

Constitution

Asthma Australia Limited

ACN 609 156 630

A Public Company Limited by Guarantee

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Preamble

Asthma Australia Limited (ACN 609 156 630) exists to build on the great legacy of the historic State and Territory based asthma foundations and seeks 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.

In 2015 The Asthma Foundation of New South Wales and The Asthma Foundation of Queensland merged to form Asthma Foundation Queensland and New South Wales.

In 2017, to continue and enhance the work of State and Territory based asthma foundations, the following entities merged their operations and services and began operating under the name Asthma Australia Limited:

- (a) Asthma Australia;
- (b) The Asthma Foundation ACT;
- (c) Asthma Foundation Queensland and New South Wales;
- (d) The Asthma Foundation South Australia; and
- (e) Asthma Foundation of Victoria.

In 2018 The Asthma Foundation of Tasmania transferred their operations and services to Asthma Australia Limited.

Asthma Australia Limited is the successor entity to the following entities:

- (a) The Asthma Foundation of New South Wales;
- (b) The Asthma Foundation of Queensland;
- (c) Asthma Foundation Queensland and New South Wales;
- (d) Asthma Australia;
- (e) The Asthma Foundation ACT;
- (f) The Asthma Foundation South Australia;
- (g) Asthma Foundation of Victoria; and
- (h) The Asthma Foundation of Tasmania.

1 Definitions and interpretation

1.2 Definitions

In this Constitution, unless a contrary intention appears:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Annual General Meeting has the same meaning as the term 'AGM' in the Corporations Act.¹

Appointments Committee means the committee constituted under clause 31.

ASIC means the Australian Securities and Investments Commission.

Company means Asthma Australia Limited being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 609 156 630.

Constitution means this constitution as amended from time to time.

Consumer Advisory Council means the Consumer Advisory Council constituted under clause 23.

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

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.

Director Identification Number has the same meaning it has in the Corporations Act.²

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

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

Gift Fund means a management account of the Company that is established in accordance with clause 38.

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

¹ At the time of adoption of this Constitution, section 9 provides that an AGM means an annual general meeting of a company that section 250N requires to be held.

² At the time of adoption of this Constitution, section 9 provides that a Director Identification Number means a director identification number given under:

- (a) section 1272; or
- (b) section 308-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

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

Legal Capacity means, in relation to an individual, that the individual is at least 18 years of age, and that:

- (a) in the Directors' reasonable assessment, the individual is capable of understanding the nature and effect of their participation in the Company's affairs without the need of special assistance or explanation;
- (d) in the Directors' reasonable assessment, the individual is able to receive and understand communications and express their will in relation to the Company's affairs; or
- (e) their person or estate is not liable to be dealt with under the laws relating to mental health:
 - (i) on a permanent or ongoing basis;
 - (ii) in an involuntary manner; or
 - (iii) on a court ordered basis.

Life Member means a Member honoured as a Life Member by the Directors under clause 6.3.

Member means a person entered on the Register of the Company as a member.

Object means the object of the Company as set out in clause 2.

Participating Entity means one of the following: Asthma Australia; The Asthma Foundation ACT; Asthma Foundation Queensland and New South Wales; The Asthma Foundation South Australia, The Asthma Foundation of Tasmania, or Asthma Foundation of Victoria.

Policy means a policy made by the Directors in accordance with clause 15.

Professional Advisory Council means the Professional Advisory Council constituted under clause 23.4.

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

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.³

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

Research Advisory Committee means the committee constituted under clause 32.

Schedule means a Schedule to this Constitution.

³ At the time of adoption of this Constitution, section 9 provides that a related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

Secretary means an individual appointed as a secretary of the Company in accordance with clause 16.2.

Special Resolution has the same meaning it has in the Corporations Act.⁴

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

Virtual Meeting Technology has the same meaning it has in the Corporations Act.⁵

1.3 Interpretation

In this Constitution, unless a 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 clause is a reference to a clause in this Constitution unless otherwise stated;
- (d) a reference to a law includes regulations and instruments made under the law;
- (e) 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 a state, a territory, the Commonwealth of Australia or otherwise;
- (f) a reference to a meeting includes a meeting by technology provided the technology gives the persons entitled to attend the meeting, as a whole, reasonable opportunity to participate without being physically present in the same place, and includes a General Meeting:
 - (i) at one or more physical venues;
 - (ii) at one or more physical venues and using Virtual Meeting Technology; or
 - (iii) using Virtual Meeting Technology only;
- (g) a reference to a person being present in person includes an individual participating in a meeting as described in clause 1.2(f);
- (h) a reference to a person being present includes an individual participating in a meeting in person or through a proxy, attorney or Representative;
- (i) a reference to a “place” includes the place or location where a General Meeting may be held, is held or is taken to be held under the Corporations Act if Virtual Meeting Technology is used in holding the meeting;
- (j) a reference to a person includes a natural person, corporation or other body corporate;
- (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; and

⁴ 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.

