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# **Constitution**

Company limited by guarantee

**The Kids Research Institute Australia**

**ACN 009278755**

**Change of name approved 20 June 2024 at Annual General Meeting**

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## Part A Preliminary matters

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### 1 Defined terms and interpretation

- (a) The Dictionary in Schedule 1 (**Dictionary**):
    - (i) defines some of the terms used in this constitution;
    - (ii) sets out the rules of interpretation which apply to this constitution; and
    - (iii) clarifies the effect of the Corporations Act on this constitution.
  - (b) The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this constitution.
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### 2 Nature of company and liability

- (a) The company is a public company limited by guarantee.
- (b) The liability of each member is limited. Each member guarantees to contribute up to a maximum of ten dollars to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

## Part B Purpose

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### 3 Purpose of the company

#### 3.1 Purpose

The Company is established to be a charity whose principal purposes are to:

- (a) promote improvement in the health of all children in Australia and internationally by establishing and developing a centre of excellence in health research and in its application.
- (b) advance knowledge in the field of child health by seeking to discover the causes of and better understand the nature of diseases which cause ill-health in children.
- (c) use the knowledge so gained to improve methods of prevention, diagnosis and the treatment of disease and ill health in children and their families.
- (d) serve as a centre for learning and training in health research and health education for medical, nursing, scientific and all other health professionals of an undergraduate and postgraduate level, both local and overseas, in a wide range of disciplines.
- (e) promote and encourage excellence in research in co-operation with universities, other medical and educational institutions, and government health authorities.
- (f) catalyse and perform research, development and marketing of technology in medicine and science as it relates to family and child health and all aspects of child care.
- (g) provide all necessary accommodation, equipment, laboratories, offices, clerical and technical assistance and other facilities for the carrying out of research, investigations and training.
- (h) consider all questions affecting the interests of research in child and family health and wellbeing and to support or oppose any legislative, public education or other measures affecting such matters concerning child and family health and wellbeing as may be deemed justified.
- (i) do all such things as are conducive or incidental to the attainment of any of the above objects.

## Part C Members and membership

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### 4 Membership

#### 4.1 Members of the company

- (a) A member of the company is any person:
  - (i) on the register of members on the date of adoption of this constitution; and
  - (ii) who is admitted as a member of the company by the directors in accordance with rule 4.2.
- (b) If a person is admitted as a member of the company, the secretary must ensure that:
  - (i) the person is given notice of admission as a member of the company; and
  - (ii) the name and details of the person are entered in the members' register in accordance with rule 4.5.
- (c) The secretary must ensure that each person who has submitted an application and is not admitted as a member of the company is informed of this decision. None of the company, directors and secretary is required to give reasons for the decision not to admit a person as a member of the company.

#### 4.2 Membership eligibility

To be a member of the company a person must:

- (a) have a commitment to the purpose of the company;
- (b) be nominated for membership by an fully paid up member;
- (c) complete and lodge a membership application in such form as determined by the directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (d) pay any joining and annual fee as determined by the directors under rule 4.6;
- (e) be aged 18 years or over;
- (f) not have been convicted of a criminal offence with a maximum penalty of 12 months imprisonment or more within Australia or any other country;
- (g) not have been previously expelled from membership of the company in accordance with rule 5.4;
- (h) be a person who has ensured that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;
- (i) be admitted into membership by the directors or by such other individual or committee as authorised by the directors to admit members; and

- (j) satisfy such other membership criteria as the directors may determine from time to time.

#### **4.3 Members rights**

Each member has the right to:

- (a) receive notices of and to attend and be heard at any general meeting of the company;
- (b) vote on any member resolution (including at a general meeting of the company, by written resolution, by show of hands and by poll).

#### **4.4 Membership not transferable**

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

#### **4.5 Register of Members**

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 4.5(a), the following must be entered in the register in respect of each member:
  - (i) the name and address of the member;
  - (ii) the date of admission to and cessation of membership; and
  - (iii) any other information required by the directors or the law from time to time.

