eligible to immediately stand for re-election for one further term (only).

43. When a director stops being a director

A director stops being a director if their term expires without being re-elected or (in the case of a director appointed under clause 39.1(b)) reappointed or if they:

- (a) give written notice of resignation as a director to the **company**
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being an **ordinary member** of the **company**
- (e) are absent for 3 consecutive directors' meetings (not counting circular resolutions) without approval from the directors, or
- (f) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

44. [Not used]

Powers of directors

45. Powers of directors

- 45.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purpose(s) set out in clause 6.
- 45.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 45.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 45, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 45.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

46. Delegation of directors' powers

- 46.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 46.2 The delegation must be recorded in the **company's** minute book.

47. Payments to directors

- 47.1 The **company** must not pay fees to a director for acting as a director.
- 47.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 47.3 Any payment made under clause 47.2 must be approved by the directors.
- 47.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

48. Execution of documents

Without limiting the ways in which the **company** may execute documents, the **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**, or
- (b) a director and the company secretary.

Duties of directors

49. Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 49
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and
- (g) not to allow the **company** to operate while it is insolvent.

50. Conflicts of interest

- 50.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors, or
 - (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 50.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 50.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 50.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 50.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 67)
 - (c) their interest relates to a payment by the **company** under clause 66 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or

- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

51. When the directors meet

The directors may decide how often, where (which may be virtually, using technology without specifying a physical place for the meeting) and when they meet.

52. Calling directors' meetings

- 52.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 52.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

53. Chairperson for directors' meetings

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

54. Quorum at directors' meetings

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

55. Using technology to hold directors' meetings

- 55.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 55.2 The directors' agreement may be a standing (ongoing) one.
- 55.3 A director may only withdraw their consent within a reasonable period before the meeting.

56. Passing directors' resolutions

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

57. Circular resolutions of directors

- 57.1 The directors may pass a circular resolution without a directors' meeting being held.
- 57.2 A circular resolution is passed if a majority of the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 57.3 or clause 57.4.

- 57.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 57.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in or as an attachment to their reply.
- 57.5 A circular resolution is passed when the last director required to make up the applicable majority signs or otherwise agrees to the resolution in the manner set out in clause 57.3 or clause 57.4.

Company Secretary

58. Appointment and role of the company secretary

- 58.1 The **company** must have at least one company secretary, who may but need not also be a director.
- 58.2 A company secretary must be appointed by the directors (after giving the **company** their signed consent to act as company secretary of the **company**) and may be removed by the directors.
- 58.3 The directors must decide the terms and conditions under which the company secretary is appointed, including any remuneration.
- 58.4 The role of the company secretary includes:
- (a) maintaining a register of the **company's** members, and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

59. Minutes and records

- 59.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of members
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a members' statement distributed to members under clause 31.
- 59.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 59.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 59.1, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 59.2 and clause 60.1.
- 59.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.

59.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

60. Financial and related records

- 60.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 60.2 The **company** must also keep written records that correctly record its operations.
- 60.3 The **company** must retain its records for at least 7 years.
- 60.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws, Governance Charters and Policies

61. By-laws

- 61.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 61.2 Members and directors must comply with by-laws as if they were part of this constitution.

62. Governance Charters and Policies

- 62.1 To assist the directors in their governance role and duties and to promote the proper, efficient and effective governance of the **company**, the directors may from time to time adopt and may add to, vary or repeal (in whole or part) a board charter and such other governance policies as are thought appropriate by the directors for the time being.
- 62.2 The terms of any board charter or governance policy adopted by the directors on or relating to the composition of the board of directors, without limiting the matters which may be provided for:
- (a) shall have as an overall objective seeking to promote, and
 - (b) may provide for processes for calling for nominations and for advancing receiving nominations which promote, the board of directors comprising persons possessing an appropriate and desirable range of skills, expertise, experience, qualifications and diversity of directors, including being consistent with clause 39.1(b) and this constitution generally, and further:
 - (c) may provide for processes for notifying members of candidates and their skills, expertise, experience or qualifications (or the directors' assessment of such), and
 - (d) may make provision for the conduct of elections (including ballots), including distribution and return of ballot papers prior to or at an annual **general meeting** and/or pre-meeting voting, provided such provisions are fair and transparent having regard to the context in which they will operate.
- 62.3 The board charter or governance policies may set out specific requirements in relation to amendments to these documents, but (unless adopted by a resolution of members) not so as to prevent them being amended by the directors from time to time and for the time being.

