
**Constitution of
Australia and New
Zealand Child
Neurology Society
Limited
(ACN 146 982 452)**

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Constitution of Australia and New Zealand Child Neurology Society Limited (ACN 146 982 452)

1. Preliminary

1.1. Replaceable rules

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this Constitution.

1.2. Definitions

The following expressions in this Constitution have the meaning below:

- (a) *Act* means the *Corporations Act 2001 (Cth)* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
- (b) *Alternate Director* means a person for the time being holding office as an alternate Director of the Company under rule 14;
- (c) *Associate Member* has the meaning given to that term under rule 6.3(e);
- (d) *Auditor* means the auditor for the time being of the Company;
- (e) *Board* means the board of Directors of the Company;
- (f) *Bylaws* has the meaning given to that term under rule 19;
- (g) *Chief Executive Officer* means the chief executive officer of the Company, from time to time, appointed by the Directors under rule 8;
- (h) *Company* means Australia and New Zealand Child Neurology Society Limited (ACN 146982452);
- (i) *Constitution* means this constitution of the Company and any supplementary, substituted or amended constitution for the time being in force;
- (j) *Director* means any person formally and lawfully appointed as a director of the Company, and includes an Alternate Director;

- (k) *Health Act* means:
- (i) in Australia:
 - (A) and specifically in Victoria, the *Health Practitioner Regulation National Law (Victoria) Act 2009*;
 - (B) and specifically in New South Wales, the *Health Practitioner Regulation Act 2009*;
 - (C) and specifically in Queensland, the *Health Practitioner Regulation National Law Act 2009*;
 - (D) and specifically in Western Australia, the *Medical Practitioners Act 2008*;
 - (E) and specifically in South Australia, the *Health Practitioner Regulation National Law (South Australia) Act 2010*;
 - (F) and specifically in Tasmania, the *Health Practitioner Regulation National Law (Tasmania) Act 2010*;
 - (G) and specifically in the Australian Capital Territory, the *Health Practitioner Regulation National Law (ACT) Act 2010*; and
 - (H) and specifically in the Northern Territory, the *Health Practitioner Regulation (National Uniform Legislation) Act 2010*;
 - (ii) in New Zealand, the *Health Practitioners Competence Assurance Act 2003 (NZ)*; and
 - (iii) in another country, a statute or law that governs the registration of medical practitioners in that country,
- and includes any legislation that varies, consolidates or replaces that legislation.
- (l) *Honorary Member* has the meaning given to that term under rule 6.3(d);
- (m) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the person being, or having been, an officer

of the Company or a subsidiary of the Company, or the employment of the person with the Company;

- (n) *Material Personal Interest* has the same meaning as given in the Act;
- (o) *Medical Practitioner* means a person who is registered to practice medicine under the relevant Health Act;
- (p) *Members* means those persons who for the time being are members (of any type) of the Company and whose names are entered in the Register as members. *Member* means any one of them and *Membership* has a corresponding meaning;
- (q) *Office* means the registered office from time to time of the Company;
- (r) *Ordinary Member* has the meaning given to that term under rule 6.3(a);
- (s) *Overseas Member* has the meaning given to that term under rule 6.3(c);
- (t) *Register* means the register of Members of the Company to be kept in accordance with the Act;
- (u) *Retired Member* has the meaning given to that term under rule 6.3(b);
- (v) *Secretary* means any person appointed to perform the duties of a secretary of the Company; and
- (w) *Trainee Member* has the meaning given to that term under rule 6.3(f).

1.3. Interpretation

In this Constitution, unless otherwise indicated by the context:

- (a) a reference to \$ or dollar means the Australian currency;
- (b) words importing the singular include the plural and vice versa.
- (c) words importing a gender include any gender.
- (d) words or expressions defined in the Act have those meanings.

- (e) except so far as the contrary intention appears in this Constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (f) headings are for convenience only, and do not affect interpretation.
- (g) a reference to:
 - (i) a party includes its administrators, successors, substitutes by novation, and assigns;
 - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
 - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
 - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

2. Company

2.1. Public company limited by guarantee

The Company is a public company limited by guarantee pursuant to the Act.

2.2. Restriction on shares

The Company does not have the power to issue or allot shares or securities of any kind.