⁵ At the time of adoption of this Constitution, section 9 provides that Virtual Meeting Technology means any technology that allows a person to participate in a meeting without being physically present at the meeting.

- (l) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

1.4 Signing and electronic communication

Where, by a provision of this Constitution, a document including a notice is required to be signed or communicated, that requirement may be satisfied in any manner permitted by the applicable law of a state, a territory, or the Commonwealth of Australia relating to electronic signing and transmission of documents.

1.5 Corporations Act

- (a) In this Constitution unless the contrary intention appears:
 - (i) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;
 - (ii) “section” means a section of the Corporations Act; and
 - (iii) while the Company is a registered charity under the ACNC Act:
 - (A) subject to clause 1.4(a)(iii)(B), the provisions of the Corporations Act in Part 2G.2 (with the exception of 249X) and Part 2G.3 apply as if section 111L(1) of the Corporations Act was not enacted; and
 - (B) 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.
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

1.6 Headings

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

2 Object of the Company

2.1 Object

The Object of the Company is 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 this Object by any means lawfully available to the Company (including carrying on a business); and
- (h) doing other things as are incidental or conducive to the attainment of the Object.

2.2 Succession

- (a) The Company is the successor of the Participating Entities. In the pursuit of the Object the Company is to have regard to the history, reputation, local connections and goodwill of the Participating Entities.
- (b) Nothing in this clause 2.2 is intended to fetter the discretion of the Company as to the pursuit of the Object.

3 Powers

The Company has the legal capacity and powers of:

- (a) an individual; and
- (b) a body corporate under the Corporations Act.

4 Application of income for Object 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 Object; 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, benefit or otherwise.

4.2 Payment in good faith

Clause 4.1 does not prevent payment, directly or indirectly, in good faith to a Member:

- (a) of reasonable remuneration for services to the Company in the ordinary course of business;
- (b) for goods supplied by the Member to the Company in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed by the Company in the ordinary course of business from the Member at a rate not exceeding that fixed for the purposes of this clause 4.2(c) by the Company in a General Meeting;
- (d) of reasonable rent or equivalent payment (including licence fees) for use of premises let by the Member to the Company; or

- (e) in furtherance of the Object.

5 Winding up

5.1 Guarantee by Members

- (a) Each Member undertakes to contribute an amount not to exceed \$1 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) On winding up of the Company, this contribution is for:
 - (i) payment of the Company's debts and liabilities;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves.

5.2 Application of property

- (a) Subject to clause 4.2(e), if any property remains on the winding up or dissolution of the Company after satisfaction of all its debts and liabilities, then, subject always to clause 5.3, that property may not be paid to or distributed among the Members but must be transferred to one or more funds or institutions:
 - (i) that have charitable purposes similar to, or inclusive of, the Object; and
 - (ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to at least the same extent 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 Application of property if deductible gift recipient

- (a) Where the Company has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act:
 - (i) as an entity; or
 - (ii) in relation to a fund or institution it operates;and
 - (iii) the Company is wound up;
 - (iv) the fund or institution is wound up; or
 - (v) an endorsement under Subdivision 30-BA of the Tax Act is revoked;then, after satisfaction of all debts and liabilities, any surplus:
 - (vi) assets of the Gift Fund (if the Company maintains a Gift Fund); or
 - (vii) if the Company does not operate a Gift Fund:
 - (A) gifts of money or property for the principal purpose of the Company, fund or institution (whichever is relevant);

- (B) contributions of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for the principal purpose of the Company, fund or institution (whichever is relevant); and
- (C) money received by the Company because of such gifts or contributions

must be transferred to one or more funds or institutions that comply with clause 5.2 and are each deductible gift recipients.

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

6 Membership

6.1 Number of Members and transitional provisions

- (a) The maximum number of Members of the Company will be 100 or such other maximum number as the Members determine from time to time.
- (b) The Members of the Company are:
 - (i) the Directors immediately before the adoption of this Constitution;
 - (ii) the members of the Consumer Advisory Council constituted under the previous constitution of the Company immediately before the adoption of this Constitution;
 - (iii) the members of the Professional Advisory Council constituted under the previous constitution of the Company immediately before the adoption of this Constitution who are also Members of the Company immediately before the adoption of this Constitution;
 - (iv) the members of the Research Advisory Committee constituted under the previous constitution of the Company immediately before the adoption of this Constitution who are also Members of the Company immediately before the adoption of this Constitution;
 - (v) the 'Life Members' under the previous constitution of the Company immediately before the adoption of this Constitution; and
 - (vi) any person the Directors admit to membership under clause 6.4.

