Thoracic Oncology Group Of Australasia Ltd

ACN 641 984 198

Public Company
Limited by Guarantee

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Thoracic Oncology Group Of Australasia Ltd

1. Definitions

1.1. Definitions

In this constitution:

Alternate Director	means a person for the time being holding office as an alternate director of the Company under Clause 23.
Annual General **Meeting:**	means a yearly meeting between the directors and Members of the Company at which Members are asked to elect the directors, discuss any Member resolutions and approve the annual accounts of that year under Clause 15.
Appointor	means in respect of an Alternate Director the Director who appointed the Alternate Director under Clause 23.
Associate Director	means a person for the time being holding office as an associate director of the Company under Clause 24.1.
Board Appointed Director	means a person appointed by the Directors under clause 19 as a Director of the Company, whether to fill a casual vacancy or as an additional Director, and does not include a Director elected by Members in general meeting under clause 19.
Business Day	means a day which is not a Saturday, Sunday or public holiday in NSW.
Commissioner	means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97 or the Commissioner of the Australian Charities and Not-for-Profits Commission.
Company	means the company named above whatever its name may be from time to time.
Corporation	means any body corporate, whether formed or incorporated.
Deductible Contribution	means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
Disregarded Amount	means any amount described in section 50-75 of the ITAA 97.
Director	means a Director for the time being of the Company and includes Associate Directors, Board Appointed Directors, Elected Directors, and Executive Directors.
Elected Director	means a Director who is a medical, clinical or research professional and a member of the Company and is appointed under clause 19.1.
Executive Director	means a Director who is an employee (whether full time or part time) of the Company or of any related body corporate of the Company.
Gift	means a gift as described in item 1 of the table in section 30-15 of the ITAA 97 to the Company.

Gift Fund	means the gift fund as described at clause 9.2.
in writing	means any mode of representing or reproducing words in a visible form including by electronic means.
ITAA 97	means the Income Tax Assessment Act 1997 (Cth).
Law	means the Corporations Act 2001 (Cth) or any other statutory modification, amendment or re-enactment thereof for the time being in force and applicable to the Company and any reference to any provision thereof is to that provision so modified, amended or re-enacted.
Managing Director	means a person holding office as a managing director of the Company under Clause 21.1.
Member	means a person admitted to membership of the Company in accordance with this Constitution.
Office	means the registered office for the time being of the Company.
Officer	means an officer as defined in section 9 of the Law.
Register	means the register of Members kept under the Law.
Representative	means a person appointed as a representative of a body corporate pursuant to Section 250D of the Law.
Seal	means the common seal of the Company (if any).
Secretary	means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries.
Special Resolution	means a resolution: (a) of which notice specifying the intention to propose it as a special resolution has been given in accordance with this Constitution and the Law; and (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution. This definition is included for clarity and is intended to operate consistently with the Corporations Act 2001 (Cth).
Subscriber	means a person specified in the application for the Company's registration under the Law as a person who consents to become a Member.

1.2. Interpretation

In this Constitution:

(a) headings are for convenience only and do not affect meaning; and unless the contrary intention appears;

(b) words importing the singular number include the plural number and vice versa;

(c) words importing any gender include all other genders;

(d) a reference to a person includes a corporation, a partnership, a body corporate, an unincorporated association and a statutory authority;

(e) where any word or phrase is given a defined meaning any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;

(f) a reference to a Clause is to a clause of this Constitution; and

(g) any power, right, discretion or authority conferred upon any person or groups of persons under this Constitution may be exercised at any time and from time to time.

2. Application of Corporations Act

Except so far as a contrary intention appears anywhere in this Constitution:

(a) an expression used in a particular Part or Division of the Law which is given a special meaning by any provision of that Part or Division for the purposes of that Part or Division (or any part thereof) has, in any of this Constitution which deals with a matter dealt with by that Part or Division (or part thereof), the same meaning as in that Part or Division;

(b) an expression which is given a general meaning by any provision of the Law has the same meaning in this Constitution; and

(c) if at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that does not affect or impair:

(1) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or

(2) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Constitution.

3. Objects

Objectives as defined in the First Schedule.

4. Powers

Solely for the purpose of carrying out these objects and not otherwise, the Company has the power to do all such things as are necessary, incidental or conducive to the attainment of these objects and, for that purpose and not otherwise, the Company has the legal capacity of an individual with all consequential powers as conferred by section 124 of the Law.