2.3. Non-profit

- (a) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- (b) The Company is a non-profit organisation and must not carry on business for the purpose of profit or gain to its Members. Further, no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of

profit, to the Members, or the Directors, or their relatives, except as provided by this Constitution.

- (c) Nothing in this Constitution prevents:
- (i) the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Company, or to any Member or the Board of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
 - (ii) the payment of interest at the rate not exceeding interest at the minimum rate for the time being charged by the Company's bankers for overdrawn accounts of a similar amount on money borrowed from a Director or a Member; or
 - (iii) payment of reasonable and proper rent for premises let by any Director or Member to the Company; or
 - (iv) the payment, in good faith, of reasonable travelling and other expenses properly incurred by any Director of the Company:
 - (A) in attending and returning from:
 - (I) meetings of the Directors;
 - (II) meetings of any committee of the Directors; or
 - (III) general meetings of the Company,in accordance with any travel guidelines the Board may establish; or
 - (B) otherwise in connection with the business of the Company.

2.4. **Dissolution**

- (a) If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities are to be given or transferred to some other institution or institutions:
- (i) having objects similar to the objects of the Company; and

- (ii) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by this Constitution; and
 - (iii) to which income tax deductible gifts can be made under any Australian tax law.
- (b) The Directors may determine the identity of the institution or institutions for the purpose of rule 2.4(a) at the time of dissolution. If the Directors fail to determine the identity of the institution or institutions under this rule 2.4(b), the Supreme Court of Queensland may make that determination.

2.5. **Revocation of Deductible Gift Recipient Endorsement**

- (a) In the event of deductible gift recipient endorsement being revoked for any reason then any surplus gifts after payment of all liabilities are to be given to another institution or fund:
- (i) having objects similar to the objects of the Company; and
 - (ii) to which income tax deductible gifts can be made under any Australian tax law.

3. **Guarantee of Members**

In the event that the Company is wound up, each Member undertakes to contribute a maximum of \$10 to the Company for payment of:

- (a) the debts and liabilities of the Company;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

while the Member is a Member or within one year after the Member ceases to be a Member.

4. Objects of the Company

The objects for which the Company is established are to:

- (a) advance the science of paediatric neurology and neuropaediatric research in Australia and related disciplines and to achieve international best practice;
- (b) to promote education and training in paediatric neurology, neuropaediatric research and related disciplines;
- (c) to encourage and support research related to paediatric neurology and neuropaediatric research;
- (d) promote care for children with neurological disorders;
- (e) promote and facilitate communication of views and experiences between clinicians working in the field of paediatric neurology and in neuropaediatric research;
- (f) arrange meetings of the Company and other events in respect of paediatric neurology or neuropaediatric research; and
- (g) to do all such other things as may be incidental to or conducive to the attainment of the above objects.

5. Legal scope of the Company's powers

In pursuing the objects of the Company, the Company has, both within Australia and outside Australia, the legal capacity of a natural person and all the powers provided by the Act.

6. Membership

6.1. Membership

The Company is made up of the following types of Membership:

- (a) Ordinary Membership;
- (b) Retired Membership;
- (c) Overseas Membership;

- (d) Honorary Membership;
- (e) Associate Membership; and
- (f) Trainee Membership.

6.2. **Number of Members**

- (a) The Company must have at least one Member at all times.
- (b) The Board may set a limit of on the maximum number of Members.

6.3. **Categories of Membership**

- (a) Ordinary Members
 - (i) Persons who are admitted to Membership of the Company will, unless admission is accepted for another type of Membership, be Ordinary Members of the Company.
 - (ii) Eligibility to Ordinary Membership is open to a Medical Practitioner who devotes the majority of his or her time to the practice of paediatric neurology, paediatric neurodisability or any allied neuroscience, provided that such applicant is endorsed in writing by no less than two existing Members (of any type) of the Company.
 - (iii) The applicant for Ordinary Membership must submit his or her curriculum vitae to the Secretary no less than six weeks before the next general meeting of the Company.
 - (iv) Any person who is or becomes an Ordinary Member of the Company must pay to the Company the then current membership fee that applies to Ordinary Members (if any).
 - (v) At a general meeting of the Company, an Ordinary Member is entitled to one vote.