6.2 Subscribers

Subject to clause 6.1(b), the 'Ordinary Members' under the previous constitution of the Company immediately before the adoption of this Constitution will be Subscribers with such benefits as described in the Policies.

6.3 Life Members

- (a) The Directors may honour any Member as a Life Member who, in the opinion of the Directors, has given outstanding and exemplary service to the Company or one of the Participating Entities.

- (b) A Life Member at the date of adoption of this Constitution is a Life Member under this Constitution.
- (c) A Life Member has membership rights as a Member under this Constitution.
- (d) Clauses 6.9 and 6.10 do not apply to a Life Member.
- (e) A Life Member ceases to be a Life Member on:
 - (i) ceasing to be a Member of the Company; or
 - (ii) the passing of a resolution by the Directors to remove the life membership of a Life Member.

6.4 Admission as a Member

The Directors may admit any person as a Member if the person is eligible under clause 6.5 and makes an application in accordance with clause 6.6.

6.5 Membership criteria

To be eligible to be a Member, a person must:

- (a) be either:
 - (i) a Director;
 - (ii) a Councillor;
 - (iii) a member of the Research Advisory Committee; or
 - (iv) any other natural person of at least 18 years of age;
- (b) satisfy any other qualification requirements of a Member as set out in the Policies;
- (c) consent in writing to become a Member; and
- (d) agree to be bound by this Constitution.

6.6 Membership process

- (a) The application for membership must be:
 - (i) in such form as the Directors may from time to time prescribe, signed by the applicant and returned to the Company as directed on the form; and
 - (ii) accompanied by the membership fee, if any, prescribed 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 notify the applicant of the decision of the Directors within a reasonable period.

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

The Directors have the discretion to refuse any person admission as a Member without giving any reason for refusing.

6.8 Registration as Member

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

6.9 Membership terms

- (a) From the date of adoption of this Constitution, Members are admitted for a term of 3 years ending on 30 June following the third anniversary of each Member's date of admission or last renewal as a Member. At the end of each term of Membership, each Member may reapply for membership. The renewal process must be made in accordance with the process prescribed by the Directors at the relevant time.
- (b) The requirement in clause 6.9(a) to renew membership does not apply to:
 - (i) a Member who is a Director;
 - (ii) a Councillor;
 - (iii) a Member who is a member of the Research Advisory Committee; or
 - (iv) a Life Member.

6.10 Membership fees

The Members must pay such membership fees as prescribed from time to time by the Directors.

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:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member for the service of notice; and
 - (D) date the Member was entered on to the Register.
 - (ii) for each person who stopped being a Member in the last 7 years:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member for the service of notices; and
 - (D) date the membership started and ended.
- (b) The Company must provide access to the Register in accordance with the Corporations Act.

7 Ceasing to be a Member

7.1 Cessation of membership

A Member ceases to be a Member on:

- (a) death;

- (b) resignation by written notice to the Company having immediate effect or with effect from a specified date in the notice;
- (c) except in the case of a Life Member, failing to pay any fee that may be prescribed by the Directors from time to time within 12 months after the fee was due and payable;
- (d) not having Legal Capacity;
- (e) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally;
- (f) the passing of a resolution by the Directors or Members in General Meeting in accordance with clause 7.2;
- (g) the expiry of the 3 year term of membership, unless the Member had applied for and been readmitted as a Member for the following term as contemplated in clause 6.9;
- (h) that Member ceasing to be a Director;
- (i) that Member ceasing to be a Councillor; or
- (j) that Member ceasing to be a member of the Research Advisory Committee.

7.2 Termination of membership

- (a) Subject to this Constitution, the Directors or Members in General Meeting may at any time terminate the membership of a Member if the Member:
 - (i) refuses or neglects to comply with this Constitution or any applicable Policies 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 due to the Company within a period of 3 months after the date for payment (such debt not including a fee referred to in clause 7.1(c)).
- (b) For a decision of the Directors or the Members in General Meeting under clause 7.2(a) to be effective, the general nature of the allegations made against the Member must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.
- (c) If a dispute arises regarding the termination of a Member's membership under this clause 7.2, the dispute resolution procedure contained in clause 35 must be followed and, for the purposes of clause 35.1, written notification under clause 7.2(b) will be the notice of the dispute (as defined in clause 35.1).