#### **4.6 Membership fees**

- (a) The joining fee for membership of the company is such amount as determined by the directors from time to time. The joining fee (if any) is payable at the same time that the application for membership is made and will be reimbursed in the event that the application is declined.
- (b) The annual membership fee for membership of the company is such amount as determined by the directors from time to time. The initial annual fee (if any) is payable at the same time that the application for membership is made and will be reimbursed if the application is declined.
- (c) Annual membership fees, except for the initial membership fee, are to be paid at such times and in such manner as the directors determine from time to time.
- (d) The directors may at their complete discretion:
  - (i) waive all or some of the fees payable by one or more members at any time; and
  - (ii) change the annual fee and joining fee.



#### 4.7 Membership renewal

The directors may distribute a membership renewal notice from time to time to one or more members requesting that those members confirm membership of the company and preferred contact details (**Member Renewal Notice**).

#### 4.8 Honorary Life Membership

Subject to the provisions of this Article, honorary life membership of the Institute may, on the recommendation of the Board, be conferred by the Institute by special resolution at an Annual General Meeting on any person who had rendered distinguished service to the Institute. Life members shall be entitled to such privileges as the Board may from time to time decide.

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## 5 Ceasing to be a member

### 5.1 General overview

- (a) There are a number of circumstances that will result in a member's membership ceasing. For instance, if a member:
  - (i) resigns from membership. See rule 5.2;
  - (ii) automatically ceases to be a member. See rule 5.3;
  - (iii) is expelled from membership. See rule 5.4; or
  - (iv) no longer complies with the membership eligibility criteria set out at rule 4.2.
- (b) The directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they so determine from time to time so long as they are consistent with the requirements set out in this rule 5.

### 5.2 Resignation from membership

- (a) A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.
- (b) A member that ceases to be a member under this rule 5.2 is eligible to reapply for membership of the company and on so doing will be required to follow the membership application process applicable at the time of the reapplication.

### 5.3 Automatic cessation of membership

A member's membership will automatically cease if the member:

- (a) dies or, in the case of a body corporate, is wound up or becomes insolvent;
- (b) fails to pay any required membership fee within two months after the date on which that membership fee becomes due or such later time as the directors may determine; or
- (c) fails to properly respond to a Member Renewal Notice within four weeks after the due date specified in the notice, or such later time as the directors may determine.

- (d) A member that has ceased being a member under rule 5.3(b) or 5.3(c) is eligible to reapply for membership of the company and on so doing will be required to follow the membership application process applicable at the time of the reapplication.

#### **5.4 Disciplining, suspension and expulsion of members**

- (a) This rule 5.4 describes what needs to happen when considering whether to warn, discipline, suspend or expel a member. In summary the process involves:
  - (i) putting the member in question on notice; and
  - (ii) passing a directors' resolution to warn, suspend, expel or otherwise discipline that member.
- (b) So long as the steps set out in this rule 5.4 are followed, the directors may resolve to warn, suspend, expel or otherwise discipline a member if that member:
  - (i) has refused or neglected to comply with the provisions of this constitution; or
  - (ii) has acted in a way that, in the opinion of the directors, is unbecoming of the member or prejudicial to the interests or reputation of the company.

#### **(Member Disciplinary Resolution)**

- (c) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must be in writing and let the member know:
  - (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
  - (ii) the reasons why the directors are considering taking the determined action; and
  - (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action.
- (d) A director who is subject to a Member Disciplinary Resolution is not entitled to vote on that resolution.
- (e) Directors have 14 days from the date a Member Disciplinary Resolution is passed to notify the relevant member about the directors' decision. The Member Disciplinary Resolution must be in writing and is final.
- (f) A member that has been expelled from membership of the company is not permitted to reapply for membership.

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## **6 General meetings**

### **6.1 Introduction**

- (a) For so long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, and for so long as the law permits or requires, the directors:

- (i) may determine whether or not to hold meetings of members including annual general meetings; and

must ensure that the Australian Charities and Not-for-profits Commission Governance Standards are complied with.

- (b) If the company does hold a general meeting of members it must be held in accordance with this constitution and Corporations Act 2001 (Cth).
- (c) If there is any inconsistency between this constitution and the Corporations Act 2001 (Cth) and this constitution with respect to the holding of meetings of members, then, unless the Corporations Act in fact applies, the provisions of this constitution will prevail.