5. Application of Income

The derived income and property of the Company will be applied solely towards the promotion of the objects of the Company as set forth in this Constitution. No proportion thereof will be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to Members provided that:

(a) nothing contained in this Constitution will prevent the payment in good faith of remuneration to any Officer, employee or Member of the Company (including any firm or corporation in which any such Officer, employee or Member has an interest) in return for any services actually rendered or for any goods supplied to the Company in the ordinary and usual way of business, nor prevent the payment of interest, in good faith, on money borrowed by the Company from any Member, or reasonable and proper rent for the premises let by any Member to the Company;

(b) except as provided by (a), no Director of the Company (other than the Executive Director if he or she is a Director, and provided any necessary approval under any applicable legislation relating to charities and charitable fundraising in each State and Territory of Australia has been obtained) will be paid any fee, commission, honorarium or other

remuneration for acting as a Director other than reasonable out of pocket expenses.

For the avoidance of doubt, any amount to be paid or transferred by the Company to a Director in accordance with this clause 5 must be approved by a resolution of the Directors.

6. Contributions of Members

Each Member of the Company undertakes to contribute to the property of the Company, in the event of the Company being wound up while that person is a Member or within one year after that person ceases to be a Member, for payment of the debts and liabilities of the Company contracted before that person ceases to be a Member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding $1.00.

7. Objectives and Expenditure Principally in Australia

With the exception of Disregarded Amounts, the Company must incur its expenditure and pursue the objectives defined in the First Schedule principally in Australia.

8. No Distribution of Property

If upon the winding up or dissolution of the Company there remains, after satisfaction of all debts and liabilities, any property whatsoever, the same will not be paid to or distributed among the Members of the Company, but will be given or transferred to some other institution or institutions having objects similar to the objects of the Company, and whose constitution or rules prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Company under this Constitution, such institution or institutions to be determined by the Members of the Company at or before the time of the dissolution and in default thereof by application to such court as may have or acquire jurisdiction in the matter.

9. Deductible Gift Recipient Status

9.1. This clause applies while the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth).

9.2. The Company must maintain a gift fund (Gift Fund) that:

(a) identifies and records Gifts and Deductible Contributions received by the Company;

(b) identifies and records any money received by the Company because of those Gifts and Deductible Contributions; and

(c) does not identify or record any other money or property of the Company.

9.3. The Company must use the Gift Fund only in compliance with its endorsement as a deductible gift recipient and in accordance with applicable taxation law.

9.4. The Directors must satisfy themselves at least annually that the Gift Fund is being maintained and administered in accordance with clauses 9.2 and 9.3. This obligation may be discharged by the Directors reviewing a report from management or the Company's accountant confirming compliance. No separate committee or management structure is required by this Constitution for the administration of the Gift Fund.

9.5. Upon the earlier of:

(a) the winding up of the Company; or

(b) the revocation of the Company's endorsement as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act 1997 (Cth), any surplus Gifts and Deductible Contributions and money received by the Company because of those Gifts and Deductible

Contributions must be transferred to one or more entities that:

(c) are endorsed as deductible gift recipients to which income tax deductible gifts can be made;

(d) are registered as charities with the Australian Charities and Not-for-profits Commission; and

(e) have objects similar to those of the Company.

9.6. Any transfer under clause 9.5 must be made in accordance with the conditions applicable to the relevant item in Subdivision 30-B of the *Income Tax Assessment Act 1997* (Cth).

10. Membership

10.1. Members

The Subscribers and such other persons as the Directors shall admit to membership of the Company in accordance with this Constitution will be Members of the Company.

10.2. Application for Membership

Every applicant for membership of the Company (other than the subscribers) must execute and deliver to the Company an application for membership in such form as the Directors from time to time determine together with the entrance fee (if any) determined by the Directors.

10.3. Further Information

An applicant for membership of the Company must provide in writing such other information in addition to that contained in the application as the Directors require.

10.4. Determination of Directors

The Directors must determine the admission or rejection of an applicant for membership of the Company. The Directors may reject an application for membership of the Company without giving any reason for the rejection.

10.5. Entrance Fee

The Directors may from time to time determine any entrance fee payable by applicants on application for membership of the Company and until so determined no entrance fee is payable.

