

Constitution

The Cancer Council ACT Limited

as adopted 22 November 2023

Constitution of The Cancer Council ACT Limited

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Preliminary

1. Defined terms & interpretation

1.1 In this Constitution unless the contrary intention appears:

ACNC Act means the *Australian Charities and Not for profits Commission Act 2012* (Cth), or any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or a national education body or otherwise for the not for profit sector, as modified or amended from time to time and includes any regulations made under that Act or any other such legislation and any rulings or requirements of the Commissioner of the Australian Charities and Not for profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Company.

Alternate Director means a person appointed as an alternate director under clause 38.

Applicable Not for Profit Law means any law relating to the regulation of charities or not for profit entities applicable to the Company, including the *ACNC Act*, the *Charities Act*, each *Charitable Fundraising Act*, the *Tax Act*, section 150 of the *Corporations Act* and any Rulings or requirements of any commissioner or body under any such law, having application to the Company.

Auditor means the Company's auditor.

Cancer means all forms of cancer and allied conditions.

Charitable Fundraising Act means the legislation of any State or Territory of Australia, or the Commonwealth of Australia, regulating the raising of funds for charitable purposes and applicable to the Company, which may include, relevantly, *Charitable Collections Act 2003* (ACT).

Charities Act means the *Charities Act 2013* (Cth).

Chief Executive Officer means the person appointed as Chief Executive Officer of the Company by the Directors.

Company means The Cancer Council ACT Limited, unless and until the Australian Securities and Investments Commission approves the omission of the word "Limited" from the name of the Company, in which case it means The Cancer Council ACT.

Constitution means the constitution of the Company as amended from time to time.

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

Director includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Member has the meaning described under clause 4.

Office means the Company's registered office.

Office-bearer means the offices of President, Vice-President, Treasurer and Honorary Secretary.

President means any person elected to that position pursuant to clause 26.

Property means for the purposes of clause 53.2 all property that relates to gifts of money or property for the objects of the Company, or contributions made in relation to an eligible fundraising event held for the objects of the Company, and any monies generated by such gifts or contributions where the donor receives or is entitled to receive a tax deduction because the Company is endorsed as a deductible gift recipient for the purposes of the *Income Tax Assessment Act 1997* (Cth).

Register means the register of Members of the Company.

Registered Address means the last known address of a Member as noted in the Register.

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.

Tax Act means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

Treasurer means any person elected to that position pursuant to clause 26.

Vice-President means any person elected to that position pursuant to clause 26.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (d) a reference to the Corporations Act is a reference to the Corporations Act as modified or amended from time to time.

1.3 Unless the contrary intention appears in this Constitution, a word or expression in a clause of this Constitution has the same meaning as in a provision or definition of the Corporations Act that deals with the same matter as the clause.

1.4 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

Objects

2. Objects

2.1 The object for which the Company is established, as a health promotion charity, is to promote the prevention and control of Cancer in the community in order to reduce and alleviate the detrimental impacts on those who have suffered from Cancer, their carers, supporters and loved ones. In pursuit of this the Company will, amongst other things:

- (a) promote Cancer awareness by developing and engaging in programs of education on matters relating to Cancer, its prevention, early detection, diagnosis and treatment;

- (b) provide resources and support, including equipment, practical information and emotional care to persons suffering from Cancer, their carers, supporters and loved ones;
 - (c) facilitate the improvement of the diagnosis, treatment and support of persons suffering from Cancer;
 - (d) undertake, coordinate and encourage research and investigation with respect to the causation, prevention, diagnosis and treatment of Cancer, and recovery from Cancer;
 - (e) cooperate and enter into arrangements with persons and associations having similar objects to those of the Company;
 - (f) maintain membership of Cancer Council Australia ABN 91 130 793 725 and through it, its international affiliations;
 - (g) raise funds and seek donations of goods and services from the public and volunteers to support the overall objects of the Company; and
 - (h) do all things that are incidental or ancillary to the attainment of the above objects.
- 2.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the objects in this clause 2; and
 - (b) do all things incidental or convenient in relation to the exercise of power under clause 2.2(a).

Income and property of Company

3. Income and property of Company

- 3.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 2.
- 3.2 Subject to clause 36, no income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for monies lent.

