

Constitution of the Association of Australian Medical Research Institutes Limited

As amended by special resolution on 7 December 2017
and signed by the President for the purposes of identification:

Signature removed on web version

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Contents

PRELIMINARY	1
1. Definitions and interpretation	1
2. Exclusion of replaceable rules	3
NATURE OF THE COMPANY	3
3. Objects	3
4. Powers	3
5. Income and property	4
6. Liability of Members	4
7. Contribution on winding up	4
8. Distribution of surplus on winding up	5
MEMBERSHIP	5
9. Members	5
10. Admission	5
11. Subscriptions	6
12. Ceasing to be a member	7
13. Expulsion of Members	7
14. Powers of attorney	8
15. Representatives	8
GENERAL MEETINGS	9
16. Number of General Meetings	9
17. Calling a General Meeting	10
18. Notice of General Meeting	10
19. Venue of General Meetings	11
20. Business of General Meetings	11
PROCEEDINGS AT GENERAL MEETINGS	11
21. Member	11

22. Quorum	11
23. Chairperson	12
24. Adjournment	12
25. Decision on questions	13
26. Taking a poll	13
27. Offensive material	14
VOTES OF MEMBERS	14
28. Entitlement to vote	14
29. Casting vote of chairperson	14
30. Objections	14
PROXIES	15
31. Appointment of proxy	15
32. Rights of proxies	15
33. Instrument appointing proxy	15
34. Lodgement of proxy	16
35. Validity	16
THE BOARD AND APPOINTMENT AND REMOVAL OF DIRECTORS	16
36. Composition of the Board	16
37. Number and qualification of Directors	17
38. Nomination, election and removal of Directors	18
39. Casual vacancies	18
40. Vacation of office	18
POWERS AND DUTIES OF DIRECTORS	19
41. Powers of Board	19
PROCEEDINGS OF DIRECTORS	19
42. Directors' meetings	19
43. Chairperson	20
44. Decision on questions	20

45. Written resolutions	20
46. Payments to Directors	21
47. Directors' interests	21
48. Remaining Directors	22
49. Validity of acts of Directors	22
50. Director's committees	23
51. Minutes and registers	23
LOCAL MANAGEMENT	24
52. Local management	24
53. Appointment of attorneys and agents	24
SECRETARY AND OTHER OFFICERS	25
54. Secretary	25
55. Other officers	25
SEALS	25
56. Common Seal	25
57. Duplicate Seal	25
INSPECTION OF RECORDS	26
58. Times for inspection	26
ACCOUNTS AND AUDIT	26
59. Accounts and audit	26
NOTICES	26
60. Service of notices	26
61. Persons entitled to notice	27
INDEMNITY AND INSURANCE	28
62. Indemnity and insurance	28
AMENDMENT OF CONSTITUTION	28
63. Amendment of Constitution	28

Corporations Act 2001

COMPANY LIMITED BY GUARANTEE

**CONSTITUTION OF ASSOCIATION OF AUSTRALIAN
MEDICAL RESEARCH INSTITUTES LIMITED**

PRELIMINARY

1. Definitions and 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) as amended, re-enacted or replaced from time to time and includes any regulations made under that Act.

Auditor means the Company's auditor or person appointed to review the financial reports of the Company (as applicable and if any).

Board means the board of Directors of the Company constituted pursuant to rule 36.

business day has the same meaning as in the Corporations Act.

Company means Association of Australian Medical Research Institutes Limited.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

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

Corporations Act means the *Corporations Act 2001* (Cth) as amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director includes any person occupying the position of director of the Company.

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

Eligible Medical Research Hub means a collaboration, partnership or joint venture which is incorporated as a separate legal entity, has amongst its members at least one Member of the Company, and is established primarily for the conduct of health and medical research, as determined by the Board;

Eligible Non-independent Medical Research Institute means a Medical Research Institute that does not fit the definition of an Independent Medical

Research Institute but has an independent board, or is recognised as an institute by its parent organisation, or is separate from the faculty structure of any university parent organisation.

General Meeting means a meeting of the Members of the Company and includes an Annual General Meeting.

Independent Medical Research Institute means a Medical Research Institute that no other organisation or organisations control or have the power to control, as determined by the Board.

Medical Research Institute means a not-for-profit institute that is established primarily for the conduct of health and medical research.

Member means a member of the Company pursuant to rule 9.

month means calendar month.

officer has the meaning given to that term in section 9 of the Corporations Act.

Ordinary Directors means Directors other than the President, President Elect and Past President.