10.6. Notification of Acceptance

(a) When an applicant has been accepted for membership of the Company, the Secretary must forthwith send to the applicant written notice of the applicant's acceptance and must enter the applicant's name in the Register.

(b) When an application for membership of the Company is rejected, the Secretary must forthwith send to the applicant written notice of such rejection and the entrance fee paid by such applicant must be refunded to him in full.

10.7. Certificates

A certificate of membership of the Company may be issued by the Company to any Member. Such certificate must remain the property of the Company and on demand in writing by the Secretary must be returned to the Company.

10.8. Membership Not Transferable

Membership of the Company shall not be transferable whether by operation of law or otherwise and all rights and privileges of membership of the Company shall cease upon the person ceasing to be a Member whether by resignation, death, winding up or otherwise.

11. Fees and Levies

11.1. Fees

Members must pay annual membership fees and such other fees in such amounts and at such times as the Directors may from time to time determine.

11.2. Levies

In order to provide additional funds required for the operation of the Company, the Directors may determine that levies are to be paid by Members and may fix the amount and the dates for payment thereof but until so determined no levies shall be payable by Members.

11.3. Different Fees or Levies Payable

In determining fees or levies under this Clause, the Directors may differentiate between classes of Members as to the amounts of fees or levies payable.

12. Variation of Members' Rights

12.1. Consent or Special Resolution of Members in Class

If at any time the membership of the Company is divided into different classes of members, the rights attached to any class may be varied or cancelled (unless otherwise provided by this Constitution or by the terms of grant of membership of that class):

(f) with the written consent of Members with at least 75% of the votes in that class; or

(g) by special resolution passed at a separate meeting of the class of members whose rights are being varied or cancelled.

12.2. Rules Applying to Meetings of Class Members

The provisions from time to time contained in this Constitution concerning meetings will apply, so far as they are capable of application and with the necessary changes, to every meeting held under Clause 12.1 but so that the necessary quorum shall be 2 Members of the class or a proxy or attorney or Representative of such a Member. Any Member of the class present in person or by proxy, attorney or Representative may demand a poll.

13. Cessation of Membership

13.1. Non Payment of Fees or Levies

If any fees or levies payable by a Member remain unpaid for a period of 2 calendar months after notice of such default is given to the Member by the Company, the Directors by resolution may suspend all the privileges of membership (including the right to vote) of that Member, provided that the Directors may reinstate the privileges of membership of that Member on payment of all arrears if the Directors think fit to do so.

13.2. Cessation of Membership

A Member's membership of the Company will cease:

(a) if the Member resigns that membership by giving notice in writing addressed to the Secretary of the Company and such resignation shall be effective from the date of receipt of the notice by the Secretary;

(b) if the membership of the Member is terminated under Clause 13.4 and such termination shall be effective from the date of the resolution of the Directors;

(c) in the case of a Member who is an individual if:

(1) the Member dies; or

(2) the Member is declared by a practicing medical practitioner duly qualified to make such a declaration to be of unsound mind or his person or estate is liable to be dealt with in any way under the laws relating to mental health; or

(d) in the case of a Member who is not an individual if:

(1) a liquidator is appointed in connection with the winding up of the Member; or

(2) an order is made by a court for the winding up of a Member being a corporation.

13.3. Continuing Rights, Liabilities, etc.

(a) The termination of a Member's membership (whether by resignation, expulsion or otherwise) will not in any way prejudice, lessen or affect the rights, duties, liabilities and obligations of a Member whether they:

(1) arise under this Constitution or otherwise; and

(2) are existing at the date of such termination or may arise or crystallise after that date out of or by reason of facts or circumstances occurring or in existence at or before that date.

(b) Without limiting the generality of Clause 13.3(a), termination of a Member's membership will not relieve a Member from any obligation to record or account for or pay any levies or fees referred to in Clause 11.

13.4. Non Compliance with Constitution, Misconduct

(a) If any Member:

(1) wilfully refuses or neglects to comply with the provisions of this Constitution; or

(2) be guilty of any conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company, the Directors may by resolution censure, suspend or expel the Member from the Company.

(b) Any Member who is proposed to be censured, suspended or expelled:

(1) must be given at least one week's notice of the meeting of the Directors at which such a resolution is to be put which must state the nature of the allegations against the Member and the intended resolution;

(2) must have the opportunity of giving orally or in writing any explanation or defence the Member may think fit at such meeting, before the passing of any resolution for censure, suspension or expulsion.