Membership

4. Admission

- 4.1 The Members of the Company are any persons whom the Directors admit to membership in accordance with this Constitution.
- 4.2 Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.

- 4.3 The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
- (a) accept or reject the application; or
 - (b) ask the applicant to give more evidence of eligibility for membership.
- 4.4 If the Directors ask for more evidence under clause 4.3, their determination of the application for membership is deferred until the evidence is given.
- 4.5 The Directors do not have to give any reason for rejecting an application for membership.
- 4.6 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and request payment of the applicant's first annual subscription.
- 4.7 Subject to clause 4.8, an applicant for membership becomes a Member when the applicant's first annual subscription is paid.
- 4.8 If the first annual subscription of an applicant for membership is not paid within 30 days after the date the applicant is notified of acceptance of their application for membership, the Directors may cancel their acceptance of the applicant for membership of the Company.
- 4.9 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.
- 4.10 Members are entitled to:
- (a) speak at, attend, vote and receive notices of meetings of Members;
 - (b) participate in a call for a poll;
 - (c) vote at elections of Directors; and
 - (d) be elected as Directors.

5. Subscriptions

- 5.1 The Directors may determine the annual subscription payable by each Member.
- 5.2 The annual subscription period will commence on 1 July of each year, and the annual subscription will be due in advance within 30 days of this date.
- 5.3 The Directors may determine that any Member admitted to membership between 1 January and 30 June will pay only one-half of the annual subscription until that Member's next annual subscription falls due.
- 5.4 If a Member does not pay a subscription within 30 days after it becomes due the Directors:
- (a) will give the Member notice of that fact; and
 - (b) if the subscription remains unpaid 21 days from the date of that notice, will declare that Member's membership forfeited.

6. Suspension and cessation of membership

- 6.1 A Member's membership of the Company will be suspended if a majority of three-quarters of the Directors present and voting at a meeting of Directors, for such period as those Directors determine, by resolution suspend the membership of a Member who has, in the opinion of those Directors, acted in a manner detrimental to the interests of the Company.
- 6.2 A Member's membership of the Company will cease:
- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company;
 - (ii) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
 - (c) if membership is forfeited under clause 5.4(b);
 - (d) if the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (iii) is convicted of an indictable offence.
- 6.3 Any Member ceasing to be a Member:
- (a) will not be entitled to any refund (or part refund) of a subscription; and
 - (b) will remain liable for and will pay to the Company all subscriptions and monies which were due at the date of ceasing to be a Member.

7. Powers of attorney

- 7.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- 7.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 7.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

General meetings

8. Calling general meeting

- 8.1 Any three Directors may at any time, and the Secretary must on the request of any three Directors, call a general meeting.
- 8.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
 - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

9. Notice of general meeting

- 9.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 9.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 9.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 9.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 8.2).
- 9.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 51.1 entitled to receive notices from the Company.
- 9.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

10. Member

In clauses 11 (other than clause 11.2), 12, 14, 18A and 19, **Member** includes a Member present in person or by proxy or attorney.

11. Quorum

11.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

11.2 A quorum of Members is five Members present in person.

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

- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

12. Chairperson

12.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting. In the absence of any such election the President will act as chairperson of Director's meeting.

12.2 The Directors present may elect a chairperson of a general meeting if:

- (a) there is no chairperson or deputy chairperson; or
- (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
- (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.

12.3 If no election is made under clause 12.2, then:

- (a) the Members may elect one of the Directors present as chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

12.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

13. Adjournment

- 13.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 13.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 13.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 13.4 Notice of an adjourned general meeting must only be given in accordance with clause 9.1 if a general meeting has been adjourned for more than 21 days.

14. Decision on questions

- 14.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 14.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 14.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 14.4 The demand for a poll may be withdrawn.
- 14.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

15. Taking a poll

- 15.1 A poll will be taken when and in the manner that the chairperson directs.
- 15.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 15.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 15.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 15.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 15.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

16. Casting vote of chairperson

- (a) The chairperson has a casting vote in addition to the chairperson's votes as a Member, proxy or attorney.
- (b) The Chairperson may, in his or her absolute discretion, elect not to exercise the casting vote provided for under clause 16(a).

17. Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

18. Use of technology for general meetings

- (a) The members need not all be physically present in the same place for a general meeting to be held.
- (b) Subject to the Corporations Act, a general meeting may be held by the Members communicating with each other by any technological means by which they are able to simultaneously hear each other and participate in discussion.
- (c) A Member who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the general meeting.

Votes of Members

19. Entitlement to vote

19.1 A Member is not entitled to vote at a general meeting if the member's annual subscription is in arrears at the date of the meeting.

19.2 A Member entitled to vote has one vote.

20. Objections

20.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

20.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

20.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

21. Votes by proxy

- 21.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 21.2 A proxy need not be a Member.
- 21.3 A proxy may demand or join in demanding a poll.
- 21.4 A proxy or attorney may vote on a poll.
- 21.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

22. Document appointing proxy

- 22.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 22.2 For the purposes of clause 22.1, an appointment received at an electronic address will be taken to be signed by the Member if:
 - (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 22.3 A proxy's appointment is valid at an adjourned general meeting.
- 22.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 22.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
 - (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 22.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more directors or the Secretary.

23. Lodgment of proxy

The written appointment of a proxy or attorney must be received by the Company, at least 6 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote.

23.1 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:

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

24. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

Appointment and removal of Directors

25. Number of Directors

25.1 There shall be no less than 5 nor more than 9 Directors of the Company.

25.2 The board of Directors shall consist of:

- (a) President;
- (b) Vice-President; and
- (c) up to 7 ordinary Directors.

26. Appointment and removal of Directors

26.1 Only Members who are not overdue in their subscriptions under clause 5 who have been Members for not less than 21 days at the date of nomination are eligible to be nominated, elected or appointed as Directors.

26.2 A person is not eligible for election as a Director at a general meeting unless the person has in writing signed by that person indicated his or her willingness to be nominated.

26.3 Elections of Directors shall be conducted by ballot of the Members.

26.4 The Company may by resolution passed in general meeting:

- (a) remove any Director before the end of the Director's period of office; and
 - (b) appoint another person in the Director's place.
- 26.5 A person appointed under clause 26.4(b) will hold office for the period for which the Director replaced would have held office if the Director had not been removed.
- 26.6 The Directors shall elect persons to hold the Office-Bearer positions by the Directors from among their number at the first meeting of Directors following the annual general meeting or if there is a vacancy in an Office-Bearer position prior to the annual general meeting at the next meeting of Directors following the vacancy arising.

27. Additional and casual Directors

- 27.1 Subject to clause 25.1, the Directors may, by a vote of at least 75% of the total number of Directors, appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors, provided that that person is a Member at the date of appointment.
- 27.2 A Director appointed under clause 27.1 will hold office for the period for which the Director whose casual vacancy the person is filling would have held office if the casual vacancy had not arisen.

28. Term of Directors

- 28.1 A Director's term of office:
 - (a) commences at the end of the annual general meeting following their election or at which they were elected; and
 - (b) ceases at the conclusion of the third annual general meeting after the Director was last elected, unless removed by the Company earlier in accordance with clause 26.4(a).
- 28.2 Subject to clause 28.3, a Director may not serve more than three consecutive terms.
- 28.3 No person who has served three consecutive terms as a Director may be appointed or elected as a Director for a further term unless all of the Directors vote to allow that person to be appointed or stand for election as a Director for a further one year term.

29. Filling vacated Office

- 29.1 When a Director's term ceases at a general meeting, the Company may by ordinary resolution elect a person to fill the vacated office, provided that that person has been a Member for not less than 21 days at the date of appointment.
- 29.2 If the vacated office is not filled and the Director whose term has ceased has offered themselves for re-election, they will be deemed to have been re-elected unless, at the meeting at which their term ceases:
 - (a) it is resolved not to fill the vacated office; or
 - (b) the resolution for the re-election of the Director is put and lost.

30. Eligibility of Director

- 30.1 A person other than a Member who has been a Member for not less than 21 days is not eligible to be elected as a Director.