Past President means the person who assumes the office of past president under rule 36.2(b).

President means the person appointed as president of the Company under rule 36.2(a).

President Elect means the person appointed or elected as president elect of the Company under rule 36.1(c) (if any).

Register means the register of Members of the Company.

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

related body corporate has the meaning given to that term in the Corporations Act.

Seal means the Company's common seal (if any).

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 those joint secretaries.

1.2 In this Constitution, unless the contrary intention appears, an expression in a rule in this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the rule.

1.3 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) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
- (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (e) a reference to **dollar** or **\$** is to Australian currency.

1.4 While the Company is a charity registered under the ACNC Act, the ACNC Act overrides any clause in this Constitution which is inconsistent with that Act.

2. Exclusion of replaceable rules

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

NATURE OF THE COMPANY

3. Objects

3.1 The Company is established to advance health by representing the interests of Australian Medical Research Institutes and improving communication between them.

3.2 Without limiting the generality of rule 3.1, the objects for which the Company is established include the following:

- (a) to represent the interests of Australian Medical Research Institutes to government, industry, the public and other external stakeholders;
- (b) to coordinate communication amongst Australian Medical Research Institutes and other research organisations and to improve collaboration amongst those institutes and other research organisations;
- (c) to advocate for the creation of a fiscal and regulatory environment that will ensure the sustainability of Medical Research Institutes, particularly Independent Medical Research Institutes, efficient conduct of research, and the practical application of that research; and
- (d) to ensure that government, industry, the public and other external stakeholders are aware of the contributions that medical research makes to improving human health and wellbeing, particularly through the activities of Australian Medical Research Institutes.

4. Powers

4.1 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) pursue, promote or carry out the purposes or objects of the Company as set out in this Constitution; and
- (b) do all things incidental or convenient in relation to the exercise of power under paragraph (a).

5. Income and property

5.1 The income and property of the Company shall only be applied towards promotion of the purposes and objects of the Company as set out in this Constitution.

5.2 No income or property of the Company shall be paid or transferred directly or indirectly to any Member except for payment in good faith to any Member:

- (a) for services actually rendered to the Company whether as an employee or otherwise;
- (b) for goods supplied to the Company in the ordinary and usual course of business;
- (c) of interest or like amounts, at a rate not exceeding the current overdraft rates of the Company's bank, on money borrowed from any Member;
- (d) of reasonable and proper rent or like amounts for premises demised or let by any Member
- (e) for any out-of-pocket expenses incurred by the Member on behalf of the Company; or
- (f) in his or her capacity as a Director which is permitted by rule 46.

6. Liability of Members

6.1 The liability of Members is limited.

7. Contribution on winding up

7.1 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 paragraph (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 \$20 in aggregate.

8. Distribution of surplus on winding up

8.1 If any surplus remains following the winding up of the Company, the surplus shall not be paid to or distributed amongst the Members but shall be paid to or distributed to another organisation or organisations in Australia:

- (a) with similar purposes and objects to the Company;
- (b) that is not carried on for the profit or gain of its individual members;

such organisation or organisations to be determined by a special resolution of the Members at or before the winding up and in default thereof by application to the Supreme Court of Victoria or such other court of competent jurisdiction for determination.

MEMBERSHIP

9. Members

9.1 The number of Members with which the Company proposes to be registered is unlimited.

9.2 The Members of the Company are:

- (a) on registration of the Company under the Corporations Act, the organisations which agreed to become or remain members of the Company and were named in the application for registration; and
- (b) any other organisations which are admitted to membership in accordance with this Constitution.

9.3 The rights and privileges of a Member are personal to that Member and are not transferable by the Member's own act or by operation of law.

10. Admission

10.1 An organisation is eligible to be a Member if, in the opinion of the Directors, it complies with this Constitution and all of the following criteria:

- (a) it supports the purpose and objects of the Company; and
- (b) it is established primarily for the conduct of health and medical research; and
- (c) it has a track record of peer-reviewed research outputs; and
- (d) it has procedures and policies in place that allow good scientific practice, the ethical conduct of research and appropriate financial governance; and
- (e) it is either:
 - (i) an Independent Medical Research Institute; or

