

**Constitution**  
**Asthma Australia Limited**

**ACN 609 156 630**

(Company)

**A Company Limited by Guarantee**



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## **1 Definitions and Interpretation**

### **1.1 Definitions**

In this Constitution unless a contrary intention appears:

**Annual General Meeting** has the same meaning as the term ‘AGM’ in the Corporations Act.

**Appointments Committee** means the committee constituted under clause 30 **Error! Reference source not found.** **ASIC** means the Australian Securities and Investments Commission.

**Asthma Australia Inc.** means Asthma Australia Incorporated, an association incorporated in the Australian Capital Territory.

**Auditor** means the auditor for the time being of the Company.

**By-law** means a by-law made by the Directors in accordance with clause 15 **Error! Reference source not found.** **Company** means Asthma Australia Limited being an Australian public company limited by guarantee established under the Corporations Act and bearing the ACN 609 156 630.

**Consumer Advisory Council** means the Consumer Advisory Council constituted under clause 22.

**Consumer Advisory Councillor** means a member of the Consumer Advisory Council.

**Constitution** means this constitution as amended from time to time.

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

**Council** means either the Consumer Advisory Council or the Professional Advisory Council and when used in relation to a Councillor, it means the Council of which the Councillor is a member.

**Councillor** means an individual holding office as a member of a Council.

**Director** means an individual holding office as director of the Company.

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

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

**Income Tax Assessment Act** means the *Income Tax Assessment Act 1997* (Cth).

**Insolvency Event** occurs where:

- (a) an order is made or a resolution is passed by creditors for the winding up, dissolution or external administration of the Member;
- (b) the Member enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them; or

- (c) a controller, receiver, receiver and manager, official manager or other external administrator is appointed to the Member.

**Life Member** means a natural person holding or admitted to membership under clause 6.4 and entered on the Register as a Life Member

**Member** means a person entered on the Register of the Company as a member and includes Ordinary Members, Professional Members and Life Members.

**Ordinary Member** means a natural person holding or admitted to membership under clause 6.2 and entered on the Register as an Ordinary Member.

**Participating Entity** means Asthma Australia Inc. (ABN 47 931 649 319) or one of the Participating Foundations.

**Participating Foundation** means one of the following: The Asthma Foundation ACT Inc (ABN 71 119 399 306), Asthma Foundation Queensland and New South Wales Ltd (ABN 91 609 156 630), The Asthma Foundation South Australia Inc (ABN 29 187 159 478), Asthma Foundation of Victoria (ABN 16 873 513 650).

**Participating Foundations** means all of the Participating Foundations.

**Participating Jurisdiction** means, in relation to a Participating Foundation, the State or Territory of Australia for which the Participating Foundation had responsibility.

**Professional Advisory Council** means the Professional Advisory Council constituted under clause 23.

**Professional Advisory Councillor** means a member of the Professional Advisory Council.

**Professional Member** means a corporation holding or admitted to membership under clause 6.3 and entered on the Register as a Professional Member.

**Register** means the register of members under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office for the time being of the Company.

**Related Body Corporate** has the same meaning it has in the Corporations Act.

**Related Condition** means a disease, illness or other physical impairment which is related to asthma and includes allergies and anaphylactic conditions.

**Representative** means an individual appointed to represent a corporate Member at a General Meeting of the Company in accordance with the Corporations Act.

**Schedule** means a schedule to this Constitution.

**Seal** means the common seal (if any) of the Company.

**Secretary** means an individual appointed as a secretary of the Company and includes an honorary Secretary and where appropriate includes an acting secretary and an individual appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Special Resolution** takes the meaning given by Section 9 of the Corporations Act.<sup>1</sup>

**Voting Member** means an Ordinary Member or a Professional Member.

**2018 AGM** means the AGM to be held in the year 2018.

## 1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes both a natural person and a body corporate;
- (d) a reference to a law includes regulations and instruments made under the law;
- (e) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (f) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;

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<sup>1</sup> At the time of adoption of this Constitution, section 9 provides that a Special Resolution is a resolution:

- (a) of which notice has been given to the Members in accordance with clause 8.3; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

- (g) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (h) a reference to a person being present in person includes a person participating at a meeting as described in clause 1.2(g);
- (i) a reference to a person includes a natural person, corporation or other body corporate;
- (j) a power, an authority or a discretion reposed in a Director, the Directors, the company in General Meeting or a Member may be exercised at any time and from time to time;
- (k) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (l) where a number of days is prescribed as the period within which something is to be done, the period will begin at midnight on the day on which the notice is given and end at midnight on the last of the prescribed number of days occurring thereafter<sup>2</sup>; and
- (m) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

### **1.3 Signing**

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied by an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

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<sup>2</sup> For example, if 7 days notice is given on a Monday, the notice period begins at midnight on that day irrespective of the time at which it was given and expires at midnight on the following Monday.



## **1.4 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, an expression has the same meaning as in that provision of the Corporations Act;
- (b) “section” means a section of the Corporations Act; and
- (c) while the Company is a registered charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth):
  - (i) subject to clause 1.4(c)(ii), the provisions of the Corporations Act in Part 2G.2 and Part 2G.3 (other than section 249X) apply as if section 111L(1) of the Corporations Act was not enacted; and
  - (ii) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the Company.