14. Powers of Company and its Directors

14.1. Directors have Powers of the Company

(a) The management of the business and affairs of the Company is vested in the Directors.

(b) The Directors may exercise all powers and do all such acts and things which the Company is authorised or permitted to exercise and do and which are not by this Constitution or by statute directed or required to be exercised or done by the Company in general meeting.

(c) The operation and effect of this Clause 14.1 are not limited in any way by Clause 14.2 to 14.9.

14.2. Directors may exercise Company's Power to Borrow

The Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company, to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person, to guarantee or to become liable for the payment of money or the performance of any obligations by any other person.

14.3. Directors may exercise Power to give Security

The Directors may exercise the powers conferred on them by Clause 14.2 in such manner and upon terms and conditions in all respects as they think fit, and in particular but without limiting the generality of the foregoing, by the issue of any debenture, debenture stock (perpetual, redeemable or otherwise), bonds, notes, charge, bill of sale, debt instrument or other security on the whole or any part of the property of the Company (both present and future).

14.4. Debentures may be Issued at Discount or Premium

Any debentures, debenture stock, bonds, notes, other security or debt instrument may be issued by the Company at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, conversion, allotment of shares, attending and voting at general meetings of the Company, appointment of directors, or other matter.

14.5. Assignability of Debentures

Debentures, debenture stock, bonds, notes, charges, bills of sale, other securities or debt instruments issued or given by the Company may be made assignable free from any equities between the Company and the person to whom the same may be issued.

14.6. Commission on Issue of Debentures

The Company may pay a commission to any person for subscribing or agreeing to subscribe for or procuring or agreeing to procure subscriptions for any debentures, debenture stock, bonds, notes, other securities or debt instruments of the Company.

14.7. Security from Company for Directors

If the Directors or any of them or any other person become or are about to become personally liable for the payment of any sum due from the Company, the Directors may execute or cause to be executed any mortgage, charge, bill of sale or security over or affecting the whole or any part of the assets of the Company in order to secure the Directors or persons so becoming liable from any loss in respect of such liability.

14.8. Directors may Appoint Attorney or Agent

(a) The Directors may, by resolution, power of attorney, or other written instrument, appoint any person or persons, including any as described in Clause 27.3, to be attorney or agent of the Company for such purposes, with such powers, authorities and discretions being powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

(b) The appointment may be on such terms for the protection and convenience of persons dealing with the attorney or agent as the Directors think fit and may also authorise the attorney or agent to delegate all or any of the powers, authorities and discretions vested in him.

14.9. Execution of Company cheques, etc.

All cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments signed, drawn, accepted, endorsed or otherwise executed by the Company, and all receipts for money paid to the Company, will be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Directors determine.

15. General Meetings

15.1. Convening of General Meeting

(a) The Directors may convene a meeting of the Company's Members whenever they think fit.

(b) The Directors will convene a general meeting on the request of Members in accordance with section 249D of the Law.

(c) A general meeting may be convened by the Members in accordance with section 249E and 249F of the Law.

15.2. Annual General Meeting

Annual general meetings will be held in compliance with the Law.

15.3. Notice period

Subject to the provisions of the Law relating to agreements for shorter notice, at least 21 days' notice must be given of a meeting of the Company's Members.

15.4. Contents of Notice

A notice of a meeting of the Company's Members will specify:

(a) the place, day and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);

(b) the general nature of the meeting's business;

(c) in the case of an election of Directors, the names of the candidates for election; and

(d) such other information as is required by section 249L of the Law.

15.5. Failure to give Notice

Subject to the Law, the accidental omission to give notice of any meeting of the Company's Members to or the non receipt of that notice by any of the Members will not invalidate any resolution passed at that meeting.

15.6. Notice of Adjourned Meeting in Certain Circumstances Only

(a) Whenever a meeting of the Company's Members is adjourned for less than 21 days, no further notice of the time and place of the adjourned meeting need be given.

(b) Whenever a meeting of the Company's Members is adjourned for 21 days or more, at least 3 days' notice of the time and place of the adjourned meeting will be given to Members.

15.7. Persons entitled to notice of general meeting

Notice of every general meeting of the Company will be given in a manner authorised by Clause 32.1 and in accordance with the Law:

(a) every Member;

(b) every Director and Alternate Director; and

(c) the auditors of the Company.