7.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1.

8 General Meetings

8.1 Annual General Meetings

Annual General Meetings are to be held in accordance with the Corporations Act.

8.2 Convening a General Meeting

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.

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 41.
- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

8.4 Calculation of period of notice

In computing the period of notice under clauses 8.3 and 8.6(c), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.5 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 8.5 does not apply to a meeting convened in accordance with the Corporations Act by Members, by the Directors on the request of Members or to a meeting convened by a Court.

8.6 Notice of cancellation or postponement of a meeting

- (a) Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:
 - (i) to each Member individually; and
 - (ii) to each other person entitled to be given notice of a General Meeting under the Corporations Act.
- (b) A notice of postponement of a General Meeting must specify:
 - (i) the postponed date and time for the holding of the meeting;
 - (ii) 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; and
 - (iii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.
- (c) 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.

8.7 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.

8.8 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 operation of this clause 8.8, 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.

8.9 Non-receipt of notice

The non-receipt of notice of a General Meeting or the convening, cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or the convening, 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 convening, cancellation or postponement of a meeting.

9 Proceedings at General Meetings

9.1 Number of a quorum

- (a) A majority of Members or 10 Members, whichever is the lesser number, present are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, where an individual is attending both as a Member and as a proxy, that individual is to be counted only once.

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 chairperson of the meeting (on the chairperson's own motion or at the request of a Member or proxy who is present) declares otherwise.

9.3 If quorum not present

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened at the request of 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), 2 Members present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

9.5 Appointment and powers of chairperson of General Meeting

If the Directors have elected one of their number as chairperson of their meetings under clause 20.1, that individual is also entitled to preside as chairperson at a General Meeting.

9.6 Absence of chairperson at General Meeting

If a General Meeting is held and:

- (a) a chairperson has not been elected by the Directors; or
- (b) the elected chairperson 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 individuals may preside as chairperson of the meeting (in order of precedence):

- (c) the deputy chairperson if a Director has been so elected by the Directors under clause 20.1; or
- (d) a Director or Member elected by the Members present in person to preside as chairperson of the meeting.

9.7 Conduct of a General Meeting

- (a) The chairperson 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 chairperson'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 chairperson considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chairperson under this clause 9.7 is final.

9.8 Adjournment of a General Meeting

- (a) The chairperson of a General Meeting may at any time during 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:
 - (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present; and
 - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

9.9 Notice of an adjourned General Meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned General Meeting unless it is adjourned for 1 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 at a General Meeting 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 chairperson

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

9.12 Voting at a General Meeting

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on:
 - (i) a show of hands; or
 - (ii) where the meeting is being conducted by Virtual Meeting Technology, such other similar method as determined by the chairperson,unless a poll is properly demanded, and the demand is not withdrawn.
- (b) 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, is conclusive evidence of the fact.
- (c) Neither the chairperson 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 at a General Meeting:

- (a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairperson 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

- (a) Every Member has one vote.

- (b) Subject to this Constitution:
 - (i) on a show of hands at a General Meeting, each Member present in person has one vote and does not have a vote in respect of each Member whose proxy they hold; and
 - (ii) on a poll at a General Meeting, each Member present in person has one vote and has one vote for each proxy they hold.

9.15 Right to appoint proxy

- (a) Subject to the Corporations Act, a Member entitled to attend a General Meeting is entitled to appoint another Member as proxy to attend in the Member's place at the meeting. A proxy has the same right as the 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 signed by the appointor or their attorney duly authorised in writing or, if the appointor is a corporation, either under seal or signed by 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 Member is entitled to instruct their proxy to vote in favour of or against any proposed resolutions. The proxy may vote as they think 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 (along with a certified copy of the power of attorney or other authority, if any, under which it is signed) must be received at:
 - (i) the Registered Office;
 - (ii) such other place within the state or territory in which the Company has its Registered Office, or to an email address, as is specified for that purpose in the notice convening the meeting; or
 - (iii) if the notice convening the meeting specifies other electronic means by which a proxy document may be received by the Company, by those other electronic means,

not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. Documents received after this time will not be treated as valid.

- (g) The Company receives a document referred to in clause 9.15(f):
 - (i) if the document is given by other electronic means as specified for that purpose in the notice convening the meeting, when the document is received by the Company as prescribed by the Corporations Act; and
 - (ii) otherwise, when the document is received at:
 - (A) the Registered Office; or
 - (B) a place specified for the purpose in the notice of meeting.