- 62.4 The board charter and a governance policy may be specified to be, and will operate as, a by-law if made by resolution under clause 61.1.

Notice

63. What is notice

- 63.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 62 to 64, unless specified otherwise.
- 63.2 Clauses 64 to 66 do not apply to a notice of proxy under clause 37.6.

64. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the company secretary by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
- (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

65. Notice to members

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

66. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and

- (d) given under clause 63.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

67. Company's financial year

The **company's** financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

68. Indemnity

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

69. Insurance

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

70. Directors' access to documents

- 70.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 70.2 If the directors agree, the **company** must give a director or former director access to:
 - (a) certain documents, including documents provided for or available to the directors, and
 - (b) any other documents referred to in those documents.

Winding up

71. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 72.1.

72. Distribution of surplus assets

- 72.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- 72.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

Definitions and interpretation

73. Definitions

In this constitution:

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

associate member means a person who is recorded in the register of members as an associate member

board appointee means a director appointed under clause 39.1(b), or who having been appointed under clause 39.1(b) has been re-elected by members

community member means a person who is recorded in the register of members as a community member

company means the **company** referred to in clause 1

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

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 41

general meeting means a meeting of members and includes the annual **general meeting**, under clause 21.1

health and associated professionals include persons holding a current registration, licence, permit, authorisation or similar entitlement or qualification to practice as a medical practitioner, a nurse or health worker in Australia or New Zealand, persons holding professional qualifications or authorisations involved with the conduct of clinical trials or studies or practising in medical, health, allied or ancillary fields, and persons holding positions or performing roles primarily focussed on undertaking, assisting or facilitating clinical trials or studies or other related research or medical, health, allied or ancillary fields (such as but not limited to clinical trials office and biobank personnel, program managers, therapists, pharmacists, social workers, research scientists, educators and administrative support)

honorary member means a person who is recorded in the register of members as an honorary member

initial member means a person who is a member as at the date this constitution takes effect

medically qualified means, in respect of a director or candidate, a person who holds a current registration to practice as a medical practitioner in Australia or New

Zealand (and being “not medically qualified” means being a person who is not within this definition)

member present means, in connection with a **general meeting**, a **member present** in person by proxy at the venue or venues for the meeting

New Zealand resident means a person who is ordinarily resident in New Zealand at the time of election or appointment as a director (and/or at the time of being re-elected or re-appointed as a director)

ordinary member means a person who is recorded in the register of members as an ordinary member

registered charity means a charity that is registered under the **ACNC Act**

special resolution means a resolution:

- i. of which notice has been given under clause 22.5(d), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

74. Reading this constitution with the Corporations Act

- 74.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 74.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 74.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 74.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

75. Interpretation

In this constitution:

- (a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression,
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations),
- (c) without limiting the ways in which a document or thing can be signed, and in addition to any method of signing given effect by any law, signing or similar includes use of or applying an electronic or digital signature or an image or representation of a signature (whether or not applied or created by hand or other means), and includes a copy or image of a signed document or thing or an indication that a document or other things is to be treated as having been signed by the person making that indication, and
- (d) clauses and notes identified with “*Transition*” are to aid interpretation and application of this constitution as a replacement of a prior constitution, but unless expressly stated otherwise do not incorporate or give any continuing effect to the prior constitution or any part of it.