## **6.2 Notice and holding of general meetings**

- (a) If a general meeting of members, including an annual general meeting, is to be convened, at least 21 days' notice of that meeting must be given to each person who is at the date of the notice:
  - (i) a member of the company eligible to receive notices of meetings;
  - (ii) a director of the company; or
  - (iii) an auditor of the company.
- (b) A notice of a general meeting must specify:
  - (i) the date, time and place of the meeting;
  - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
  - (iii) the general nature of the business to be transacted at the meeting; and
  - (iv) any other matters required by law.
- (c) A person who is entitled to receive a notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present, whether or not the person is a member of the company.
- (d) A meeting of members may be held in two or more places linked together by any technology so long as it:
  - (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chair to be aware of proceedings in each place; and
- (e) enables the members in each place to vote on a show of hands and on a poll.

## **6.3 Quorum at general meetings**

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.

- (b) The quorum for a general meeting of members is five members present in person or by proxy and entitled under these rules to vote at a general meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (i) the meeting stands adjourned to the same day in the next week at the same time and place;
  - (ii) at the adjourned meeting the quorum is three members present in person or by proxy and entitled under these rules to vote at a general meeting; and
  - (iii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **6.4 Chair of general meetings**

- (a) The chair of directors must preside as chair at each general meeting.
- (b) If the chair of directors is absent or is unwilling to act, then the deputy-chair of directors, if one has been appointed, must preside as chair at the meeting.
- (c) If both the chair and deputy-chair are absent or are both unwilling to act, then the members present at that meeting may elect a person present to chair the meeting.

#### **6.5 Conduct of general meetings**

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
  - (i) proper and orderly debate or discussion; and
  - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.

#### **6.6 Decisions at general meetings**

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting (including being present by technological means) and that decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members, the chair has a second or casting vote in addition to any vote the chair may have in his or her capacity as a member.

- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded.
- (d) A member may only cast one vote on a show of hands regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote being decided by a show of hands is taken or before or immediately after the declaration of the result of the show of hands:
  - (i) by the chair of the meeting;
  - (ii) by at least five members present and entitled to vote on the relevant resolution; or
  - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) Unless a poll is demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (g) If a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

## **6.7 Voting rights**

Each member has the right to exercise one vote on a show of hands and on a poll.

## **6.8 Representation at general meetings**

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - (i) in person; or
  - (ii) by proxy in a form as the directors may prescribe or accept; or
  - (iii) by attorney in a form as the directors may prescribe or accept.
- (b) A proxy or attorney may be a member of the company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a proxy or attorney to establish to the satisfaction of the chair that the person has been validly appointed as a proxy or attorney and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.

- (d) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:
  - (i) the person specified by the company in the proxy form; or
  - (ii) if no person is specified in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:
  - (i) at the registered office of the company, at the facsimile number at its registered office or at another place, facsimile number or electronic address specified for that purpose in the notice convening the meeting; and
  - (ii) at least 48 hours before the time scheduled for the commencement of the meeting as specified in the notice of meeting, or such other period of time before the meeting determined by the directors from time to time.
- (f) The authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that member is present at the meeting unless the members present at the meeting resolve otherwise.
- (g) The chair may hold as many proxies as are given to the chair. All other proxy holders may hold a maximum of three proxies.

## **6.9 Decisions without meetings**

Members may pass resolutions and otherwise make decisions outside of a members' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of member resolutions as determined by the directors from time to time.

### 7 No profits for members

- (a) Subject to rule 7(b), the assets and income of the company must be applied solely in furtherance of its purpose and no portion of its income or assets may be paid or transferred, directly or indirectly, to any member.
- (b) The company may, with the approval of the directors, make payment in good faith to a member of the company:
  - (i) by way of reasonable and proper remuneration for any goods supplied or services rendered to the company (including remuneration as an employee or consultant);
  - (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
  - (iii) by way of reasonable and proper rent for premises let by that member to the company; and
  - (iv) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.
- (c) Nothing in this rule 7 prevents a member from benefiting from participating in the company's activities or receiving services from the company provided that such activities and services are not exclusive to membership.

## Part E Directors and secretary

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### 8 Directors

#### 8.1 Number of directors

- (a) The minimum number of directors is 3. Subject to rule 8.1(b), the maximum number of directors is ten (including the Executive Director).
- (b) The directors may change the maximum number of permitted director positions in accordance with the law.

#### 8.2 Becoming a director

To become a director a person must be a member of the company and either:

- (a) be elected to be a director by the members, in which case the person's term of office is to be three years; or
- (b) be appointed by the directors to fill any vacancy however arising, in which case the person's term of office is to be for 12 months or, if the company is to hold an annual general meeting, from the time of appointment until the next annual general meeting.