## **1.5 Headings**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

## **1.6 Replaceable rules do not apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

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## **2 Objects of the Company**

### **2.1 General Objects**

The objects of the Company are to provide relief to every person living in Australia and suffering from, or at risk of suffering from, sickness, helplessness, poverty or destitution caused by asthma and Related Conditions including by:

- (a) developing, procuring and disseminating information concerning the causes, diagnosis, prevention and treatment of asthma and Related Conditions;
- (b) promoting, carrying out and assisting medical and scientific research into the causes, diagnosis, prevention and treatment of asthma and Related Conditions;
- (c) promoting public awareness of asthma and Related Conditions and advocating in political and other forums for the interests of people affected by asthma and Related Conditions and their families and carers;
- (d) providing health professionals with best practice, evidence based information relating to the causes, diagnosis, prevention and treatment of asthma and Related Conditions;
- (e) providing advice and other assistance to people affected by asthma and Related Conditions and their families and carers;
- (f) providing training , access to training, training facilities and training resources relating to the diagnosis, prevention and treatment of respiratory conditions to medical practitioners and other health professionals, scientists, students, people affected by asthma and Related Conditions and their families and carers and any other person who has a need for that training or those training facilities or resources;
- (g) raising funds to enable the Company to achieve these objects by any means lawfully available to the Company (including carrying on a business);
- (h) continuing the work of the Participating Entities for the attainment of these objects and
- (i) doing such other things as are incidental or conducive to the attainment of these objects.

### **2.2 Succession**

The Company is the successor of the Participating Entities. In the pursuit of the general objects recited in clause 2.1, the Company must:

- (a) endeavour to preserve the history, reputation, local connections and goodwill of the Participating Entities;
- (b) continue to provide the kinds of services formerly undertaken by the Participating Entities for so long as there is a continuing need for those programs and the Company's resources permit them to be undertaken; and
- (c) recognise that the financial resources made available to the Company by each Participating Entity were accumulated with the expectation of donors and other partners that they would be utilised for the benefit of the constituency formerly served by the Participating Entity and honour that expectation to the extent that it is practical and reasonable to do so.

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### **3 Powers**

The Company has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

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## **4 Application of income for objects only**

### **4.1 Application of income and property**

The income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the objects of the Company; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

### **4.2 Payment in good faith**

Clause 4.1 does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

- (a) of reasonable remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;

- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Company in a General Meeting; or
- (d) of reasonable rent for premises let by a Member; or
- (e) otherwise in furtherance of the objects..

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## **5 Winding up**

### **5.1 Guarantee by Members**

- (a) Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within 1 year after they cease to be a Member.
- (b) This contribution is for:
  - (i) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$1.

### **5.2 Application of property**

- (a) If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to one or more other funds or institutions:
  - (i) having charitable purposes that are similar to or include the objects of the Company; and
  - (ii) are not for profit entities whose governing documents prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution.
- (b) The funds or institutions will be determined by the Members at or before the time of dissolution.

### **5.3 Revocation of Australian Tax Office endorsement**

(a) Where the Company has been endorsed as a deductible gift recipient as an organisation or in relation to a public fund under Subdivision 30-BA of the Income Tax Assessment Act, then where:

- (i) the Company is wound up;
- (ii) the fund is wound up; or
- (iii) the endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked;

then any surplus :

- (iv) gifts of money or property for the principal purpose of the Company or fund (whichever is relevant);
- (v) contributions described in item 7 or 8 of the table in section 30 15 of the Income Tax Assessment Act in relation to a fundraising event held for that purpose; and
- (vi) money received by the Company because of such gifts or contributions remaining after payment of all liabilities must be transferred to one or more of the institutions or funds that comply with clause 5.2 and are endorsed deductible gift recipients.

(b) Where the Company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked only in relation to one of those funds then it may transfer any surplus assets of that fund after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient.

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## **6 Membership**

### **6.1 Categories of Members**

There will be the following categories of Members:

- (a) Ordinary Members;

- (b) Professional Members; and
- (c) Life Members.

## **6.2 Ordinary Members**

- (a) Only natural persons may be Ordinary Members.
- (b) The members of the Participating Foundations as at the date on which this Constitution is adopted are entitled, on application, to be Ordinary Members of the Company.
- (c) An Ordinary Member is entitled to vote at a General Meeting.

## **6.3 Professional Members**

- (a) Only corporations may be Professional Members.
- (b) A Professional Member is entitled to vote at a General Meeting.

## **6.4 Life Members**

- (a) Only natural persons may be Life Members.
- (b) The life members of the Participating Foundations as at the date on which this Constitution is adopted are entitled to be Life Members of the Company.
- (c) The directors may, by resolution, admit to Life Membership any person who, in the opinion of the Directors, has given outstanding and exemplary service to the Company or one of the Participating Entities.
- (d) A Life Member is entitled to attend and speak but not to vote at a General Meeting
- (e) A Life Member is entitled to apply for and be admitted to membership as an Ordinary Member in addition to his or her Life Membership and, whilst the Ordinary Membership subsists, to vote in his or her capacity as an Ordinary Member.