- (ii) an Eligible Non-independent Medical Research Institute; or
 - (iii) an Eligible Medical Research Hub; and
 - (f) such other criteria as the Board may determine from time to time.
- 10.2 An application for membership of the Company must be:
- (a) in writing in a form approved by the Directors;
 - (b) signed by a duly authorised representative of the applicant;
 - (c) accompanied by such documents or evidence as to qualification for membership as outlined in or under this Constitution,
- and must include:
- (d) a consent to become a Member; and
 - (e) an agreement to be bound by the terms of the Constitution.
- 10.3 The Directors must consider an application for membership of the Company and determine, in accordance with this Constitution, whether to accept or reject the application.
- 10.4 An applicant becomes a Member when the applicant's application for membership has been considered and approved by the Board.
- 10.5 If an applicant is admitted to membership:
- (a) the Secretary must (or must cause another person to) notify the applicant in writing of admission; and
 - (b) the name and details of the Member must be entered in the Register.
- 10.6 Peter MacCallum Cancer Institute ABN 42 100 504 883 is exempt from rules 10.1(b), 10.1(e) and 10.1(f) for so long as it is a Member of the Company.

11. Subscriptions

- 11.1 The Board may determine the annual subscription payable by each Member and also the date on which such payment will be due provided that the following procedure is observed:
- (a) Members must be given written notice of any decision to change the annual subscription within 7 days after the decision is made;
 - (b) any Member may object to a change by notice in writing to the Secretary within 21 days after the decision is made;
 - (c) if 10% or more of the Members (worked out as at midnight before the decision was made) object to a change in the annual subscription in accordance with paragraph (b), the change must be approved by a resolution of the Members at a General Meeting before it becomes effective; and

- (d) if approval of the Members is not required pursuant to paragraph (c), a change will take effect 21 days after the decision is made.

- 11.2 Subject to rule 11.1, in a new Member's year of admission, the new Member shall be required to pay only a pro rata subscription with the calculation based on the period from the day of admission until the end of the financial year in which the Member was admitted.
- 11.3 A Member must provide all information required by the Board to calculate the amount of the annual subscription payable by that Member.
- 11.4 If a Member does not pay a subscription within six months after it becomes due, the Member's membership is forfeited.

12. Ceasing to be a member

- 12.1 A Member must notify the Secretary in writing immediately if (and how) it no longer satisfies the criteria for membership under this Constitution.
- 12.2 A Member's membership of the Company will cease:
 - (a) if the Member gives the Secretary written notice under rule 12.1, which is deemed to take effect from the date of receipt of the notice;
 - (b) if the Member gives the Secretary written notice of resignation, which is deemed to take effect from the date of receipt of the notice or such later date as is specified in the notice;
 - (c) if membership is forfeited under rule 11.4;
 - (d) if the Member is expelled under rule 13; or
 - (e) if the Member is wound up or is otherwise dissolved or deregistered.
- 12.3 Any Member ceasing to be a Member will remain liable for and pay to the Company any moneys which were due by the Member to the Company at the date of ceasing to be a Member. If an outgoing Member has not paid the annual subscription for the year in which they cease to be a Member by their last day of membership, then the annual subscription for that year will be and remain payable on a pro rata basis with the calculation based on the period from the first day of the year until the last day of membership. No amount paid by a Member on account of the annual subscription prior to cessation of membership will be repayable by the Company.

13. Expulsion of Members

- 13.1 If any Member:
 - (a) wilfully refuses or neglects to comply with the provisions of the Constitution; or
 - (b) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interest of the Company; or

- (c) in the opinion of the Directors no longer satisfies the criteria for membership under this Constitution,

the Directors may call a General Meeting for the purpose of proposing a special resolution to expel the Member from the Company and remove the Member's name from the Register

- 13.2 At least 21 days before the General Meeting at which a special resolution of the nature referred to in rule 13.1 is passed the Directors must give to the Member notice of:

- (a) the General Meeting;
- (b) what is alleged against the Member; and
- (c) the proposed special resolution.

- 13.3 At the General Meeting and before passing the special resolution the Member must have an opportunity to give orally or in writing any explanation or defence the Member thinks fit.

- 13.4 If at the General Meeting such a special resolution is passed, the Member concerned shall be expelled and the Member's name removed from the Register.

- 13.5 In rule 13, "***special resolution***" has the same meaning as under the Corporations Act.

14. Powers of attorney

- 14.1 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.

- 14.2 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.

- 14.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

15. Representatives

- 15.1 Any corporation or organisation which is a Member may by written notice to the Secretary:

- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
- (b) remove a Representative.