9.16 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of a General 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 Member dies;
- (b) the Member revokes the appointment or authority; or
- (c) the Member is mentally incapacitated.

9.17 Objection to voting qualification

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

10 Directors

10.1 Number of Directors

- (a) The number of Directors must be such number between 3 and 9 as the Members determine. In the absence of any such determination, the number of Directors will be 9.
- (b) If a Director resigns then, unless the Appointments Committee makes an appointment under clause 10.6, those Directors that remain constitute the Directors until the next Directors are appointed by the Appointments Committee under clause 10.2.
- (c) Directors appointed under the previous constitution of the Company will complete the remainder of their term, but subject to clause 10.4, are eligible to be re-appointed.

10.2 Directors appointed by the Appointments Committee

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

10.3 Qualifications of Directors

To be eligible for the office of Director an individual must:

- (a) be a Member at all times during their term as Director;
- (b) have a Director Identification Number; and

- (c) consent in writing to act as a Director.

10.4 Terms and retirement of a Director

- (a) Subject to clause 10.4(b), the term of office of each Director begins at the close of the Annual General Meeting at which his or her appointment takes effect under clause 10.2(c) and ends at the close of the third succeeding Annual General Meeting.
- (b) A Director whose term has expired must retire from office but, subject to clause 10.5 is eligible for reappointment.

10.5 Reappointment of a Director

- (a) A Director is entitled to be reappointed as a Director on 2 occasions provided that a Director's period of continuous service to the Company does not exceed a period of 9 years, excluding any period of service under clause 10.6, unless the Members, by ordinary resolution in General Meeting elect to waive this requirement for a particular Director.
- (b) A Director who is disqualified from appointment under clause 10.5(a) is eligible for reappointment at the Annual General Meeting following that at which his or her last term ended.

10.6 Casual vacancy

- (a) The Appointments Committee may at any time appoint any individual meeting the requirements of clause 10.3 to be a Director to fill a casual vacancy, provided the total number of Directors does not exceed the number determined in clause 10.1.
- (b) A Director appointed under clause 10.6(a) holds office until the conclusion of the next Annual General Meeting but is eligible to be appointed by the Appointments Committee under clause 10.2.

10.7 Appointment of officers

The Directors are to appoint the other officers with such frequency as the Directors from time to time determine.

11 Remuneration of Directors

- (a) Subject to clause 11(b), the Directors may, with the prior approval of the Members, be paid reasonable remuneration for their services as Directors. The remuneration may differ from one Director to another.
- (b) The quantum of any remuneration to be paid to a Director must be fixed and may be varied from time to time by the Members in General Meeting.

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.

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;
- (b) the Members resolve to remove him or her from office; or
- (c) the Director:
 - (i) ceases to be eligible under clause 10.3;
 - (ii) resigns from the office by notice in writing to the Company having immediate effect or with effect from a specified date in the notice;
 - (iii) is not present at 3 successive meetings of the Directors without leave of absence from the Directors;
 - (iv) does not have Legal Capacity;
 - (v) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;
 - (vi) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator; or
 - (vii) dies.

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 Compliance with duties

While the Company is a registered charity under the ACNC Act, each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the ACNC Act or the Corporations Act from time to time.

14.4 Delegation

- (a) The Directors may resolve to delegate any of their powers to:
 - (i) a committee in accordance with clause 22;

- (ii) a Council;
 - (iii) a Director;
 - (iv) an employee of the Company on terms and subject to any restrictions to be decided by the Directors; or
 - (v) any other person on terms and subject to any restrictions to be decided by the Directors.
- (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.

15 Policies

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Policies which are binding on the Directors and Members for the management and conduct of the business of the Company.

16 Chief Executive Officer, Secretary and Public Officer

1.1 Chief Executive Officer

- (a) The Directors may appoint a Chief Executive Officer on such terms and conditions (including as to remuneration) as they think fit.
- (b) The Directors may delegate any of their powers to the Chief Executive Officer and the Chief Executive Officer must exercise those powers:
 - (i) in accordance with the terms and subject to any restrictions or the directions of Directors; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,
 and may revoke the delegation at any time.
- (c) The Chief Executive Officer may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

1.2 Secretary

- (a) There must be at least one Secretary who is to be appointed by the Directors.
- (d) The Directors may suspend or remove a Secretary from that office.
- (e) 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.

1.3 Public Officer

The Directors must appoint an individual as Public Officer of the Company in accordance with the *Income Tax Assessment Act 1936* (Cth).