## **6.5 Admission as a Member**

- (a) The Directors:
  - (i) may admit as an Ordinary Member a natural person who makes an application under clause 6.6: and

- (ii) must admit as an Ordinary Member a natural person who is a member of one or more of the Participating Foundations as at the date on which this Constitution is adopted or who was a member of either the Asthma Foundation of New South Wales Ltd. or the Asthma Foundation of Queensland Ltd. on the day on which they merged to form the Company.
- (b) The Directors:
  - (i) may admit as a Professional Member a corporation which:
    - (A) makes an application in accordance with clause 6.6; and
    - (B) satisfies the Directors that it represents the interests of a health professional group with a real interest in the prevention and management of asthma or a Related Condition; and
- (c) To be admitted as a Member, a natural person or a corporation must:
  - (i) consent in writing to become a Member; and
  - (ii) agree to be bound by this Constitution.

## **6.6 Membership process**

- (a) The application for membership must be:
  - (i) in writing, signed by the applicant;
  - (ii) in such form as the Directors may from time to time prescribe; and
  - (iii) accompanied by the membership fee, if any, determined by the Directors.
- (b) Each application for membership must be considered by the Directors within a reasonable time after the application is made.
- (c) When an applicant has been accepted or rejected for membership the Secretary must, in due course, notify the applicant of the decision of the Directors.

## **6.7 Directors' discretion to admit or refuse admission as a Member**

- (a) The Directors must admit to membership a person who applies for membership under clause 6.5(a)(ii).

- (b) Otherwise, the Directors have the discretion to refuse the admission of a Member without giving any reason for refusing.

#### **6.8 Registration as Member**

If the Directors accept an application for membership the Directors must, as soon as practicable, cause the name and address of the person to be entered in the Register.

#### **6.9 Term of Membership**

- (a) An Ordinary Member's membership expires at the end of the third AGM after he or she was admitted to membership but may be renewed on reapplication.
- (b) The membership of a Professional Member or a Life Member continues until it ceases under clause 7.

#### **6.10 Membership fees**

- (a) The Members must pay membership fees as prescribed from time to time by the Directors.
- (b) The Directors may prescribe different fees for each category of Member.
- (c) The fees payable by a Member while he, she or it is a Member are debts owed to the Company and remain payable after cessation of the membership.

#### **6.11 Register**

- (a) The company must establish and maintain a Register. The Register must be kept by the Secretary and must contain:
  - (i) for each current Member:
    - (C) the Member's name;
    - (D) the Member's address;
    - (E) any alternative address (including an electronic address) nominated by the Member for the service of notices; and
    - (F) the date the Member was entered on to the Register.
  - (ii) for each person who stopped being a Member in the last 7 years:



- (A) the person's name;
  - (B) the last address notified to the company by the person as the person's address for the service of notices; and
  - (C) date the membership started and ended.
- (b) The Company must provide access to the Register in accordance with the Corporations Act.

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## **7 Ceasing to be a Member**

### **7.1 Cessation of membership**

A Member ceases to be a Member on:

- (a) in the case of an individual, his or her death or, in case of a body corporate, its ceasing to exist;
- (b) resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;
- (c) failure to pay any fee that may be prescribed by the Directors from time to time within twelve months after the fee was due and payable;
- (d) in the case of an Ordinary Member, the expiration of the Member's membership under clause 6.9 unless the Member reapplies and is readmitted to membership, in which case the membership will be taken not to have expired but to have continued uninterrupted;
- (e) in the case of an individual, becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health;
- (f) in the case of a body corporate, immediately before the Member becoming subject to an Insolvency Event;
- (g) in the case of an individual, becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally; or
- (h) the passing of a resolution by the Directors pursuant to clause 7.2.

## **7.2 Termination of membership**

- (a) Subject to this Constitution, the Directors may, by two successive resolutions passed not less than two months apart, terminate the membership of a Member if the Member:
  - (i) refuses or neglects to comply with this Constitution or any applicable Rules made by the Directors;
  - (ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company; or
  - (iii) fails to pay any debt (other than a fee referred to in clause 7.1(c)) due to the Company within a period of three months after the date for payment.
- (b) The Directors may not pass a second resolution under clause 7.2(a) unless the Member has been allowed a reasonable opportunity to respond to the allegations made against the Member and to put the Member's case to the Directors.

## **7.3 Limited liability**

The Members have no liability as Members except as set out in clauses 5.1 and 6.10(c).

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# **8 General Meetings**

## **8.1 Annual General Meetings**

- (a) Annual General Meetings of the Company are to be held in accordance with the Corporations Act.
- (b) The Directors must determine the venue for each Annual General.

## **8.2 Convening and Conducting a General Meeting**

- (a) The Directors may convene and arrange to hold a General Meeting when they think fit and must do so if required to do so under the Corporations Act.
- (b) The Directors may arrange for a General Meeting to be held in two or more places, using technology that facilitates the holding of the meeting in that manner.
- (c) The Directors must ensure that the technology used for a General Meeting held in two or more places enables each attending Member to hear and be heard at the meeting.

### **8.3 Notice of a General Meeting**

- (a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 39.
- (b) If the Meeting is to be held in two or more places, the notice must specify the technology that will be used to facilitate the holding of the meeting in that manner.

### **8.4 Cancellation or postponement of General Meeting**

- (a) Where a General Meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause 8.4 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

### **8.5 Notice of cancellation or postponement of a meeting**

Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

### **8.6 Contents of notice of postponement of meeting**

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting; and
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting.