No other person is entitled to receive notices of general meetings.

15.8. Persons entitled to attend general meetings

(a) All Members are entitled to attend meetings of the Company's Members as well as any other persons entitled to attend under the Law.

(b) The chairperson may require any person to leave and remain out of any meeting who in the opinion of the chairperson is not complying with his or her reasonable directions.

15.9. Postponement or cancellation of meeting

The Directors may whenever they think fit postpone or cancel any meeting of the Company's Members other than a meeting convened under Clause 15.1(b) or 15.1(c).

16. Proceedings at General Meetings

16.1. Business of annual general meeting

The business of an annual general meeting is:

(a) to receive and consider the annual financial report and any other accounts;

(b) reports and statements as are required to be laid before the meeting;

(c) to elect Directors in the place of those retiring;

(d) to determine the remuneration of the Directors; and

(e) to transact any other business which under this Constitution or by the provisions of the Law ought to be or may be transacted at an annual general meeting.

16.2. Special business

(a) All other business transacted at an annual general meeting and all business transacted at any other meeting of the Company's Members will be deemed special.

(b) Except pursuant to the provisions of the Law, with the prior approval of the Directors, or with the permission of the chairperson, no person may, as regards any special business of which notice has been given, move at any meeting of the Company's Members any resolution (other than a resolution in the same terms as specified in that notice) or any amendment of a resolution.

16.3. Quorum

(a) A quorum for a general meeting is 2 persons, each being a Member, or a proxy of a Member, or attorney of a Member, or a Representative entitled to vote at that meeting.

(b) For the purposes of determining whether a quorum is present:

(1) where a Member appoints more than one proxy or attorney or Representative, only one such proxy, attorney or Representative will be counted; and

(2) a Member who is present in their own capacity and as a proxy, attorney or Representative of another Member will be counted only once.

(c) No business can be transacted at any meeting of the Company's Members unless the requisite quorum is present at the commencement of the meeting.

(d) If a quorum is present at the beginning of a meeting of the Company's Members it is deemed present throughout the meeting unless the chairperson otherwise declares on the chairperson's own motion or at the instance of a Member, the attorney of a Member, the proxy of a Member, or a Representative.

16.4. Chairperson

(a) The Directors may elect an individual to preside as chairperson at every meeting of the Company's Members of the Company.

(b) If there is no such chairperson, or if at any meeting of the Company's Members such person is not present within 15 minutes of the time appointed for holding the meeting or willing to act for all or part of the meeting, the Director or Directors present may choose another Director as chairperson of the meeting (or part of it).If no Director is present or if all Directors present decline to act as chairperson for all or part of the meeting, the Members present may choose one of their number to be chairperson of the meeting (or part of it).

16.5. If quorum absent

If half an hour after the time appointed for a meeting of the Company's Members a quorum is not present, a meeting convened by the Directors on a request of Members or by the Members as is provided by the Law will be dissolved, but in any other case the meeting will be adjourned to such other day, time and place as the Directors may by notice to the Members appoint, but failing such appointment, then to the same day in the next week at the same time and place as the meeting adjourned.

16.6. Dissolution of adjourned general meeting if quorum absent

If at any adjourned general meeting a quorum is not present after half an hour from the time appointed for that adjourned general meeting, then the meeting must be dissolved.

16.7. Chairperson has casting vote

In the case of an equality of votes at any general meeting, the chairperson has a casting vote both on a show of hands and on a poll, in addition to the vote or votes to which the chairperson is entitled as a Member, proxy or attorney of a Member or Representative.

16.8. Voting: show of hands or poll

At any meeting of the Company's Members a resolution put to the vote of the meeting will be decided on a show of hands unless before a vote is taken or before or immediately after the declaration of the result of the show of hands a poll is demanded:

(a) by the chairperson;

(b) by at least 5 Members, present in person or by proxy or attorney or by a Representative, having the right to vote at the meeting; or

(c) by any Member or Members, present in person or by proxy or attorney or by a Representative, who are together entitled to at least 5% of the votes that may be cast on that resolution on a poll;

but no poll will be demanded on any resolution concerning the election of a chairperson of a meeting or the adjournment of any meeting.

16.9. Questions decided by majority

Subject to the requirements of the Law in relation to special resolutions, a resolution will be taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half.