17 Appointment of attorney

- (a) By power of attorney, the Directors may appoint any individual to be an attorney of the Company, with such powers, authorities and discretions of the Directors as the Directors think fit and for such purposes, period and conditions as determined by the Directors.
- (b) A power of attorney granted under clause 17(a) may contain any provisions for the protection and convenience of the attorney and 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.

18 Conflicts of interest

18.1 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.

18.2 Disclosure recorded in minutes

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

18.3 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 18.4:

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

18.4 Present and voting

A Director with a material personal interest in a matter 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 arises in relation to remuneration as a Director of the Company;
- (c) 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 42.2);

- (d) their interest relates to a payment by the Company under clause 42.1, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (e) ASIC makes an order allowing the Director to vote on the matter; or
- (f) 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) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

19 Proceedings of Directors

19.1 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.

19.2 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.

20 Chairperson and deputy chairperson of Directors

20.1 Election of chairperson and deputy chairperson

The Directors may elect from their number a chairperson and a deputy chairperson of their meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.

20.2 Absence of chairperson at Directors' meeting

If a Directors' meeting is held and:

- (a) a chairperson has not been elected under clause 20.1; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 20.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

20.3 No casting vote for chairperson at Directors' meetings

In the event of an equality of votes cast for and against a resolution, the chairperson of the Directors' meeting does not have a second or casting vote, and consequently the resolution will not be passed.

21 Quorum for Directors' meeting

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is the greater of:
 - (i) 3; or
 - (ii) a majority of Directors holding office.
- (b) The Directors may act despite a vacancy in their number.

22 Committees

22.1 Delegation to committees

- (a) The Directors may delegate any of their powers, to a committee consisting of one or more Directors and such other individuals as they think fit and may revoke the delegation at any time.
- (b) The Directors must prescribe the terms of reference of a committee constituted under clause 22.1(a).
- (c) A committee to which any powers have been delegated under clause 22.1(a) must exercise those powers:
 - (i) in accordance with the terms and subject to any restrictions and any directions of the Directors; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,

and a power so exercised is taken to have been exercised by the Directors.

22.2 Meetings of committees

A committee may meet and adjourn as it thinks proper.

22.3 Chairperson of a committee

The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 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 chairperson of the meeting.

23 The Consumer Advisory Council

23.1 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 Consumer Advisory Council's deliberations, findings and recommendations; and
- (g) to appoint one member of the Consumer Advisory Council to the Appointments Committee as required by clause 31.2(d).

23.2 Number of Consumer Advisory Councillors

The number of Consumer Advisory Councillors is at least 9 or such greater number as the Directors may determine from time to time.

23.3 Appointment of Consumer Advisory Councillors

- (a) The Consumer Advisory Councillors must be appointed by the Directors.
- (b) The Directors must make reasonable efforts to ensure that at least one Consumer Advisory Councillor is appointed from each State or Territory of Australia for which a Participating Entity had responsibility.

23.4 Qualification of Consumer Advisory Councillors

A Consumer Advisory Councillor must be a Member.

24 The Professional Advisory Council

24.1 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; and
 - (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 Professional Advisory Council's deliberations, findings and recommendations; and
- (d) to appoint one member of the Professional Advisory Council to the Appointments Committee as required by clause 31.2(d).

24.2 Number of Professional Advisory Councillors

The number of Professional Advisory Councillors is 4 or such greater number as the Directors may determine from time to time.

24.3 Appointment of Professional Advisory Councillors

The Professional Advisory Councillors must be appointed by the Directors.

24.4 Qualification of Professional Advisory Councillors

A Professional Advisory Councillor must be a Member.

25 Terms of Office of Councillors

- (a) The term of office of each Councillor begins on the day on which he or she is appointed by the Directors and ends at the close of the third Annual General Meeting thereafter.
- (b) Subject to clause 25(c), a Councillor whose term has expired must retire from office but is eligible for reappointment.
- (c) A Councillor's total period of service as a Councillor may not exceed 3 consecutive terms unless the Directors elect to waive this requirement for a particular Councillor.
- (d) To facilitate a transition in governance arrangements, all Councillors appointed under the previous constitution of the Company will complete the remainder of their term but, subject to clause 25(c), are eligible to be re-appointed.

26 Remuneration of Councillors

The Councillors may, with the prior approval of the Directors, be paid reasonable remuneration for their services as Councillors. The remuneration may differ from one Councillor to another.

27 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 when otherwise engaged on the business of the Company.
- (b) Any payment to a Councillor must be approved by the Directors.