### **8.7 Number of clear days for postponement of meeting**

The number of days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of days' notice of the General Meeting required to be given under clause 8.3.

## **8.8 Business at postponed meeting**

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

## **8.9 Proxy at postponed meeting**

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at one or more General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by force of this clause 8.9, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

## **8.10 Non-receipt of notice**

The non-receipt of notice of a General Meeting or cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of a meeting.

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# **9 Proceedings at General Meetings**

## **9.1 Number of a quorum**

- (a) A majority of the Voting Members or ten (10) Voting Members, whichever is the lesser number, present in person or by proxy are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy for a Voting Member is to be counted, except that:
  - (i) where a Voting Member has appointed more than one proxy, only one is to be counted; and

- (ii) where an individual is attending both as a Voting Member and as a proxy, that individual is to be counted separately for each appointment unless there is no other Voting Member present, in which case a quorum will be taken not to be present.

## **9.2 Requirement for a quorum**

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chair of the meeting (on the chair's own motion or at the request of a Voting Member or proxy who is present) declares otherwise.

## **9.3 If quorum not present**

If within fifteen minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director or at the request of Voting Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## **9.4 Adjourned meeting**

At a meeting adjourned under clause 9.3(b), two Voting Members present in person or by proxy at the meeting are a quorum. If a quorum is not present within fifteen minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **9.5 Appointment and powers of chair of General Meeting**

If the Directors have elected one of their number as chair of their meetings under clause 19.1, that person is also entitled to preside as chair at a General Meeting.

## **9.6 Absence of chair at General Meeting**

If a General Meeting is held and:

- (a) a chair has not been elected by the Directors under clause 19.1; or

- (b) the elected chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following persons may preside as chair of the meeting (in order of precedence):

- (c) the deputy chair if a Director has been so elected by the Directors under clause 19.1; or
- (d) a Director or Voting Member elected by the Voting Members present in person to preside as chair of the meeting.

### **9.7 Conduct of General Meetings**

- (a) The chair of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) may require the adoption of any procedure which is, in the chair's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
  - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chair under this clause is final.

### **9.8 Adjournment of General Meeting**

Subject to clause 9.8(a), at any time during the meeting the chair may, of his or her own volition, and must, if required by the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but only unfinished business is to be transacted at a meeting resumed after an adjournment.

- (a) The chair may not adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting to an adjourned meeting at another time without the approval of the meeting.

## **9.9 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

## **9.10 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

## **9.11 Equality of votes – no casting vote for chair**

If there is an equality of votes, either on a show of hands or on a poll, then the chair of the meeting is not entitled to a casting vote in addition to any votes to which the chair is entitled as a Voting Member or proxy or attorney or Representative, and consequently the resolution fails.

## **9.12 Voting on show of hands**

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands of the Voting Members unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the chair that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the Company, is conclusive evidence of the fact.
- (c) Neither the chair nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

## **9.13 Poll**

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the chair and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chair or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **9.14 Votes of Members**

Subject to this Constitution:

- (a) on a show of hands, each Voting Member present in person and each other person present as a proxy of a Voting Member has one vote; and
- (b) on a poll, each Voting Member present in person has one vote and each person present as proxy of a Voting Member has one vote for each Voting Member that the person represents.

#### **9.15 Right to appoint proxy**

- (a) Subject to the Corporations Act, a Voting Member entitled to attend a meeting of the Company is entitled to appoint another Voting Member as proxy to attend in the Voting Member's place at the meeting. A proxy has the same right as the Voting Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (b) The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- (c) The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) A Voting Member is entitled to instruct his or her proxy to vote in favour of or against any proposed resolutions. The proxy may vote as he thinks fit unless otherwise instructed.
- (e) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.
- (f) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority must be received at the Registered Office, or at such other place within Australia, or to a fax number or email address, as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid.



### **9.16 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Voting Member dies;
- (b) the Voting Member revokes the appointment or authority; or
- (c) the Voting Member is mentally incapacitated.

### **9.17 Objection to voting qualification**

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
  - (i) may not be raised except at that meeting or adjourned meeting; and
  - (ii) must be referred to the chair of that meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

### **9.18 Attendance of Members who are not Voting Members**

Members who are not Voting Members are nevertheless entitled to receive notice of and to attend and speak at General Meetings.

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## **10 Directors**

### **10.1 Number of Directors**

- (a) Subject to paragraphs (b) and (c), the number of Directors is nine or such lesser number as the Voting Members in General Meeting may determine from time to time.
- (b) If a Director resigns then, unless the Appointments Committee makes an appointment under clause 10.8, those Directors that remain constitute the Board until the next Directors are appointed by the Appointments Committee under clause 10.3.
- (c) Until the expiration of the terms of office allocated to the Directors named in clause 10.2, the number of Directors is the number of those Directors whose initial term has not concluded or nine, whichever is the greater number.