- 15.2 Subject to notice under rule 15.1 and to rule 15.7:

- (a) the person who signed a Member's consent to become a Member will be treated as the Member's Representative for all purposes on a standing basis;
- (b) any officer or employee of a Member who attends a General Meeting on behalf of that Member, in accordance with an RSVP given to the Company in accordance with any requirements in the request for RSVPs, will be treated as a duly authorised Representative of the Member for the purpose of that meeting only; and
- (c) all Representatives are appointed by reference to the position that they hold with the Member such that, if the person in the position changes, the new person will be the Representative.

15.3 A Representative is entitled to:

- (a) exercise at a General Meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
- (b) stand for election as an office bearer or Director; and
- (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a General Meeting by its Representative.

15.4 A certificate executed in accordance with the Corporations Act is rebuttable evidence of the appointment of the Representative, any restrictions on the Representative's powers or of the revocation of the appointment of the Representative.

15.5 The chairperson of a General Meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairperson of the General Meeting his or her status as a Representative within a period prescribed by the chairperson of the General Meeting.

15.6 The appointment of a Representative may set out restrictions on the Representative's powers.

15.7 Only one Representative may exercise a Member's powers at any one time. Members must ensure that their Representatives know, and advise the Company at or around the time of registration for a meeting, which of them will vote for the Member at that meeting.

GENERAL MEETINGS

16. Number of General Meetings

16.1 A General Meeting called the "Annual General Meeting" shall be held at least once every calendar year in accordance with the Corporations Act, the ACNC Act and this Constitution.

16.2 Other General Meetings shall be held in accordance with this Constitution.

17. Calling a General Meeting

17.1 The Directors may, at any time, call a General Meeting.

17.2 A Member:

- (a) may only request the Directors to call a General Meeting in accordance with the Corporations Act; and
- (b) may not convene or join in convening a General Meeting except in accordance with the Corporations Act.

18. Notice of General Meeting

18.1 Subject to the provisions of the Corporations Act allowing General Meetings to be held with shorter notice, at least twenty-one (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 the persons entitled to notice of General Meetings.

18.2 A notice calling a General Meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the business to be transacted at the meeting;
- (c) if a special resolution is to be proposed at the meeting – set out an intention to propose the special resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy – contain a statement setting out the following information:
 - (i) that the Member has a right to appoint a proxy; and
 - (ii) that the proxy does not need to be a Member or a Representative of a Member.

18.3 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.

18.4 The Directors may postpone or cancel any General Meeting whenever they think fit (other than a meeting convened as the result of a request under rule

17.2). The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.

18.5 The failure or accidental omission to send a notice of a General Meeting (including a proxy appointment form) to any Member or other person referred to in rule 61 or the non-receipt of a notice (or form) by any Member or other person referred to in rule 61 does not invalidate the proceedings at or any resolution passed at the General Meeting.

19. Venue of General Meetings

19.1 A General Meeting may be held at two (2) or more venues using any available technology that gives the Members as a whole a reasonable opportunity to participate.

20. Business of General Meetings

20.1 The business of an Annual General Meeting will include the following:

- (a) to receive and consider the Company's financial statements and the reports of the Board and of the Auditor of the Company (if any); and
- (b) to transact any other business which, under the Corporations Act, the ACNC Act or this Constitution, is required to be transacted at any Annual General Meeting and any business which is brought under consideration by any reports of the Board issued with the notice convening the meeting.

20.2 The Auditor is entitled to attend and be heard on any part of the business of any General Meeting which concerns him or her as Auditor.

PROCEEDINGS AT GENERAL MEETINGS

21. Member

21.1 In rules 17.2, 19, 22, 25 and 28, '**Member**' includes a Member present in person or by proxy, attorney or Representative.

22. Quorum

22.1 No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.

22.2 A quorum of Members is seven (7) Members.

22.3 If a quorum is not present within thirty (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 (7) 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 thirty (30) minutes after the time appointed for the General Meeting, it is automatically dissolved.

23. Chairperson

- 23.1 The President, or in the President's absence the President Elect (if any), will be the chairperson at every General Meeting.
- 23.2 The Directors present may elect a chairperson if:
- (a) there is no President or President Elect; or
 - (b) neither the President nor President Elect are present within fifteen (15) minutes after the time appointed for holding the General Meeting; or
 - (c) the President and President Elect are unwilling to act as chairperson of the General Meeting.
- 23.3 If no election is made under rule 23.2, then the Members may elect one of the Directors present as chairperson. If no Director is present or willing to act as chairman of the General Meeting, then the meeting will be adjourned.
- 23.4 If there is a dispute at a General Meeting about a question of procedure, the chairperson may determine the question.