31. Nomination of Director

- 31.1 A person other than a Director whose term has ceased is not eligible for election as a Director at a general meeting unless the person, or a Member who intends to propose the person, has left at the Office a written notice signed by him or her:
- (a) giving the person's consent to the nomination; and
 - (b) stating either that the person is a candidate for the office of Director or that the Member intends to propose the person for election.
- 31.2 A notice given in accordance with clause 31.1 must be left at the Office at least 14 days before the relevant general meeting.
- 31.3 A written notification of all Director vacancies and each candidate for election, must be displayed at the Office at least seven days before every general meeting at which an election of a Director will take place.

32. Vacation of Office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company;
- (e) is absent from Directors' meetings for three consecutive meetings without leave of absence from the Directors;
- (f) ceases to be a Member of the Company; or
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

Powers and duties of Directors

33. Powers and duties of Directors

- 33.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.

- 33.2 Without limiting the generality of clause 33.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

Proceedings of Directors

34. Directors' meetings

- 34.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 34.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director and each Director's alternate.
- 34.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 34.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 34.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 34.6 Subject to clause 37, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 34.7 Clauses 34.4 to 34.5 apply to meetings of Directors' committees as if all committee members were Directors.
- 34.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 34.9 A quorum is any five Directors.
- 34.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 34.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

35. Decision on questions

- 35.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 37, each Director has one vote.
- 35.2 The chairperson of a meeting has a casting vote in addition to his or her deliberative vote.

35.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.

35.4 If the Alternate Director is a Director, he or she also has a vote as a Director.

Payments to Directors

36. Payments to Directors

36.1 No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service; and
- (c) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

37. Directors' interests

37.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

37.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

37.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

37.4 Subject to clause 36, a Director or a body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any agreement or arrangement with the Company;
- (b) hold any office or place of profit other than as auditor in the Company; and
- (c) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

37.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or

- (b) vote on the matter,

unless permitted by the Corporations Act to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

37.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

38. Alternate Directors

38.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate for a period determined by that Director.

38.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.

38.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.

38.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.

38.5 The appointment of an Alternate Director:

- (a) may be revoked at any time by the appointor or by the other Directors; and
- (b) end automatically when the appointor ceases to be a Director.

38.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

39. Remaining Directors

39.1 The Directors may act even if there are vacancies on the board.

39.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

- (a) appoint a Director; or
- (b) call a general meeting.

40. Chairperson

40.1 The President will be the chairperson of Directors' meetings.

- 40.2 The Vice-President will be the deputy chairperson to act as chairperson in the President's absence.
- 40.3 If no President or Vice-President is elected or if the President and Vice-President are not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

41. Delegation

- 41.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to:
- (a) a committee or committees (each a **Committee**);
 - (b) a Director;
 - (c) an employee of the Company; or
 - (d) any other person.
- 41.2 The Directors may at any time revoke any delegation of power made pursuant to clause 41.1.
- 41.3 At least one member of each Committee must be a Director.
- 41.4 A delegate must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 41.5 A delegate may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in them.
- 41.6 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each committee member was a Director.

42. Rules

- 42.1 The Directors may make such rules as they consider necessary or expedient for the purpose of giving effect to this Constitution or carrying out their powers, functions and duties under this Constitution.

43. Written resolutions

- 43.1 The Directors may pass a resolution without a Directors' meeting being held if 75% or more of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs constituting 75% or more of the Directors entitled to vote on the resolution have signed a statement that they are in favour of the resolution.
- 43.2 For the purposes of clause 43.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 43.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

43.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 43.

43.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

44. Validity of acts of Directors

44.1 If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

45. Minutes and Registers

45.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 43;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 37.

45.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

45.3 The Company must keep all registers required by this Constitution and the Corporations Act.

Local management

46. Local management

46.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

46.2 Without limiting clause 46.1 the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (b) delegate to any person appointed under clause 46.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

46.3 The Directors may at any time revoke or vary any delegation under this clause 46.

47. Appointment of attorneys and agents

47.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,
determined by the Directors.

47.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local board established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm; or
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

47.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

47.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.

47.5 An attorney or agent appointed under this clause 47 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

48. Secretary

48.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.

48.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.

48.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Inspection of records

49. Inspection of records

- 49.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 49.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Notices

50. Service of notices

- 50.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 50.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 50.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 50.4 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.
- 50.5 A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this clause.
- 50.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 50.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 50.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

51. Persons entitled to notice

51.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director and Alternate Director; and
- (c) any Auditor.