## **10.2 The First Directors**

From the date of the adoption of this constitution the following persons are the Directors, each of whom will hold office for the term appearing by his or her name:

- The Hon. David Simmons OAM who is to be the Chairman (term ends 2020 AGM)
- Dr Rosemary Calder AM (term ends 2020AGM)
- Mr James Wright (term ends 2020 AGM)
- Mr Terry Evans (term ends 2018 AGM)
- Ms Marita Cowie (term ends 2018 AGM)
- Mr Paul Sinclair (term ends 2018 AGM)
- Ms Simone Carton (term ends 2018 AGM)
- Mr Nick Thornton (term ends 2018 AGM)
- Mr Rob Stobbe (term ends 2018 AGM)

## **10.3 Directors appointed by the Appointments Committee**

- (a) From the 2018 AGM onwards Directors must be appointed by the Appointments Committee.
- (b) Prior to each AGM from (and including) the 2018 AGM, the Appointments Committee must meet to select a person to fill the position of each Director whose term expires at the close of that AGM.
- (c) The Appointments Committee's selections take effect from and must be announced at the AGM.

## **10.4 Qualification of Directors**

A Director must be a Member.

## **10.5 Terms and retirement of Directors**

- (a) Subject to clauses 10.2 and 10.6, the term of office of each Director begins at the close of the AGM at which his or her appointment takes effect under clause 10.3(c) and ends at the close of the third succeeding AGM.
- (b) A Director whose term has expired must retire from office but, subject to clause 10.7 is eligible for reappointment.

## **10.6 Rotation**

Despite clause 10.5(a), at least one third of the Directors must retire at each AGM following the 2018 AGM. Therefore, if the number of Directors whose terms will expire at an AGM is less than one third of their total number, the additional retirees required to bring the number up to one third must be chosen by the Directors from among their number.

## **10.7 Limit on Reappointment of Directors**

- (a) A Director's total period of service to the Company may not exceed three consecutive terms or nine (9) years, whichever is the longer.
- (b) A Director who is disqualified from appointment under clause 10.7(a) is eligible for reappointment at the AGM following that at which his or her last term ended.
- (c) A period of service as a Director appointed to a casual vacancy under clause 10.8 is not to be counted for the purpose of clause 10.7(a).

## **10.8 Casual Vacancies**

If there is a casual vacancy in the membership of the Directors, the Appointments Committee may appoint a Member to fill the vacancy. A person appointed to fill a casual vacancy holds office only until the end of the next Annual General Meeting irrespective of the term of office of the person whom he or she replaces.

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## **11 Remuneration of Directors**

- (a) Subject to clause 11(b), the Directors may be remunerated for their services as Directors but only with the approval of the Voting Members in General Meeting.
- (b) The quantum of any remuneration to be paid to the Directors must be fixed and may be varied from time to time by the Voting Members in General Meeting.

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## **12 Expenses of Directors**

- (a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company.

- (b) Any payment to a Director must be approved by the Directors.

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### **13 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if:

- (a) the Director's term expires and is not renewed or the Director:
  - (i) ceases to be eligible under clause 10.4;
  - (ii) resigns from the office by notice in writing to the Company;
  - (iii) is not present at three successive meetings of the Directors without leave of absence from the Directors;
  - (iv) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (v) becomes insolvent or bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditors;
  - (vi) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction regulator; or
  - (vii) dies; or
- (b) the Voting Members resolve to remove him or her from office.

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## **14 Powers and duties of Directors**

### **14.1 Directors to manage the Company**

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.

### **14.2 Specific powers of Directors**

Without limiting the generality of clause 14.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to:

- (a) borrow or raise money;
- (b) charge any property or business of the Company; and
- (c) give any security for a debt, liability or obligation of the Company or of any other person.

### **14.3 Delegation**

- (a) The Directors may resolve to delegate any of their powers to:
  - (i) a committee constituted under clause 21;
  - (ii) a Council;
  - (iii) a Director;
  - (iv) an employee of the Company; or
  - (v) any other person.
- (b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

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## **15 By-Laws**

- (a) Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter by-laws which are consistent with this Constitution and which govern the management and conduct of the business of the Company.
- (b) The By-laws are binding on Members

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## **16 Appointment of attorney**

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.
- (b) A power of attorney granted under this clause 16 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

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## **17 Conflicts of Interest**

### **17.1 Disclosure of conflict of interest**

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

### **17.2 Disclosure recorded in minutes**

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

### **17.3 Material personal interest**

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 17.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

### **17.4 Present and voting**

A Director may still be present and vote if:

- (a) their interest arises because they are a Member of the Company and the other Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 40.2);
- (c) their interest relates to a payment by the Company under clause 40.1 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) ASIC makes an order allowing the Director to vote on the matter; or
- (e) the Directors who do not have material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Company; and
  - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

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## **18 Proceedings of Directors**

### **18.1 Directors' meetings**

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.
- (c) A Director may attend a meeting by telephone or other electronic means by which he or she can hear and be heard.

## **18.2 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

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## **19 Chair and deputy chair of directors**

### **19.1 Election of chair and deputy chair**

- (a) The Directors must elect from their number a chair and a deputy chair of their meetings and may also determine the period for which the persons elected as chair and deputy chair are to hold office.
- (b) The Directors may, at any time, remove and replace a chair or deputy chair elected under clause 19.1(a).

### **19.2 Absence of chair at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chair has not been elected under clause 19.1; or
- (b) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chair, if elected under clause 19.1, must be the chair of the meeting or, if the deputy chair is not present, the Directors present must elect one of their number to be a chair of the meeting.

### **19.3 No casting vote for chair at Directors' meetings**

In the event of an equality of votes cast for and against a question, the chair of the Directors' meeting does not have a second or casting vote, and consequently the question is decided in the negative.