- (b) Retired Members
 - (i) On retirement from the medical profession or any allied neuroscience profession, an existing Member may elect, with the consent of the Board, to become a Retired Member of the Company.
 - (ii) Any person who is or becomes a Retired Member of the Company must pay to the Company the then current membership fee that applies to Retired Members (if any).
 - (iii) At a general meeting of the Company, a Retired Member is not entitled to vote.
- (c) Overseas Members
 - (i) A person may be admitted as an Overseas Member if:
 - (A) he or she satisfies the requirement for becoming an Ordinary Member under rule 6.3(a)(ii) and 6.3(a)(iii); and
 - (B) practices his or her profession in a country other than Australia or New Zealand.
 - (ii) Any person who is or becomes an Overseas Member of the Company must pay to the Company the then current membership fee that applies to Overseas Members (if any).
 - (iii) At a general meeting of the Company, an Overseas Member is not entitled to vote.
- (d) Honorary Members
 - (i) At the election of the Board, any person may be deemed to be an Honorary Member of the Company.
 - (ii) Honorary Members are not required to pay any membership fee.
 - (iii) At a general meeting of the Company, an Honorary Member is not entitled to vote.

- (e) Associate Members
 - (i) At the election of the Board, any person who expresses a desire to contribute to, participate in, or assist the Company achieve its objects as set out in its Constitution may be deemed to be an Associate Member of the Company.
 - (ii) Any person who is or becomes an Associate Member of the Company must pay to the Company the then current membership fee that applies to Associate Members (if any).
 - (iii) At a general meeting of the Company, an Associate Member is not entitled to vote.
- (f) Trainee Members
 - (i) At the election of the Board, any Medical Practitioner who is a trainee in the specialisation of neurology, paediatric neurology, neuropathology, or any other associated disciplines may be deemed to be a Trainee Member of the Company.
 - (ii) Any person who is or becomes a Trainee Member of the Company must pay to the Company the then current membership fee that applies to Trainee Members (if any).
 - (iii) At a general meeting of the Company, a Trainee Member is not entitled to vote.

6.4. **Board may establish other categories of Membership**

The Board, at its absolute discretion, may:

- (a) extinguish or alter the existing categories of Membership;
- (b) establish new categories of Membership; and
- (c) prescribe the qualifications, rights and privileges and membership fees (if any) of persons to become a Member of a class of Membership.

6.5. Admission to Membership

- (a) An application for Membership must be in writing and must be delivered to Secretary at the Office or submitted via the official webpage of the Company (if any).
- (b) Admission to Membership will be at the absolute discretion of the Board.

6.6. Address of Member

- (a) Each Member is required to provide to the Company details of an address in Australia where the Company can send notices to the Member.
- (b) If a Member fails to provide an address, the address of the Member is deemed to be the Office.
- (c) The addresses of all Members are to be kept on the Register and the Register is to be kept at the Office.
- (d) The names of all Members (but not their addresses) may be published by the Company on its official website (if any).

6.7. Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) subject to the Act and this Constitution, terminates on cessation of the person's Membership.

6.8. Cessation of Membership

A Member ceases to be a Member if he or she:

- (a) dies;
- (b) resigns from his or her Membership in writing;
- (c) becomes of unsound mind or becomes liable to be dealt with in any way under any law relating to mental health or incapacity;

- (d) in the opinion of the Board, has engaged in any acts that is prejudicial or detrimental to the Company; or
- (e) is convicted of an indictable offence.

6.9. **Non-payment of membership fee**

- (a) If the membership fee or any other fee of a Member remains unpaid for two consecutive years, the Member:
 - (i) will cease to be a member of the Company;
 - (ii) will be removed from the Register; and
 - (iii) will be excluded from all privileges of Membership.
- (b) The Directors may, if they think fit, reinstate the Member on payment of all arrears.

6.10. **Effect of cessation**

- (a) A Member who ceases to be a Member continues to be liable for:
 - (i) any membership fees and all arrears due and unpaid at the date of cessation;
 - (ii) all other moneys due by him or her to the Company; and
 - (iii) the guarantee amount set out in rule 3.
- (b) Membership fees and monies paid in advance by a Member will not be refunded when that Member's membership ceases.

7. Rights and obligations of Members

7.1. **Amount of membership and other fees payable**

- (a) Annual membership fees for the various categories of Membership (if any) will be due on 1 June of each calendar year.