24. Adjournment

- 24.1 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 consent of a majority of Members present; and
 - (b) must adjourn the General Meeting if a majority of Members present direct him or her to do so.
- 24.2 An adjourned General Meeting may take place at a different venue to the initial meeting.
- 24.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial General Meeting.
- 24.4 Notice of an adjourned General Meeting need not be given in accordance with rule 18.1 unless the General Meeting has been adjourned for more than twenty-one (21) days.

25. Decision on questions

- 25.1 Unless specified otherwise in this Constitution and subject to any requirement for a special resolution, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 25.2 A resolution put to the vote of a General Meeting is decided on a show of hands unless a poll is demanded, before or on the declaration of the result of the show of hands, by:
- (a) the chairperson;
 - (b) at least five (5) Members entitled to vote on the resolution; or
 - (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.
- 25.3 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.
- 25.4 The demand for a poll may be withdrawn.
- 25.5 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.

26. Taking a poll

- 26.1 A poll will be taken when and in the manner that the chairperson of the General Meeting directs.
- 26.2 The result of the poll will be the resolution of the General Meeting at which the poll was demanded.
- 26.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 26.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 26.5 A poll demanded on the election of the chairperson or the adjournment of a General Meeting must be taken immediately.
- 26.6 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.

27. Offensive material

27.1 A person may be refused admission to, or required to leave and not return to, a General Meeting if the person is in possession of any:

- (a) electronic or recording device;
- (b) placard or banner; or
- (c) other article,

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

VOTES OF MEMBERS

28. Entitlement to vote

28.1 Subject to this Constitution:

- (a) every Member may vote;
- (b) on a show of hands every Member has one vote; and
- (c) on a poll every Member has one vote.

28.2 A Member is not entitled to vote at a General Meeting (in person or by proxy, attorney or Representative) if the annual subscription of the Member is more than one month in arrears at the date of the meeting or the postponed or adjourned meeting.

29. Casting vote of chairperson

29.1 The chairperson has a casting vote on a show of hands and on a poll in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

30. Objections

30.1 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.

30.2 An objection must be referred to the chairperson of the General Meeting, whose decision is final.

30.3 A vote which the chairperson does not disallow pursuant to an objection is valid for all purposes.

PROXIES

31. Appointment of proxy

- 31.1 A Member may appoint a person as the Member's proxy to attend and vote for the Member at a General Meeting.
- 31.2 A proxy need not be a Member or an officer or employee or Representative of a Member.

32. Rights of proxies

- 32.1 A proxy appointed to attend and vote for a Member has the same rights as the Member:
- (a) to attend and speak at the meeting;
 - (b) to vote (but only to the extent allowed by the appointment) and
 - (c) to demand or join in a demand for a poll.
- 32.2 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll in accordance with any instructions on the appointment.
- 32.3 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member or any Representative of the Member is present at the meeting.

33. Instrument appointing proxy

- 33.1 An appointment of a proxy is valid if it is signed or otherwise authenticated in a manner prescribed under the Corporations Act by the Member making the appointment and contains the following information:
- (a) the Member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meetings at which the appointment may be used.
- 33.2 A proxy's appointment is valid at an adjourned General Meeting.
- 33.3 An appointment may be a standing one.
- 33.4 An undated appointment is taken to have been dated on the day it is given to the Company.
- 33.5 An appointment may specify the way the proxy is to vote on a particular resolution.

33.6 A later appointment revokes an earlier one.

34. Lodgement of proxy

34.1 The written appointment of a proxy must be deposited at the Company's registered office, or another address nominated by the Company (including electronic address), not less than forty-eight (48) hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

- (a) the time for holding the General Meeting or adjourned General Meeting at which the appointee proposes to vote; or
- (b) the taking of a poll on which the appointee proposes to vote.

34.2 If the appointment purports to be executed under a power of attorney or other authority, then the original document, or an office copy or a notarially certified copy of it, must be deposited with the appointment.

35. Validity

35.1 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 of unsound mind; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind, or revocation was received at the Company's registered office before the relevant General Meeting or adjourned General Meeting.

THE BOARD AND APPOINTMENT AND REMOVAL OF DIRECTORS

36. Composition of the Board

36.1 The Board shall comprise:

- (a) the President, for a term of two years;
- (b) the immediate Past President;
- (c) the President Elect (upon election by the Board);
- (d) up to four people elected by the Board, each of whom shall be elected for an initial term of two years and (if re-elected in this position) subsequent terms of one year; and
- (e) one other person elected by the Board who is not the director (or equivalent) of a Medical Research Institute for an initial term of two years and (if re-elected in this position) subsequent terms of one year

(provided that the person in this position on 1 January 2016 will be entitled to hold office for the remainder of the term as of that date, subject to early removal or retirement under this Constitution).