#### 8.3 Directors time in office

- (a) Each director is to remain as a director until the term of her or his office expires or until he or she resigns, retires or is otherwise removed as a director of the company in accordance with the law and this constitution. However, subject to the law and rule 8.3(b), a person is eligible for reappointment or re-election.
- (b) Subject to rule 8.3(c), a person must not hold the office of a director for any more than nine consecutive years unless otherwise resolved by a special resolution of Members.
- (c) A person having held office as a director for nine consecutive years is eligible for re-election or re-appointment once a period of two years has expired since that person last held office as a director of the company.
- (d) This does not apply to the Executive Director.

#### 8.4 Qualifications and composition of directors

Each director must:

- (a) have knowledge, and expertise relevant to and be committed to the purpose, objectives and activities of the company; and
- (b) satisfy any other policies relating to the composition of the board and skills and qualifications of directors developed by the directors from time to time.

#### 8.5 Vacation of office



- (a) In addition to the circumstances prescribed by law, the office of any director becomes vacant if the director dies or, unless the directors otherwise resolve to confirm the director's position, if the director:
  - (i) ceases to be a member of the company;
  - (ii) is, due to physical or mental impairment, unable to properly perform his or her duties as a director as determined by a suitably qualified health professional, acting reasonably;
  - (iii) becomes bankrupt;
  - (iv) is convicted of an indictable offence;
  - (v) fails to attend three consecutive directors' meetings without leave of absence approved by the directors;
  - (vi) ceases to hold or is removed from office as a director; or
  - (vii) is removed from office by members in accordance with requirements of the Corporations Act.
- (b) Nothing in rule prevents a director from vacating his or her office if the director resigns by notice in writing to the company.

## **8.6 Payments to directors**

- (a) Subject to rule 8.6(c), directors are entitled to be paid all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees but will not otherwise receive any payment for acting as a director.
- (b) Nothing in this rule 8.6 restricts the remuneration to which a director may be entitled as an officer or employee of the company in a capacity other than director.
- (c) The terms of that employment have been approval by a resolution provided by the Board. Nothing in this rule 8.6 shall prevent a director from charging and recovering professional or other fees rendered on reasonable commercial terms and the payment of which is approved by a resolution of the Board in connection with professional or technical services provided by that Director to the Institute otherwise then in his or her capacity as a Director and with the prior approval of the Board.
- (d) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by the directors or such other person or persons to which the directors may have delegated such authority.

## **8.7 Interested directors**

- (a) No contract or other arrangement made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at

the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the law which permits that director to do so.

Except where the personal interest is material, a director who has a personal interest in an arrangement may, despite that interest:

- (i) be counted in determining whether a quorum is present at any meeting of directors considering that arrangement; and
- (ii) vote in respect of the arrangement or any matter arising out of it.

## **8.8 Powers and duties of directors**

The directors are responsible for managing the business of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the company in general meeting.

## **8.9 Directors' meetings**

The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

## **8.10 Convening of meetings of directors**

Any director of the company may convene a directors' meeting.

## **8.11 Notice of directors' meetings**

- (a) A notice of a directors' meeting must:
  - (i) be given to each current director, other than a director on leave of absence approved by the directors, in a way permitted by rule 13;
  - (ii) be given with sufficient time for the directors to properly review and consider the material provided with the notice and the matters arising from it;
  - (iii) specify the time and place of and, if relevant, the form of technology for, the meeting; and
  - (iv) state the nature of the business to be transacted at the meeting.
- (b) A resolution passed at a directors meeting is not invalid just because a director did not receive notice of the meeting provided that:
  - (i) the notice was not received because of accident or error;
  - (ii) before or after the meeting, the director notifies the company of his or her agreement to the resolution; or
  - (iii) the director attended the meeting.

## **8.12 Quorum for directors' meetings**

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.

- (b) A quorum consists of three directors.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by electronic means such as by telephone.
- (d) If at any time there are less than three directors, the remaining director or directors may act but only:
  - (i) in an emergency;
  - (ii) for the purpose of convening a general meeting of the company; or
  - (iii) for the purpose of increasing the number of directors to three.
- (e) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide.