- (b) Sponsorship payments and other periodical payments due from Members will be in such amounts and due at such times as the Board determines.

7.2. Variation of rights of Members

The rights attached to any specific category of Membership (if any) may, whether or not the Company is being wound up, be varied only by resolution of the Members of the relevant Membership category.

8. Chief Executive Officer

8.1. Appointment of Chief Executive Officer

The Board may appoint a Chief Executive Officer either for a specified term or without specifying a term. The Board may at any time resolve to change the official title for the position of the Chief Executive Officer. The Chief Executive Officer may also be a Director.

8.2. Powers of Chief Executive Officer

The Board may delegate any of the powers of the Board to the Chief Executive Officer:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board,

and may revoke the delegation at any time. This rule does not limit the powers of the Directors set out in rule 13.

8.3. Terminations of appointment of Chief Executive Officer

The appointment of a Chief Executive Officer terminates if the Board by resolution removes the Chief Executive Officer from the office of Chief Executive Officer (which, subject to any contract between the Company and the Chief Executive Officer, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

8.4. Other officers

The Board has the power to appoint officers and employees at any time and on such terms as it thinks fits and may, subject to any contract between the Company and such officers and employees, remove the officer or employee at any time.

9. Financial reports and audit

9.1. Company must keep financial records

The Board must cause the Company to keep written financial records that:

(a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and

(b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the Auditor to inspect those records at all reasonable times.

9.2. Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to Members in accordance with the Act no later than the deadline set by the Act.

9.3. Audit

If required by law, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the Auditor are regulated by the Act.

9.4. Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

9.5. Inspection of financial records and books

A Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or as specified in the Act.

10. General meetings

10.1. Annual General Meetings

An annual general meeting of the Company must be held in accordance with the provisions of the Act.

10.2. Convening of meetings by Directors

A Director may convene a general meeting at any time.

10.3. Convening of meetings by Members

The Directors must call and arrange to hold a general meeting upon the requisition of the Members, if required to do so under the Act.

10.4. Notice of general meeting

- (a) To the extent practicable, the Secretary must give notice of a general meeting two months (but in any event no less than 21 days) before the date fixed for the holding of a general meeting.
- (b) A notice of a general meeting may be given by any form of communication permitted by the Act. The notice must specify the place, the day and the hour of meeting and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.
- (c) To the extent practicable, the general meeting shall be held in different states and territories of Australia and New Zealand to enable as large participation and as balanced presentation of the Members as practicable.
- (d) The accidental omission to give notice of any general meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

10.5. Quorum at general meetings

- (a) Subject to rule 10.14, business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise set out in this Constitution (and, in particular, in

rule 10.14), at least two Members of the Company present in person or by proxy or representative is a quorum.

- (b) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson, one of the following procedures must be followed:
 - (i) if the meeting was convened on the requisition of Members – it must be dissolved;
 - (ii) if the meeting is convened otherwise – it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.
- (c) If a meeting has been adjourned to another time and place determined by the Directors, not less than 7 days' notice of the adjourned meeting must be given to the Members.
- (d) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

10.6. **Appointment of chairperson**

- (a) If a chairperson of Directors' meetings is appointed in accordance with this Constitution to chair their meetings, that person is entitled to preside as the chairperson at every general meeting.
- (b) If a deputy chairperson of Directors' meetings is appointed in accordance with this Constitution, that person is entitled to preside as the chairperson at any general meeting if any of the following events occur:
 - (i) a Director has not been appointed as the chairperson of Directors' meetings;
 - (ii) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chairperson is unwilling or unable to act.

- (c) The Directors present at a general meeting must elect one of the Directors to chair the meeting in any of the following circumstances:
 - (i) if a Director has not been appointed as the chairperson or deputy chairperson of Directors' meetings;
 - (ii) if the chairperson or the deputy chairperson is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) if the chairperson or deputy chairperson is unwilling or unable to act.
- (d) The Members present at a general meeting must elect one of the Members to chair the meeting in either of the following circumstances:
 - (i) if there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or
 - (ii) if all Directors present decline to take the chair.

10.7. **Chairperson's powers**

Subject to the terms of this Constitution dealing with adjournment of meetings, rulings of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting are final and no motion of dissent from a ruling of the chairperson may be accepted.