- 36.2 At the end of the President's term:
- (a) the President Elect shall become the President;
 - (b) the incumbent President shall become the Past President; and
 - (c) the incumbent Past President shall retire from the Board.
- 36.3 Any retiring Director shall be eligible for re-election, provided that no person may serve as a Director for longer than six (6) consecutive years. The President Elect, President and Past President shall not however be subject to retirement under this rule 36.3 while in any of those offices.
- 36.4 The manner and procedure of appointments, election and vacation of office of Directors and office bearers are set out in the succeeding rules which shall (to the extent of any inconsistency) take precedence over the general provisions in rule 36.

37. Number and qualification of Directors

- 37.1 Subject to rule 37.5(a), the number of Directors must not be less than five (5) or more than eight (8).
- 37.2 A majority of the Directors must be officers or employees of an independent Medical Research Institute.
- 37.3 Without limiting rule 37.2, the President and the President Elect (if any) must be officers or employees of an Independent Medical Research Institute.
- 37.4 The Directors must assess the qualification of Directors prior to appointment and as necessary to ensure compliance with rules 37.2 and 37.3.
- 37.5 In the event that the composition of the Board does not satisfy rule 37.2, the Directors may act only to:
- (a) appoint a Director, or as many Directors as necessary to satisfy rule 37.2, even if the number of Directors in office would exceed the maximum number referred to in rule 37.1;
 - (b) accept the resignation of a Director or Directors;
 - (c) convene a General Meeting.
- 37.6 A Director must notify the Secretary in writing promptly after becoming, or ceasing to be, an officer or employee of an Independent Medical Research Institute.
- 37.7 A person is not eligible to be appointed as a Director if he or she is ineligible to be a Director under the Corporations Act or the ACNC Act.

- 37.8 Any Director appointed under rule 37.5(a) will, unless they are appointed to fill a specific position under rule 36.1, hold office until the conclusion of the first Annual General Meeting after their appointment whereupon they will be eligible for re-election only if there is a position available under rule 36.1 or permitted under rule 37.5(a).

38. Nomination, election and removal of Directors

- 38.1 An election of a person may not be made unless the person has given the Company a signed consent to act as a Director.
- 38.2 Subject to rule 37, the procedures and qualifications for nomination and election of Directors shall be as determined by the Directors from time to time, and unless otherwise determined the Directors shall seek to appoint the chairperson of a Medical Research Institute as the elected Director under rule 36.1(e).
- 38.3 The Members may by resolution remove any Director from office.

39. Casual vacancies

- 39.1 Subject to rule 37, the Directors may appoint any person as a Director to fill a casual vacancy on the Board or as an addition to the existing Directors, and must fill a casual vacancy in the office of President.
- 39.2 A Director appointed under rule 39.1 shall hold office:
- (a) if appointed to fill a casual vacancy in the office of President Elect, until the end of the President's term when that person shall become the President in accordance with rule 36.2(a);
 - (b) if appointed to fill a casual vacancy in the office of President, for the balance of the term of the President he or she is replacing (or such longer term as the Directors determine up to two years) when that person shall become the Past President in accordance with rule 36.2(b);
 - (c) if appointed to fill a casual vacancy in the office of Past President, until the end of the President's term when that person shall retire from the Board in accordance with rule 36.2(c); and
 - (d) if appointed to fill a casual vacancy in any other office, for the unexpired term of the Director he or she is replacing or if appointed as an addition to the existing Directors then for two years or such shorter period as the Directors determine.

40. Vacation of office

- 40.1 The office of a Director immediately becomes vacant if the Director:
- (a) (in the case of the President or President Elect) ceases to be eligible to be a Director under rule 37.3;

- (b) resigns by notice in writing to the Company;
- (c) is prohibited by the Corporations Act or the ACNC Act from continuing as a Director;
- (d) becomes bankrupt or compounds with his or her creditors or assigns his estate for the benefit of his or her creditors;
- (e) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (f) fails to attend three (3) consecutive meetings of the Directors without leave of the Directors;
- (g) is removed pursuant to the provisions of this Constitution, the Corporations Act or the ACNC Act.

POWERS AND DUTIES OF DIRECTORS

41. Powers of Board

- 41.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution, the Corporations Act and the ACNC Act do not require to be exercised by the Company at a General Meeting.
- 41.2 The Directors must comply with their duties as directors under the law.
- 41.3 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiate instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by any two Directors, or any such other manner as the Directors determine.