### **8.13 Chair and deputy-chair**

- (a) The directors must, subject to the rules relating to term of office found at rule 8.3, appoint a director to the office of chair.
- (b) The directors may, subject to the rules relating to term of office found at rule 8.3, appoint a director to the office of deputy-chair.
- (c) A person may only fill the office of chair or deputy-chair for so long as that person is a director of the company.
- (d) The chair must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act.
- (e) If the chair is unable to attend a directors' meeting or unwilling to act, then the deputy-chair, if one has been appointed, must preside as chair of that meeting.
- (f) If both the chair and deputy-chair are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from among their number to preside as chair for that meeting.

### **8.14 Decisions of directors**

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may cast a second vote.

### **8.15 Decisions without meetings**

Directors may pass resolutions and otherwise make decisions outside of a directors' meeting in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

### **8.16 Committees**

- (a) The directors may resolve to:
  - (i) establish one or more committees consisting of such persons as they determine;
  - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
  - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
  - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.
- (c) The directors may continue to exercise all of their powers despite any delegation made under this rule.

### **8.17 Delegation to individuals**

The directors may resolve to delegate any of their powers:

- (i) to one or more directors;
- (ii) to one or more members; or
- (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

## 8.18 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

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## 9 Secretaries

- (a) The directors must appoint a secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in his or her capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to:
  - (i) ensuring that the necessary registers required by the law are established and properly maintained;
  - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
  - (iii) ensuring the organisation of, and attend, any meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a secretary is not invalidated just because:
  - (i) of a defect in the person's appointment as a secretary; or
  - (ii) the person is disqualified from being a secretary,

if that circumstance was not known by the person when the act was done.

## Part F Winding up and loss of endorsement

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### 10 Winding up and loss of endorsement

#### 10.1 Winding up

- (a) Before winding up the company, the directors must ensure that any of its public funds with deductible gift recipient endorsement are wound up and all associated DGR-sourced moneys and other assets are distributed in accordance with each public fund's rules and the law.
- (b) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be paid to, or distributed amongst members, but must be given or transferred to one or more charitable organisations that:
  - (i) has objects or purposes similar to those of the company;
  - (ii) by its constituent rules, prohibits the distribution of its income and property amongst its Members to an extent at least as great as is imposed upon the company; and
  - (iii) for so long as the company is endorsed as a deductible gift recipient under Australian income tax laws, is also endorsed as a tax deductible recipient under the same category of endorsement as the company.
- (c) The decision as to which organisation is, or which organisations are, to be the recipient of the Surplus Assets distributed in accordance with rule 10.1(b):
  - (i) is to be determined by the directors at or before the winding up or dissolution of the company; or
  - (ii) if required, by the Court.
- (d) Any part of the Surplus Assets consisting of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to, or otherwise dealt with in the way directed by, the department or authority that supplied it.

#### 10.2 Loss of deductible gift recipient endorsement

- (a) If the endorsement of the company as a deductible gift recipient is revoked, the following assets remaining after the payment of the company's liabilities must be transferred to one or more charitable organisations to which income tax deductible gifts can be made:
  - (i) deductible gifts of money or property received for the purpose of the company;
  - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the purpose of the company; and
- (b) money received by the company because of such deductible gifts and contributions.

- (c) The decision about which charitable organisation or organisations is to receive funds under rule 10.2(a) is to be made by the directors.

## Part G Administrative matters

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### 11 Minutes and records

#### 11.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of directors; and
- (c) meetings and resolutions of committees.

#### 11.2 Inspection of records

- (a) Subject to the law and rule 11.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to inspection.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep all financial and other records required by law.

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### 12 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) This indemnity:
  - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule); and
  - (ii) operates only to the extent that the loss or liability is not paid by insurance.



- (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs).
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## 13 Notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
  - (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determine by the directors from time to time.
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## 14 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of Western Australia, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

### 1      Dictionary

In this constitution:

**Member Disciplinary Resolution** has the meaning at rule 5.4(b).

**Surplus Assets** has the meaning given in rule 10.1(a).

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### 2      Interpretation

#### 2.1      General

- (a) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (b) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing a gender include every other gender;
  - (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
  - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

#### 2.2      Replaceable rules not to apply

The replaceable rules contained in the *Corporations Act 2001* (Cth) from time to time do not apply to the company.