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## **20 Quorum for Directors' meeting**

- (a) At a meeting of Directors, the number of Directors necessary to constitute a quorum is a majority of Directors then holding office.
- (b) The Directors may act despite a vacancy in their number.

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## **21 Committees**

### **21.1 Delegation to committees**

- (a) The Directors may delegate any of their powers, to a committee or committees as they think fit.
- (b) A committee may be constituted of Directors, of persons who are not Directors or a combination of both.
- (c) The Directors must prescribe the terms of reference of a Committee constituted under clause 21.1(a).
- (d) A committee to which any powers have been delegated under this clause 21.1 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

### **21.2 Meetings of Committee**

- (a) A committee may meet and adjourn as it thinks proper.
- (b) A committee member may attend a meeting by telephone or other electronic means by which he or she can hear and be heard.

### **21.3 Chair of Committee**

Subject to the terms of reference prescribed by the Directors, the members of a committee must elect one of their number as chair of their meetings. If a meeting of a committee is held and:

- (a) a chair has not been elected; or
- (b) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the committee members involved may elect one of their number to be chair of the meeting.

## **21.4 Governance of Committees**

In all other respects but subject to the terms of reference prescribed by the Directors, the provisions of this Constitution concerning Directors' meetings and the conduct of individual Directors apply equally to the Committee meetings and the conduct of committee members.

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## **22 The Consumer Advisory Council**

### **22.1 The Functions of the Consumer Advisory Council**

There will be a Consumer Advisory Council whose functions are:

- (a) to act as a forum for discussion of matters relevant to the Company in the various regions in which the Company operates;
- (b) to assist the Directors in advocacy and fundraising in those regions;
- (c) to represent to the Directors the interests of consumers of the Company's services
- (d) to identify and report to the Directors where interests of consumers diverge or require differing methods of delivery, particularly where the divergences or differences are regional or socio-economic
- (e) to give advice to the Directors on matters of policy affecting consumers of the Company's services;
- (f) to report to the Directors on the Council's deliberations, findings and recommendations; and
- (g) to appoint two members of the Appointments Committee as required by clause 30.2(c).

### **22.2 Number of Consumer Advisory Councillors**

The number of Consumer Advisory Councillors is twelve (12).

### **22.3 Election and appointment of Consumer Advisory Councillors**

- (a) The first Consumer Advisory Councillors must be appointed by the Directors and will hold office until the close of the 2018 AGM.

- (b) Thereafter, a number of Consumer Advisory Councillors equal to the number of Participating Foundations may be elected by the Ordinary Members under clause 24 and the rest must be appointed by the Directors.

#### **22.4 Qualification of Consumer Advisory Councillors**

A Consumer Advisory Councillor must be a Member.

#### **22.5 Terms and retirement of Consumer Advisory Councillors**

- (a) Subject to clauses 22.3(a) and 22.5(c) , the term of office of each Consumer Advisory Councillor begins at the close of the AGM at which his or her election or appointment is declared under clause 24.3(d) and ends at the close of the third succeeding AGM.
- (b) Subject to clause 22.6, a Consumer Advisory Councillor whose term has expired must retire from office but is eligible for re-election or reappointment.
- (c) Despite clause 22.5(a), at least one third of the Consumer Advisory Councillors must retire at each AGM following the 2018 AGM. Therefore, if the number of Consumer Advisory Councillors whose terms will expire at an AGM is less than one third of their total number, the additional retirees required to bring the number up to one third must be chosen by the Directors.

#### **22.6 Limit on Reappointment of Consumer Advisory Councillors**

- (a) A Consumer Advisory Councillor's total period of service to the Company may not exceed three consecutive terms or nine (9) years whichever is the longer.
- (b) A Consumer Advisory Councillor who is disqualified from appointment under clause 22.6(a) is eligible for reappointment at the AGM following that at which his or her last term ended.

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### **23 The Professional Advisory Council**

#### **23.1 The Functions of the Professional Advisory Council**

There will be a Professional Advisory Council whose functions are:

- (a) to assist the Directors in:
  - (i) advocacy and policy development with governments and health professionals;

- (ii) the procurement of funding from governments and the health professionals;
- (b) to provide expert advice and counsel to the Directors on medical, research and other technical or professional matters:
- (c) to report to the Directors on the Council's deliberations, findings and recommendations; and
- (d) to appoint two members of the Appointments Committee as required by clause 30.2(c).

### **23.2 Number of Professional Advisory Councillors**

The number of Professional Advisory Councillors is not less than four and not more than eight.

### **23.3 Election and appointment of Professional Advisory Councillors**

- (a) The first Professional Advisory Councillors must be appointed by the Directors and will hold office until the close of the 2018 AGM.
- (b) Thereafter, four Professional Advisory Councillors may be elected by the Professional Members under clause 24.2(a) and the rest (if any) must be appointed by the Directors.

### **23.4 Qualification of Professional Advisory Councillors**

A Professional Advisory Councillor need not be a Member.