PROCEEDINGS OF DIRECTORS

42. Directors' meetings

- 42.1 A Director may at any time, and the Secretary must on the requisition of a Director, call a Directors' meeting.
- 42.2 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. The Directors need not all be physically present in the same place for a Directors' meeting to be held. A Director who participates in a meeting held in accordance with this rule 42.2 is taken to be present and entitled to vote at the meeting.
- 42.3 Subject to this Constitution, the Directors may meet together, adjourn and regulate their meetings as they think fit.
- 42.4 At a meeting of Directors (a) a quorum is three (3) Directors; and (b) a majority of those present and eligible to vote must be Directors who are officers or employees of an Independent Medical Research Institute.

42.5 If a quorum for a meeting of Directors is not present within thirty (30) minutes after the time appointed for the meeting, then it will stand adjourned to another day, time and place determined by the Directors present, giving notice in accordance with rule 61.3, and at the adjourned meeting a quorum is three Directors and a majority of those present and eligible to vote must be Directors who are officers or employees of an Independent Medical Research Institute.

42.6 At least one (1) Board meeting must take place each financial year.

43. Chairperson

43.1 The President, or in the President's absence the President Elect (if any), will be the chairperson of Director's meetings.

43.2 The Directors present may elect as chairperson one of the Directors present who is an officer or employee of an Independent Medical Research Institute if:

- (a) there is no President or President Elect; or
- (b) neither the President nor President Elect is present within fifteen (15) minutes after the time appointed for holding the Directors' meeting.

43.3 If there is a dispute at a Directors' meeting about a question of procedure, the chairperson may determine the question.

44. Decision on questions

44.1 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 rule 47, each Director has one (1) vote.

44.2 The chairperson of a meeting has a casting vote in addition to the chairperson's deliberative vote if there is an equality of votes.

45. Written resolutions

45.1 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Directors' meeting held on the day on which the last Director signed the document.

45.2 For the purposes of rule 45.1, two (2) or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents.

45.3 Any document referred to in rule 45 may be in the form of a facsimile or electronic transmission.

45.4 Rule 45 applies to meetings of Directors' committees as if all members of the committee were Directors.

46. Payments to Directors

- 46.1 No payment will be made to any Director 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;
 - (c) of any salary or wage due to the Director as an employee of the Company or a related body corporate where the terms of employment have been approved by the Directors of the Company (including any salary or wage of the Institute Director);
 - (d) relating to an indemnity in favour of the Director and not prohibited by section 199A of the Corporations Act or section 77A of the Competition and Consumer Act or a contract of insurance not prohibited by section 199B; and
 - (e) in his or her capacity as a Member which is permitted by rule 5.2.

47. Directors' interests

- 47.1 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.
- 47.2 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.
- 47.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 47.4 Subject to rule 46, 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 (or equivalent) in the Company; and

- (c) act in a professional capacity other than as auditor (or equivalent) 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.

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

- (d) be present while the matter is being considered at the meeting; or
- (e) vote on the matter,

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

- (f) 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;
- (g) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (h) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

47.5 A Director may be or become a director or other officer of, or otherwise interested in, any related 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.

48. Remaining Directors

48.1 The Directors may act even if there are vacancies on the Board.

48.2 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) convene a General Meeting.

49. Validity of acts of Directors

49.1 If it is discovered that:

- (a) there was a defect in the appointment of a person as a 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.

50. Director's committees

- 50.1 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 committee or committees.
- 50.2 The Directors may at any time revoke any delegation of power to a committee.
- 50.3 A committee appointed shall consist of such persons as the Directors think fit and may include persons who are not Directors.
- 50.4 A committee 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.
- 50.5 A committee may be authorised to sub-delegate all or any of the powers for the time being vested in it.
- 50.6 Meetings of any committee 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.

51. Minutes and registers

- 51.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all general meetings, 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 rule 45;
 - (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made pursuant to rule 47.
- 51.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 51.3 The Company must keep all registers required by this Constitution and the Corporations Act.

LOCAL MANAGEMENT

52. Local management

- 52.1 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.
- 52.2 The Directors may at any time revoke or vary any delegation under this rule 52.