16.10. Declaration by chairperson that resolution carried

A declaration by the chairperson that a resolution has on a show of hands been carried or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in

the book of proceedings of the Company will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

16.11. Conduct of poll

(a) If a poll has been demanded under this Constitution before the Chairman's declaration, it will be taken in such manner and at such time and place as the chairperson directs, and either at once or after an interval or adjournment or otherwise.

(b) The result of the poll will be deemed to be the resolution of the general meeting at which the poll was demanded.

(c) The demand for a poll may be withdrawn.

16.12. Continuation of meeting notwithstanding poll

The demand for a poll will not prevent the continuance of the meeting or the transaction of any business other than the resolution on which a poll has been demanded.

16.13. Adjournment of general meetings

(a) The chairperson will adjourn a meeting of the Company's Members from time to time and from place to place; if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so.

(b) No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

16.14. General conduct of meetings

(a) Subject to the requirements of the Law, the chairperson will be responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.

(b) The chairperson may make rulings, adjourn the meeting without putting the question (or any question) to the vote if such action is required to ensure the orderly conduct of the meeting.

(c) The chairperson may require the adoption of any procedures which are in the chairperson's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

(d) The chairperson may determine conclusively any dispute concerning the admission, validity or rejection of a vote.

(e) Persons in possession of visual recording, pictorial-recording or sound-recording devices or placards, banners or articles considered by the Directors or the chairperson to be dangerous, offensive or liable to cause disruption, or persons who refuse to produce or to permit examination of any articles in their possession or the contents thereof, may be refused admission to any general meeting or may be required to leave and remain out of the meeting.

(f) Nothing contained in this Clause 16.14 will be taken to limit the powers conferred on the chairperson by law.

17. Votes at General Meetings

17A Voting Members

(a) (a) Subject to the Law, this Constitution and any rights attached to a class of Members, the Board may by resolution determine the categories of Members entitled

to vote at general meetings of the Company and designate those categories as Voting Members for the purposes of this Constitution.

(b) A determination under clause 17A(a):

(1) may apply generally or for a specified period;

(2) may specify objective criteria, conditions or qualifications for voting eligibility;

(3) may be amended, revoked or replaced by a further Board resolution; and

(4) does not take effect for a general meeting once notice of that meeting has been given.

(c) The Secretary must keep a record of each determination made under this clause and make that record available to Members on request.

(d) For the avoidance of doubt:

(1) this clause does not of itself create, vary or cancel any rights attached to a class of Members; and

(2) if a proposed determination under this clause would create, vary or cancel rights attached to a class of Members, that change may only be made in accordance with clause 12 and the Law.

(3) Only Members who fall within a category of Voting Members determined by the Board under this clause are entitled to vote at a general meeting.

17.1. Number of votes

Subject to any special rights or restrictions attaching to a class of Members, any determination made under clause 17A, and clauses 17.3 and 17.7:

(a) on a show of hands at a general meeting, each Voting Member present who is a Member, or is a proxy, attorney or Representative of a Voting Member, has one vote; and

(b) on a poll at a general meeting:

(1) each Voting Member who is an individual and is present in person or by proxy or attorney has one vote; and

(2) each Voting Member that is a corporation and is present by Representative or by proxy or attorney has one vote.

17.2. Votes of incapacitated member

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Member's committee or trustee or such other person as properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of the Company's Members as if the committee, trustee or other person were the Member.

17.3. No vote if fees unpaid

Notwithstanding this Constitution, a Member will not be entitled to vote on any question, either personally, by proxy, by attorney, or by a Representative at any meeting of the Company's Members, or on a poll if the Directors have so resolved pursuant to Clause 13.1 and such entitlement to vote has not been reinstated in accordance with Clause 13.1.

17.4. Chairperson to determine disputes re votes

In the case of any dispute as to the admission or rejection of a vote, the chairperson may determine the dispute and such determination made in good faith will be conclusive.

17.5. Objections to qualification to vote

(a) No objection to the qualification of any person to vote will be raised except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at that meeting is valid for all purposes.

(b) Any objection to the qualification of any person to vote at a meeting of the Company's Members made in due time will be referred to the chairperson, whose decision made in good faith is final and conclusive.