### **23.5 Terms and retirement of Professional Advisory Councillors**

- (a) Subject to clauses 23.3(a) and 23.5(c), the term of office of each Professional Advisory Councillor begins at the close of the AGM at which his or her election or appointment is declared under clause 24.3(d) and ends at the close of the third succeeding AGM.
- (b) Subject to clause 23.6, a Professional Advisory Councillor whose term has expired must retire from office but is eligible for re-election or reappointment.
- (c) Despite clause 23.5(a), at least one third of the Professional Advisory Councillors must retire at each AGM following the 2018 AGM. Therefore, if the number of Professional Advisory Councillors whose terms will expire at an AGM is less than one third of their total number, the additional retirees required to bring the number up to one third must be chosen by the Directors.

## **23.6 Limit on Reappointment of Professional Advisory Councillors**

- (a) A Professional Advisory Councillor's total period of service to the Company may not exceed three consecutive terms or nine (9) years whichever is the longer.
- (b) A Professional Advisory Councillor who is disqualified from appointment under clause 23.6(a) is eligible for reappointment at the AGM following that at which his or her last term ended.

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## **24 Elections and Appointment of Councillors**

### **24.1 Consumer Advisory Council**

- (a) The Ordinary Members may elect Consumer Advisory Councillors according to the following rules:
  - (i) The Ordinary Members resident in a Participating Jurisdiction may elect one Consumer Advisory Councillor.
  - (ii) An Ordinary Member will be deemed to reside at the address at which he is registered on the Register of Members.
  - (iii) The election must be conducted at the time and by the process prescribed by or under clause 24.3.
  - (iv) When a Consumer Advisory Councillor's office becomes vacant, his or her replacement must be elected under clause 24.3 by the Ordinary Members then residing in the Participating Jurisdiction whose Ordinary Members elected the vacating Consumer Advisory Councillor.
- (b) The Directors may appoint the rest of Councillors and their replacements.

### **24.2 Professional Advisory Council**

- (a) The Professional Members may elect up to four Professional Advisory Councillors.
- (b) The election must be conducted at the time by under the process prescribed by clause 24.3.
- (c) The Directors may appoint the rest of Councillors and their replacements

### **24.3 The Election Process**

- (a) The Directors must arrange for elections of Councillors prior to the AGM in each year.
- (b) The Directors may prescribe rules for the nomination and election of Councillors.
- (c) The rules prescribed under clause 24.3(a) may provide for elections to be held by postal or electronic ballot conducted otherwise than at a General Meeting.
- (d) The result of the election must be declared at the AGM.

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### **25 Remuneration of Councillors**

The Councillors must not be paid any remuneration for their services as Councillors.

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### **26 Expenses of Councillors**

- (a) A Councillor is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Councillor may incur when travelling to or from meetings of the Councillors or a committee of Councillors or when otherwise engaged on the business of the Company.
- (b) Any payment to a Councillor must be approved by the Directors.

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### **27 Vacation of office of Councillor**

- (a) The office of a Councillor becomes vacant if the Councillor's term expires and is not renewed or the Councillor:
  - (i) resigns from the office by notice in writing to the Company;
  - (ii) dies;
  - (iii) if the Councillor was elected, under clause 24.1(a), the Ordinary Members in the Participating Jurisdiction from which he or she was elected resolve to terminate his or her office;

- (iv) if the Councillor was elected, under clause 24.2(a), the Professional Members resolve to terminate his or her office; or
  - (v) if the Councillor was appointed by the Directors, the Directors resolve to terminate his or her office.
- (b) When the office of a Councillor becomes vacant otherwise than by expiry of the Councillor's term, the vacancy must be filled under clause 24 by those who appointed or elected the outgoing Councillor.

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## **28 Frequency and Conduct of Councillors and Council meetings**

- (a) Each Council must meet at least three times each year.
- (b) The Directors must convene and arrange the Council meetings.
- (c) In all other respects, the provisions of this Constitution concerning Directors' meetings, the election of the chair of Directors and the conduct of individual Directors apply equally to Council meetings and the conduct of Councillors.

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## **29 Circulating resolutions**

- (a) The Directors or the Council may pass a resolution without a meeting being held if all of those entitled to vote on the resolution sign<sup>3</sup> a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors or the Councillors (as the case may be) if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director or Councillor signs.

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<sup>3</sup> Clause 1.3 permits this to be done electronically

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## **30 Appointments Committee**

### **30.1 Constitution and Function of the Committee**

- (a) There will be an Appointments Committee of six persons whose principal function is to select persons for appointment as Directors under clause 10.3.
- (b) It is intended that the Directors should, between them, have appropriate gender and cultural diversity, experience, professional knowledge and geographical spread to enable the Directors to pursue the Company's objects and to oversee its operations. To that end, the Appointments Committee must consult with the Directors when it is embarking on an appointment process in order to ascertain the views of the Directors on the skills and experiences that they think appointees should have.
- (c) The Directors may, in their discretion, delegate other powers to the Appointments Committee as if it were a committee constituted under clause 21.

### **30.2 Appointment of the Appointments Committee**

- (a) The Directors must appoint two of their number to the Appointments Committee for terms of up to three years expiring, in each case, not less than six months prior to the end of the Director's then current term as a Director.
- (b) The Directors may revoke an appointment made under this clause before the appointee's term expires and must replace an appointee when his or her term expires or is revoked.
- (c) Each of the Consumer Advisory Council and the Professional Advisory Council must appoint two members of the Appointments Committee for terms of up to three years. Each of the Consumer Advisory Council and the Professional Advisory Council may revoke an appointment made by it under this clause before the appointee's term expires and must replace an appointee when his or her term expires or is revoked.
- (d) A Appointments Committee member appointed by a Council may be a Director or a Councillor, but is not required to be.
- (e) A Appointments Committee member whose term expires is eligible for reappointment.