53. Appointment of attorneys and agents

- 53.1 The Directors may from time to time by resolution or power of attorney 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.
- 53.2 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.
- 53.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 53.4 The Directors may appoint attorneys or agents by telex, facsimile transmission, telegraph, cable or electronic means to act for and on behalf of the Company.
- 53.5 An attorney or agent appointed under this rule 53 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 AND OTHER OFFICERS

54. Secretary

- 54.1 There must be at least one (1) secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by the Directors.
- 54.2 The Secretary is entitled to attend and be heard on any matter at all Directors' Meetings and General Meetings.
- 54.3 The Directors may, without affecting the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

55. Other officers

- 55.1 The Directors may from time to time:
- (a) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time confer; and
 - (b) appoint any person, whether or not a Director, to any position or positions created under paragraph (a).
- 55.2 The Directors at any time may terminate the appointment of a person holding a position created under rule 55.1 and may abolish the position.

SEALS

56. Common Seal

- 56.1 The Company may at the option of the Directors have a Seal.
- 56.2 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
 - (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
 - (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another director, the Secretary or another person appointed by the Directors to countersign the document.
- 56.3 The Company may execute a document without using its Seal in accordance with the Corporations Act.

57. Duplicate Seal

- 57.1 If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which

- (a) must be a facsimile of the Seal with “Duplicate Seal” on its face; and
- (b) must not be used except with the authority of the Directors.

INSPECTION OF RECORDS

58. Times for inspection

- 58.1 Except as otherwise required by the Corporations Act or the ACNC Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 58.2 Except as otherwise required by the Corporations Act or the ACNC Act, a Member other than a Director does not have the right to inspect any accounting 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.

ACCOUNTS AND AUDIT

59. Accounts and audit

- 59.1 The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Corporations Act and the ACNC Act.
- 59.2 The Directors must cause the financial records of the Company to be reviewed or audited in accordance with the applicable requirements of the Corporations Act and the ACNC Act.

NOTICES

60. Service of notices

- 60.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
 - (a) serving it on the person;
 - (b) sending it by post, telex or facsimile transmission 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;
 - (c) if the notice is to a Member and the Member has no registered office, posting it on a notice board at the Company's registered office;
 - (d) sending it to the electronic address (if any) nominated by the person; and
 - (e) any other means requested by the person and agreed to by the Company.

- 60.2 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 next business day after the day on which it was posted.
- 60.3 A notice sent by telex, facsimile transmission or other electronic means is taken to be served:
- (a) by properly addressing the telex, facsimile transmission or electronic document and sending it; and
 - (b) on the next business day after its dispatch.
- 60.4 A notice posted on a notice board is taken to be served twenty-four (24) hours after it is posted on the board.
- 60.5 A cheque, warrant or other document may be delivered by the Company either personally or by sending it:
- (a) in the case of a Member who does not have a registered address in Australia, by airmail post; and
 - (b) in any other case, by ordinary post,
- and is at the risk of the addressee as soon as it is given or posted.
- 60.6 A Member whose registered address is not in Australia may specify in writing an address in Australia as the Member's registered address within the meaning of this rule.
- 60.7 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.
- 60.8 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed, including electronic signature.
- 60.9 All notices sent by post outside Australia must be sent by prepaid airmail post.

61. Persons entitled to notice

- 61.1 Notice of every General Meeting must be given to:
- (a) every Member;
 - (b) every Director and Secretary; and
 - (c) any Auditor.
- 61.2 No other person is entitled to receive notice of a General Meeting.

- 61.3 Notice of every Directors' meeting shall be given to every Director and Secretary. Such notice shall afford the Director a reasonable opportunity to participate in the meeting.

INDEMNITY AND INSURANCE

62. Indemnity and insurance

- 62.1 To the extent permitted by law (including the Corporations Act), the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person as such an officer in respect of any act or omission whatsoever and howsoever occurring in defending proceedings, whether civil or criminal.

To the extent permitted by law (including the Corporations Act), the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against a liability incurred by the person as such an officer, or for costs and expenses incurred by the person as such an officer in defending proceedings, whether civil or criminal and whatever their outcome.

- 62.2 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance merely because the contract insures or would insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate.

- 62.3 In rule 62:

indemnify has the same meaning as in section 199A of the Corporations Act;

pay has the same meaning as in section 199B of the Corporations Act.

AMENDMENT OF CONSTITUTION

63. Amendment of Constitution

- 63.1 An amendment of this Constitution is only effective if it is:
- (a) approved by a resolution of the Board, passed by a majority of no less than two-thirds of the Directors, prior to being submitted to Members in accordance with this Constitution; and
 - (b) approved by the Members in accordance with the Corporations Act.