28 Vacation of office of Councillor

The Office of a Councillor becomes vacant if:

- (a) the Councillor's term expires and is not renewed;
- (b) the Directors resolve to remove him or her from office; or
- (c) the Councillor:
 - (i) resigns from the office by notice in writing to the Company having immediate effect or with effect from a specified date in the notice;
 - (ii) does not have Legal Capacity;
 - (iii) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors; or
 - (iv) dies.

29 Frequency and Conduct of Councillors and Council meetings

- (a) Each Council must meet at least 3 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.

30 Circular resolutions

- (a) The Directors or the Council may pass a resolution without a meeting being held in the manner set out in this clause.
- (b) A circular resolution is passed if each Director or Councillor entitled to vote on the resolution signs a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors or the Councillors 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.

31 Appointments Committee

31.1 Constitution and Function of the Appointments Committee

- (a) There will be an Appointments Committee of 6 persons whose principal function is to select persons for appointment as Directors under clause 10.2.
- (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 22.

31.2 Appointment of the Appointments Committee

- (a) The Directors must appoint 2 of their number to the Appointments Committee for terms of up to 3 years expiring, in each case, not less than 6 months prior to the end of the Director's then current term as a Director.
- (b) The Directors must appoint 2 Members to the Appointments Committee for terms of up to 3 years expiring, in each case, not less than 6 months prior to the end of the Member's then current term as a Member.
- (c) 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.
- (d) Each of the Consumer Advisory Council and the Professional Advisory Council must appoint one of their number to the Appointments Committee for terms of up to 3 years expiring, in each case, not less than 6 months prior to the end of the Councillor's then current term as a Councillor.

- (e) 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.
- (f) An Appointments Committee member whose term expires is eligible for reappointment.
- (g) To facilitate a transition in governance arrangements, all members of the Appointments Committee appointed under the previous constitution of the Company will complete the remainder of their term but are eligible to be re-appointed.

31.3 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 chairperson but that nominee may not be the chairperson 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 constituted under clause 22.

32 Research Advisory Committee

32.1 Constitution and Function of the Research Advisory Committee

- (a) There will be a Research Advisory Committee whose principal function is to provide the Directors with advice, information and guidance around the design, implementation and evaluation of the research program and to facilitate collaboration with individuals and organisations locally and internationally.
- (b) The Directors may, in their discretion, delegate other powers to the Research Advisory Committee as if it were a committee constituted under clause 22.

32.2 Number of Research Advisory Committee members

The number of Research Advisory Committee members is at least 4 or such greater number as the Directors may determine from time to time.

32.3 Appointment of the Research Advisory Committee

- (a) The members of the Research Advisory Committee must be appointed by the Directors for terms of up to 3 years.
- (b) A Research Advisory Committee member whose term expires is eligible for reappointment.
- (c) To facilitate a transition in governance arrangements, all members of the Research Advisory Committee appointed under the previous constitution will complete the remainder of their term but are eligible to be re-appointed.

32.4 Qualification of Research Advisory Committee members

A member of the Research Advisory Committee must be a Member.

32.5 Frequency and Conduct of Research Advisory Committee meetings

- (e) The Research Advisory Committee must meet as often as is required to perform its function.
- (f) The Directors must convene and arrange the Research Advisory Committee meetings.
- (g) The Directors must nominate one of the Research Advisory Committee to be its chairperson but that nominee may not be the chairperson of the Directors.
- (h) In all other respects, the rules prescribed in this constitution for the conduct of meetings of committees apply equally to meetings of the Research Advisory Committee as if the Research Advisory Committee were a committee of the Directors constituted under clause 22.

33 Expenses of Appointments Committee and Research Advisory Committee members

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

34 Validity of acts of Directors, Councillors, Appointments Committee and Research Advisory Committee members

All acts done by a person acting in good faith as a Director, a member of a committee, a Councillor or a member of the Appointments Committee or Research Advisory Committee are taken as valid as if the relevant individual 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 individual or of the individual so acting; or
- (b) a person was disqualified or was not entitled to vote.

35 Dispute resolution

35.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of this Constitution, the Policies or otherwise (**Dispute**), then either party must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) the Member and the Company must in the period of 14 days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute;

- (b) if the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company;
- (c) if the disputants are unable to agree on a mediator within 7 days of the expiration of the Initial Period, the Member or the Company may request the chairperson of Resolution Institute⁶ to nominate a mediator to whom the Dispute will be referred;
- (d) the costs of the mediation must be shared equally between the Member and the Company; and
- (e) where:
 - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 35.1(b);
 - (ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or
 - (iii) the mediation fails to resolve the Dispute;

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

35.2 Urgent interlocutory relief

The procedure in clause 35.1 will not apply in respect of proceedings for urgent interlocutory relief.