17.6. Proxy not to vote if Member present

If a Member is present at a meeting of the Company and a proxy or attorney for such Member is also present, the proxy or attorney is not in respect of the membership to which the proxy or attorney relates entitled to vote on a show of hands or on a poll.

17.7. When numerous proxies or Representatives are present

If more than one proxy or attorney or Representative for a Member is present at a meeting of the Company, none of them will be entitled to vote on a show of hands, or on a poll.

17.8. No vote if contrary to Law

Notwithstanding any other Clause, a Member shall not be entitled to vote, and any vote purported to be cast by the Member or any proxy, attorney or Representative for the Member, shall be disregarded on a particular resolution where such a vote is prohibited by the Law.

18. Proxies and Representatives

18.1. Right to appoint proxy/attorney

(a) A Member is entitled to appoint another person (whether a Member or not) as the Member's proxy or attorney as the case may be to attend and vote instead of the Member at the meeting.

(b) A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.

18.2. Proxy or attorney will be written

(a) An instrument appointing a proxy or attorney:

(1) will be in writing executed under the hand of the appointor or of the appointor's attorney duly authorised in writing or, if the appointor is a corporation, under its common seal or the hand of its duly authorised attorney or in a manner permitted by the Law; and

(2) may contain directions as to the manner in which the proxy or attorney, as the case may be, is to vote in respect of any particular resolution or resolutions.

(b) A facsimile of a written appointment of a proxy or a power of attorney is valid, unless the notice of meeting of the Company's Members to which the appointment relates requires production of the written appointment at the meeting and that requirement is not complied with.

18.3. Directors or chairperson decide validity

Subject to the Law, the Directors' or chairperson's decision as to the validity of a proxy or power of attorney or a facsimile thereof will be final and binding.

18.4. Authority conferred on proxy or attorney

Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney will be taken to confer authority:

(a) to agree to a meeting being convened by shorter notice than is required by the Law or by this Constitution;

(b) to agree to a resolution being proposed and passed as a resolution at a meeting of which less than 21 days notice has been given;

(c) even though the instrument may refer to specific resolutions and may direct the proxy or attorney how to vote on those resolutions:

(1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and

(2) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting;

(d) to speak on any proposed resolution on which the proxy or attorney may vote; and

(e) to demand or join in demanding a poll on any resolution on which the proxy or attorney may vote.

18.5. Power of attorney and proxy form to be deposited before meeting

An instrument appointing an attorney or a proxy and, the power of attorney or other authority (if any) under which it is signed or a copy of that power or authority certified as a true copy by statutory declaration or a facsimile of any of the documents referred to in this Clause, will be deposited at the Office not less than 48 hours before the time scheduled for commencement of the meeting (or any adjournment of that meeting) at which the person named in the instrument intends to vote.

18.6. Vote by proxy valid notwithstanding intervening death etc. of Member

A vote given in accordance with the terms of an instrument appointing a proxy or attorney will be valid notwithstanding the previous death or unsoundness of mind of the principal, or revocation of the proxy or power of attorney if no intimation in writing of the death, unsoundness of mind or revocation has been received at the Office, not less than 48 hours before the time scheduled for the commencement of the meeting at which the person named in the proxy or power of attorney, as the case may be, intends to vote.

18.7. Member may indicate whether proxy is to vote for or against resolution

(a) Any form of proxy sent out by the Company to Members in respect of a proposed general meeting of Members will make provision for the Member to indicate whether the Member wishes to vote for or against any resolution.

(b) The Member may but need not give an indication or direction as to the manner in which a proxy is to vote in respect of a particular resolution.

(c) Where an indication or direction is given, the proxy is not entitled to vote on the resolution on behalf of that Member except in accordance with that indication or direction.

18.8. Form of proxy/attorney

Every instrument appointing a proxy or attorney whether for a specified meeting or otherwise will be in such form as the Directors may prescribe or accept.

18.9. Failure to name appointee

Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson or such other person as is nominated by the Directors in the notice convening the relevant meeting of the Company's Members.

18.10. Appointment of Representative by Corporation

(a) Any Corporation which is a Member of the Company by a resolution of its directors may authorise any person (whether a Member or not) it thinks fit to act as its Representative at all meetings or any particular meeting or meetings held during the continuance of the authority, whether the meeting is of the Company or of any class of Members of the Company.