51.2 No other person is entitled to receive notice of a general meeting.

Audit and accounts

52. Audit and accounts

52.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.

52.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

Winding up

53. Winding up or revocation of deductible gift recipient endorsement

53.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year,
undertakes to contribute to the property of the Company for the:
- (c) payment of debts and liabilities of the Company (in relation to clause 53.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,
such amount as may be required, not exceeding \$10.

53.2 If any surplus remains following the winding up of the Company, or surplus Property remains following the revocation of its deductible gift recipient endorsement under subdivision 30-BA of the Tax Act, the surplus, or surplus Property (as applicable), will not be paid to or distributed amongst Members, but will be given or transferred to another fund, authority or institution which is charitable at law and which is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act as determined by the Members at or before the winding up, or the revocation of its deductible gift recipient endorsement, and in default, as determined by Cancer Council Australia ABN 91 130 793 725.

Indemnity

54. Indemnity

- 54.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 54.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 54.3 The amount of any indemnity payable under clauses 54.1 or 54.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- 54.4 For the purposes of this clause 54, **officer** means:
- (a) a Director; or
 - (b) a Secretary.

Applicable Not-for-Profit Laws

55. Applicable Not-for-Profit Laws

- 55.1 The Company will at all times comply with the Applicable Not-for-Profit Laws.

Transitional Arrangements

56. Transitional Arrangements

- 56.1 The transitional arrangements the term of Directors are outlined at Annexure A to this Constitution.

Annexure A – Transitional Arrangements

Transitional Arrangement Definitions

1. In this Constitution unless the contrary intention appears:

Adoption Date means the date of the adoption of this constitution.

Transitional Director means an individual who holds the office of Director prior to the Adoption Date and is re-elected at the 2016 annual general meeting.

Tranche A Transitional Directors means one third of the Transitional Directors, or if their number is not a multiple of three, then the number nearest but not exceeding one third, being the Transitional Directors who have served the shortest in office as at the date of their re-election at the 2016 annual general meeting and, if two or more Transitional Directors have been in office an equal length of time, the Transitional Directors who will be the Tranche A Transitional Directors shall, in default of agreement, be determined by lot.

Tranche B Transitional Directors means one third of the Transitional Directors, or if their number is not a multiple of three, then the number nearest but not exceeding one third, being the Transitional Directors who have served the next shortest in office (i.e. after the Tranche A Transitional Directors) as at the date of their re-election at the 2016 annual general meeting and, if two or more Transitional Directors have been in office an equal length of time, the Transitional Directors who will be the Tranche B Transitional Directors shall, in default of agreement, be determined by lot.

Tranche C Transitional Directors means one third of the Transitional Directors, or if their number is not a multiple of three, then the number nearest but not exceeding one third, being the Transitional Directors who have served the longest in office as at the date of their re-election at the 2016 annual general meeting and, if two or more Transitional Directors have been in office an equal length of time, the Transitional Directors who will be the Tranche C Transitional Directors shall, in default of agreement, be determined by lot.

2016 annual general meeting

2. All Directors must retire at the first annual general meeting that occurs after the Adoption Date (being the 2016 annual general meeting).

2017 annual general meeting

3. Tranche A Transitional Directors must retire at the conclusion of the first annual general meeting that occurs after their election at the 2016 annual general meeting (being the 2017 annual general meeting).
4. All Tranche A Transitional Directors elected at the 2017 annual general meeting must retire at the third annual general meeting after their election (being the 2020 annual general meeting).

2018 annual general meeting

5. Tranche B Transitional Directors must retire at the conclusion of the second annual general meeting after their election at the 2016 annual general meeting (being the 2018 annual general meeting).

6. All Tranche B Transitional Directors elected at the 2018 annual general meeting must retire at the third annual general meeting after their election (being the 2021 annual general meeting) and, subject to clause 28.3, may not serve a further term.

2019 annual general meeting

7. Tranche C Transitional Directors must retire at the conclusion of the third annual general after their election at the 2016 annual general meeting (being the 2019 annual general meeting).

2020 annual general meeting

8. Despite clause 28.2, a Tranche A Transitional Director who was elected at the 2017 annual general meeting may stand for re-election for a further three year term at the 2020 annual general meeting.