36 Execution of documents

Documents executed for and on behalf of the Company must be executed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) such other individuals as the Directors by resolution appoint from time to time.

37 Accounts

- (a) The Directors must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Company or otherwise considered by the Directors to be appropriate, cause the accounts of the Company to be audited or reviewed accordingly.
- (b) The Directors must distribute to the Members copies of the annual financial reports of the Company accompanied by a copy of the report of the auditor or reviewer (as required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.

38 Gift Fund

- (a) Without limiting clause 37, the Company may maintain a Gift Fund:

⁶ Resolution Institute is a not-for-profit organisation facilitating dispute resolution – further information can be found at www.resolution.institute.

- (i) to identify and record gifts of money or property for the principal purpose of the Company or of a fund or institution it operates;
 - (ii) to identify and record contributions of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for the principal purpose of the Company or of a fund or institution it operates; and
 - (iii) to identify and record money received by the Company because of such gifts or contributions; and
 - (iv) that does not identify and record any other money or property.
- (b) The Gift Fund forms part of the accounts of the Company.
 - (c) Where the Company operates more than one fund or institution for which it is endorsed as a deductible gift recipient, the Company must maintain a separate Gift Fund for the principal purpose of each fund or institution for which it is endorsed as a deductible gift recipient.

39 Seals

39.1 Safe custody of common seals

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

39.2 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.

40 Inspection of records

40.1 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).

40.2 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.

41 Service of documents

41.1 Document includes notice

In this clause 41, a reference to a document includes a notice.

41.2 Methods of service

- (a) The Company may give a document to a Member or Director:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member or Director in the Register or an alternative address nominated by the Member or Director;
 - (iii) by sending it to an electronic address nominated by the Member or Director; or
 - (iv) by any other method of service provided by the Corporations Act.
- (b) A Member or Director may give a document to the Company:
 - (i) by serving it on the Company at the Registered Office;
 - (ii) by sending it by post to the Registered Office; or
 - (iii) by sending it to the electronic address nominated by the Company.
- (c) A Member may elect to be sent notices of General Meetings and other certain documents that are required or permitted to be sent to a Member by the Company under the Corporations Act either:
 - (i) in physical form; or
 - (ii) in electronic form;by notifying the Company of the election.
- (d) Except in relation to service of a document referred to in clause 9.15(f), a document is taken to be given:
 - (i) if it is sent by post, on the 3rd business day after the date of its posting;
 - (ii) if it is sent by electronic transmission:
 - (A) by properly addressing and transmitting the electronic transmission; and
 - (B) if the document is properly addressed and transmitted in accordance with clause 41.2(d)(ii)(A), on the day following its transmission; and
 - (iii) if it is given in any other way permitted under the Corporations Act, then when it is taken to have been given under the Corporations Act.

41.3 Evidence of service

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

42 Indemnity and insurance

42.1 Indemnity

- (a) The Company must indemnify any current or former Director, Councillor, committee member, Appointments Committee member, Research Advisory

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:

- (i) every liability incurred by the individual in that capacity; and
- (ii) 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 individual becomes involved because of that capacity;

except to the extent that:

- (iii) the Company is forbidden by law (including the Corporations Act) to indemnify the individual against the liability or legal costs;
 - (iv) an indemnity by the Company of the individual against the liability or legal costs would, if given, be made void by any law; or
 - (v) the individual is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).
- (b) The indemnity is a continuing obligation and is enforceable by an individual even though they are no longer a Director, Councillor, committee member, Appointments Committee member, Research Advisory Committee member, Secretary or executive officer of the Company, or of a Related Body Corporate of the Company.

42.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an individual who is or has been a Director, Councillor, committee member, Appointments Committee member, Research Advisory Committee member, Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability arising out of conduct by the individual in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or
- (b) the contract would, if the Company paid the premium, be made void by any law (including the Corporations Act).

42.3 Contract

The Company may enter into an agreement with an individual referred to in clauses 42.1 and 42.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 42 may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

43 Amendment to Constitution

- (a) Subject to clause 43(d), this Constitution may only be amended by Special Resolution.
- (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) While the Company is a registered charity under the ACNC Act, the 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.

Schedule 1

Appointment of Proxy - (see clause 9.15(e))

**Asthma Australia Limited
ACN 609 156 630**

I/We, (name)
of (address)
being a member/members of the abovenamed Company hereby appoint
..... (name)
of (address)
or in their 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 ACN 609 156 630 at:
[ADDRESS/EMAIL ADDRESS/FAX No]
by [TIME] on [DATE]
**[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME
FOR THE MEETING]**