10.8. **Adjournment of meetings**

- (a) The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

10.9. Voting on show of hands

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- (b) If a poll is not duly demanded, a declaration by the chairperson 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 book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

10.10. Demand for a poll

- (a) A poll may be demanded by any of the following:
 - (i) the chairperson;
 - (ii) at least 5 Members entitled to vote on the resolution; or
 - (iii) any Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) The demand for a poll may be withdrawn.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- (d) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (e) A poll demanded on the election of the chairperson or on a question of adjournment must be taken immediately.

10.11. Voting rights of Members

- (a) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a show of hands every Member present or who represents a Member has one vote.

- (b) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a poll every Member present in person or by proxy, attorney or representative has one vote.

10.12. **Chairperson's vote at general meetings**

The chairperson of a general meeting is entitled to a second or casting vote.

10.13. **Objections to voter qualification**

No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered. An objection to the qualification of a voter must be referred to the chairperson, whose decision is final. A vote not disallowed according to an objection as provided in this Constitution is valid for all purposes.

10.14. **Single member companies**

If at any time the Company has only one Member, that Member may pass a resolution by recording the resolution and signing the record.

11. Proxies and representatives

11.1. **Proxies and representatives of Members**

- (a) At meetings of Members (general meetings) or categories of Members (if any), each Member entitled to vote may vote by a proxy, or by an attorney, and may appoint an individual as his or her representative.
- (b) Except as expressly provided by the terms of their appointment, a person attending as a proxy, or as the attorney or representative of a Member has all the powers of a Member, except where expressly stated to the contrary in this Constitution.

11.2. **Appointment of proxies**

- (a) A Member may appoint another person as his or her proxy to attend and vote instead of the Member.
- (b) A proxy need not be a Member.

- (c) A document appointing a proxy must be in writing in any form permitted by the Act and signed by the Member making the appointment.
- (d) For the avoidance of any doubt, a proxy document may be submitted electronically.

11.3. Authority of proxies

- (a) A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- (b) Except as expressly provided otherwise by the document appointing a proxy, the appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting.

11.4. Verification of proxies

Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, all of the following documents must be deposited with the Secretary before the commencement of the meeting:

- (a) the document appointing the proxy; and
- (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.

11.5. Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to the meeting or a vote being taken as required by this Constitution.

11.6. Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document, power of attorney or otherwise is valid, if no intimation in writing of the revocation of the instrument or of the authority under which the instrument was executed has been received by the Company.

12. Directors

12.1. Number of Directors

The Board may decide the number of Directors but that number must be at least three.

12.2. Qualification

- (a) A Director must be a Member of the Company.
- (b) Neither the Auditor of the Company for the time being nor any partner or employee of the Auditor is eligible to act as a Director.

12.3. Appointment by the Board

Subject to the Constitution and the Act, the Board may appoint a person to be a Director at any time except during a general meeting. Any Director so appointed:

- (a) automatically retires at the next annual general meeting and is eligible for re-election by that general meeting; and
- (b) is not taken into account in deciding the rotation or retirement of Directors or the number of them to retire under rule 12.6 at that general meeting.

12.4. Election by general meeting

Subject to this Constitution and the Act, the Members may elect Directors by ordinary resolution. A Director appointed to replace one removed from office under rule 12.10 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

12.5. Eligible candidates

The Company in general meeting cannot validly elect a person as a Director unless:

- (a) the person retires under rules 12.3, 12.4 or 12.6 and seeks re-election;
- (b) the Board recommends the appointment; or

- (c) at least 30 Business Days before the meeting at which the relevant resolution will be considered, the Company receives both:
 - (i) a nomination of the person by at least 2 Members (other than the person); and
 - (ii) a consent to act as a director signed by the person.

The Company must notify Members of every candidate for election as a Director at least 7 days before the relevant general meeting.

12.6. **One third of Directors retire annually**

- (a) At each annual general meeting:
 - (i) one third (or if that is not a whole number, the whole number nearest to one third) of the Directors who are not:
 - (A) appointed by the Board, and required to retire, under rule 12.3;
 - (B) Directors who vacate office under the Act; and
 - (ii) subject to rule 12.2 any Director who would, if that Director remained in office until the next annual general meeting, have held that office for more than 3 years,

must retire from office.
- (b) A retiring Director, if recommended by the Chairman and supported by a majority of the Board, will be eligible for re-election for a further term.