### **30.3 Frequency and Conduct of Appointments Committee meetings**

- (a) The Appointments Committee must meet as often as is required to perform its function.



- (b) The Directors must convene and arrange the Appointments Committee meetings.
- (c) The Directors must nominate one of the Appointments Committee to be its chair but that nominee may not be the chair of the Directors.
- (d) In all other respects, the rules prescribed in this constitution for the conduct of meetings of committees apply equally to meetings of the Appointments Committee as if the Appointments Committee were a committee of the Directors.

### **31 Remuneration of Appointments Committee members**

The Appointments Committee members must not be paid any remuneration for their services as Appointments Committee members.

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### **32 Expenses of Appointments Committee members**

- (a) A Appointments Committee member is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Appointments Committee member may incur when travelling to or from meetings of the Appointments Committee members or a committee of Appointments Committee members or when otherwise engaged on the business of the Company.
- (b) Any payment to a Appointments Committee member must be approved by the Directors.

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### **33 Validity of acts and Directors, Councillors and Appointments Committee Members**

All acts done by a person acting in good faith as a Director, a member of a committee of Directors, a Councillor or a member of the Appointments Committee are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of the person; or
- (b) a person was disqualified or was not entitled to vote.

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## **34 Secretary**

### **34.1 Appointment of Secretary**

There must be at least one Secretary who is to be appointed by the Directors.

### **34.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **34.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

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## **35 Execution of documents**

Documents executed by the company must be executed by:

- (a) two Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Directors by resolution appoint from time to time.

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## **36 Accounts**

- (a) The Directors must cause proper financial records to be kept and cause the accounts of the Company to be audited if an audit is required by
    - (i) a law, regulation or guideline applicable to the Company;
    - (ii) a resolution of the Consumer Advisory Council; or
    - (iii) a resolution of the Professional Advisory Council
- or is otherwise considered by the Directors to be appropriate.

- (b) The Directors must distribute to the Members copies of the annual financial reports of the Company accompanied by a copy of the Auditor's report and Directors' report in accordance with the requirements of a relevant law, regulation or guideline.

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## **37 Seals**

### **37.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **37.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **38 Inspection of records**

### **38.1 Inspection by Members**

Subject to the Corporations 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 to inspection by the Members (other than Directors).

### **38.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

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## **39 Service of documents**

### **39.1 Document includes notice**

In this clause 39, a reference to a document includes a notice.

### **39.2 Methods of service**

- (a) The Company may give a document to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
  - (iii) by sending it to an electronic address nominated by the Member.
- (b) A document sent by post:
  - (i) if sent to an address in Australia, may be sent by ordinary post and is taken to have been received on the fifth day after the date of its posting; and
  - (ii) if sent to an address outside Australia, must be sent by airmail and is taken to have been received on the fifth day after the date of its posting.
- (c) If a document is sent by electronic transmission, delivery of the document is taken:
  - (i) to be effected by properly addressing and transmitting the electronic transmission; and
  - (ii) to have been delivered on the day following its transmission.

### **39.3 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

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## **40 Indemnity and insurance**

### **40.1 Indemnity**

The Company may indemnify any current or former Director, Councillor, committee member, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity; and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **40.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Councillor, committee member or Secretary or executive officer of the Company or of a Related Body Corporate of the Company (**Relevant Office**) against liability incurred by the person arising out of the person's conduct in the Relevant Office, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay premiums in respect of conduct of that kind by persons holding a Relevant Office (whether or not the statute applies in the circumstances of the particular case); or
- (b) the contract would, if the Company paid the premium, be made void by statute.

### **40.3 Contract**

The Company may enter into an agreement with a person referred to in clauses 40.1 and 40.2 with respect to the matters covered by these clauses. An agreement entered into pursuant to

this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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#### **41 Amendment to Constitution**

- (a) Subject to clause 41(b), this Constitution may only be amended by Special Resolution of the Voting Members of the Company.
- (b) A Special Resolution to amend this Constitution does not have any effect unless it is endorsed by a resolution of a simple majority of the Directors passed not more than two months after the date on which the Special Resolution is passed.
- (c) The Voting Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.
- (d) Any modification of this Constitution takes effect on the date the Special Resolution is endorsed by the Directors or any later date specified, or provided for, in the resolution.

**Appointment of Proxy**

**Asthma Australia Limited**  
**ACN [XXX XXX XXX]**

I/We \_\_\_\_\_ [name]

of \_\_\_\_\_ [address]

being a member / members of the above named Company hereby appoint

\_\_\_\_\_ [name]

of \_\_\_\_\_ [address]

or, in his or her absence \_\_\_\_\_ [name]

of \_\_\_\_\_ [address]

as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ and at any adjournment of that meeting.

[To be inserted if desired] This form is to be used in favour of / against the resolution (Strike out whichever is not desired)

[Insert details of specific resolutions if desired]

SIGNED \_\_\_\_\_

NAME \_\_\_\_\_

DATED \_\_\_\_\_

This notice must be returned to Asthma Australia Limited at [address/email address/fax number] by [time] on [date] [insert specific details ensuring that the time is 48 hours before the time for the meeting]