12.7. **Selection of Directors to retire**

Subject to rule 12.4, the Directors who retire under rules 12.3 or 12.6 are those who have held office the longest since last being elected or appointed. If 2 or more Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

12.8. **Time of retirement**

A Director's retirement under rule 12.6 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

12.9. Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a company director;
- (b) becomes disqualified from managing corporations under the Act and is not given permission or leave to manage the Company under the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings for a continuous period of 6 months without leave of absence from the Board;
- (e) resigns by notice in writing to the Company; or
- (f) is removed from office under rule 12.10.

12.10. Removal from office

Whether or not a Director's appointment was expressed to be for a specified period:

- (a) the Directors by ordinary resolution; or
- (b) the Members by ordinary resolution,

may remove a Director from office. The powers to remove a Director under this rule 12.10 are in addition to the Act.

12.11. Too few Directors

If the number of Directors is reduced below the minimum required by rule 12.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of Members; and
- (c) in emergencies.

13. Powers and proceedings of Directors

13.1. Powers of Directors

Subject to this Constitution, the Directors may exercise all those powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

13.2. Convening of Directors' meetings

A Director may at any time, and a Secretary must on the requisition of a Director, convene a meeting of the Directors. Reasonable notice of the proposed meeting must be given to all Directors.

13.3. Mode of meeting for Directors

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

13.4. Quorum at Directors' meetings

- (a) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is a majority of the Directors unless another number is determined by the Directors.
- (b) If the number of Directors is reduced below the number necessary for a quorum of Directors, the continuing Director or Directors may act only to appoint additional Directors to the number necessary for a quorum or to convene a general meeting of the Company.

13.5. Voting at Directors' meetings

Questions arising at a meeting of Directors must be decided by a majority of votes of Directors present and voting. A decision of the majority is for all purposes a decision of the Directors.

13.6. Appointment of chairperson

The Directors will appoint a Director to be the chairperson of Directors' meetings and determine the period for which the person elected is to hold office. If a chairperson has not been elected, or if at any meeting the chairperson is not present within 10 minutes after the time appointed for holding the meeting or is unwilling or unable to act, the deputy chairperson will chair the meeting.

13.7. Appointment of deputy chairperson

The Directors will elect one of the Directors to be the deputy chairperson of Directors' meetings. The Directors will determine the period for which the person elected is to hold office. If neither of the chairperson nor the deputy chairperson is present within 10 minutes after the time appointed for holding the meeting or is unwilling or unable to act the Directors present will elect one of their number to be the chairperson of that meeting.

13.8. Chairperson's vote at Directors meetings

Subject to the Act, in case of an equality of votes on a resolution at a meeting of Directors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his capacity as a Director in respect of that resolution.

13.9. Director not in breach if acts in matters relating to Director's interests

- (a) This rule 13.9 applies if:
 - (i) a Director has an interest or duty in relation to a matter that is not a Material Personal Interest; or
 - (ii) a Director with a Material Personal Interest in relation to the Company's affairs:
 - (A) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs before acting in a matter that relates to the interest; and
 - (B) may be present and vote on the matter under the Act.
- (b) The Director is not in breach of his or her duties to the Company merely because he or she acts in matters that relate to the Director's interest.

- (c) The Director may vote on matters that relate to the Director's interest.
- (d) In relation to any transactions that relate to the Director's interest:
 - (i) the transactions may proceed;
 - (ii) the Company cannot avoid the transactions merely because of the Director's interest; and
 - (iii) the Director may retain benefits under the transactions despite the Director's interest.

13.10. Director not in breach if does not act in matters relating to Director's interests

- (a) This rule 13.10 applies if a Director with a Material Personal Interest in relation to a matter:
 - (i) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs; but
 - (ii) must not be present and vote on the matter under the Act.
- (b) The Director is not in breach of duty to the Company merely because he or she does not act in relation to the matter.
- (c) The Directors may vote on matters that relate to the Director's interest in the Director's absence.
- (d) In relation to any transactions that relate to the Director's interest:
 - (i) the transactions may proceed;
 - (ii) the Company cannot avoid the transactions merely because of the Director's interest; and
 - (iii) the Director may retain benefits under the transactions despite the Director's interest.

13.11. Execution of instruments

A Director may participate in the execution of an instrument for the Company, regardless of any interest or duty that the Director may have:

- (a) whether or not the Director has complied with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs; and
- (b) whether or not the Director may be present and vote in relation to the execution of the instrument under the Act.

13.12. Delegation of powers to committee

The Directors may delegate any of their powers to committees consisting of Directors or other persons as they think fit, including, among other persons, the Chief Executive Officer, the Secretary and Members. The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Directors. In the exercise of any powers delegated to it, a committee formed by the Directors must conform to the directions of the Directors.

13.13. Proceedings of committees

Except as provided in a direction of the Directors, the meetings and proceedings of a committee formed by the Directors must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Directors.

13.14. Validity of acts of Directors

All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

13.15. Minutes

The Directors must cause minutes of all proceedings of general meetings, of meetings of the Directors and of committees formed by the Directors to be entered in books kept for the purpose. The Directors must cause all minutes to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

13.16. Resolutions in writing

- (a) A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Directors passed at a meeting of the Directors duly convened and held.
- (b) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- (c) A document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing.
- (d) A document bearing a facsimile of a signature is to be treated as signed.

14. Alternate Directors

14.1. Appointment of Alternate Directors

A Director may appoint a person to be an Alternate Director in the Director's place during the period that the Director thinks fit. The appointment of an Alternate Director must be in writing, signed by the Director and takes effect immediately on the signing of the notice of appointment by the Director.

14.2. Powers of Alternate Director

- (a) An Alternate Director is subject in all respects to the terms and conditions applying to the other Directors except as follows:
 - (i) the provisions of this Constitution which relate to the election of Directors, their fees and remuneration and the power to appoint an Alternate Director; and
 - (ii) as expressly provided in this Constitution.
- (b) An Alternate Director is entitled to do all of the following:
 - (i) perform all the duties of a Director while the Director who appointed the Alternate Director is not exercising or performing them;
 - (ii) receive notice of meetings of the Directors; and

- (iii) attend and vote at meetings of the Directors if the Director who appointed the Alternate Director is not present.

14.3. Termination of appointment of Alternate Directors

The appointment of an Alternate Director is immediately terminated if any of the following occur:

- (a) the Director who appointed the Alternate Director ceases for any reason to be a Director; or
- (b) the Director who appointed the Alternate Director gives notice of termination of the appointment to the Company.

15. Directors' remuneration

15.1. Directors fees

The Directors may be paid by way of fees for their services the amounts, if any, determined from time to time by the Company in general meeting. Directors' fees accrue from day to day.

15.2. Payment for extra services

A Director who is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond the Director's ordinary duties may be paid additional fees for those services, exertions or work.

16. Indemnity and insurance

16.1. Indemnity

Every Officer and past Officer (with the exception of any Auditor) of the Company is hereby indemnified by the Company to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

16.2. Insurance premiums

- (a) The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by law.
- (b) For the purposes of this Constitution:
 - (i) *Officer* means a Director, an alternate Director, a Secretary, an officer as defined by the Act, or the Chief Executive Officer; and
 - (ii) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company.

16.3. Indemnity to employees

Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

17. Notices

17.1. Notices by the Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;

- (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
- (iii) sent by fax to the fax number (if any) nominated by that person; or
- (iv) sent by electronic message to the electronic address (if any) nominated by that person.

17.2. **Overseas Members**

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

17.3. **When notice is given**

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 4:00pm (local time in the place of receipt) on a Business Day – on that day; or
 - (ii) after 4:00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) if it is sent by mail:
 - (i) within Australia – 3 Business Days after posting; or
 - (ii) to a place outside Australia – 7 Business Days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

17.4. **Notices to lost members**

If:

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or

- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 17.2,

the Company may give effective notice to that Member by exhibiting the notice at the Company's Office for at least 48 hours. This rule ceases to apply if the Member gives the Company notice of a new address.

18. Amendment to Constitution

This Constitution cannot be amended, varied or replaced without a special resolution of the Members.

19. Bylaws

- (a) The Company may establish operational rules relating to the Company ('*Bylaws*').
- (b) The Bylaws may be amended from time to time if the amendment is passed by:
 - (i) an ordinary resolution of the Board; or
 - (ii) an ordinary resolution of the Members in general meeting.
- (c) Where a rule under the Bylaws is inconsistent with a rule under the Constitution, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.