(b) Unless otherwise specified in the appointment, a Representative acting in accordance with his or her authority until it is revoked by the Corporation, is entitled to exercise the same powers on behalf of that Corporation as that Corporation could exercise at a meeting or in voting on a resolution.

18.11. Proof of appointment or revocation of appointment of Representative

A certificate:

(a) under the seal of the Corporation;

(b) signed by two directors of the Corporation (or where the Corporation has only one director, signed by that director); or

(c) signed by one director and one secretary of the Corporation;

or such other document as the chairperson of the meeting in his or her sole discretion considers sufficient will be prima facie evidence of the appointment or of the revocation of the appointment (as the case may be) of a Representative.

19. Term of Service of Elected and Board Appointed Directors, Election and Appointment of Directors, Removal and Remuneration of Directors

19.1. Elected Directors

(a) Elected Directors appointed under this clause are appointed for a term of three (3) years.

(b) The number of Elected Directors must be not less than three (3) and not more than six (6).

(c) The Company in general meeting may by ordinary resolution reduce, but not increase above six (6), the number of Elected Directors, provided the minimum number is not less than three (3).

(d) For the purposes of this clause, the Board may by resolution clarify which membership categories of the Company constitute medical, clinical or research professional members, provided any such resolution is consistent with the membership categories of the Company as established from time to time.

19.2. Eligibility for election as Elected Director

(a) Only medical members and clinical and research members of the Company who are entitled to vote at general meetings of the Company are eligible to seek election as a Director.

(b) For the purposes of this clause, the Board may by resolution clarify which membership categories of the Company constitute medical, clinical or research professional members, provided any such resolution is consistent with the membership categories of the Company as

established from time to time.

19.3. Board Composition and Board Appointed Directors

(a) The total number of Directors holding office at any one time, being Elected Directors and Board Appointed Directors combined, must not exceed eleven (11).

(b) The number of Board Appointed Directors holding office at any one time must not exceed five (5).

(c) Subject to this Constitution, the Directors may appoint a person as a Board Appointed Director:

(1) to fill a casual vacancy; or

(2) as an additional Director.

(d) A person must not be appointed as a Board Appointed Director under clause 19.3(c) unless immediately after the appointment:

(1) the total number of Directors will not exceed the limit in clause 19.3(a);

(2) the number of Board Appointed Directors will not exceed the limit in clause 19.3(b);

(3) the number of Elected Directors holding office will exceed the number of Board Appointed Directors holding office; and

(4) a majority of the Directors holding office will be medical members or clinical and research members of the Company who are entitled to vote at general meetings.

(e) For the purposes of this clause, a Director position that is vacant does not count as an Elected Director or as a Board Appointed Director holding office.

(f) If, because of a vacancy arising after the last Annual General Meeting or because of the timing of retirement, re-appointment or election at or around an Annual General Meeting, the requirement in clause 19.3(d)(iii) or clause 19.3(d)(iv) is temporarily not satisfied, the validity of any act, resolution or decision of the Directors is not affected by that non-compliance. The Directors must restore compliance by the conclusion of the next Annual General Meeting, whether by filling any vacant Elected Director position, by filling the vacancy with a qualifying member, by not re-appointing one or more Board Appointed Directors following that Annual General Meeting, or by a combination of those steps. Board acts during that period remain valid.

(g) A Board Appointed Director appointed under this clause need not be a Member of the Company.

19.4. Limited ability of Directors to act during vacancies

The continuing Directors may act notwithstanding any vacancy in their number; but for as long as the number of Directors is below the minimum fixed by this Constitution, the Directors will not act except in emergencies or for the purpose of filling up vacancies or convening a general meeting of the Company.

19.5. Director need not be Member

A Board Appointed Director appointed need not be a Member of the Company. This clause does not apply to Directors elected by Members in general meeting, who remain subject to the eligibility requirements in Clause 19.2.

19.6. Board Appointed Directors

(a) Every Board Appointed Director retires at the conclusion of each Annual General Meeting of the Company.

(b) A Board Appointed Director who retires under clause 19.6(a) may only return to office by re-appointment by the Board under clause 19.6(c). Retirement of a Board Appointed Director at the Annual General Meeting does not make that person eligible for election by Members. Clause 20 does not apply to a Board Appointed Director retiring under this clause.

(c) Following each Annual General Meeting, the Board may by resolution passed at a Board meeting held after that Annual General Meeting re-appoint any person who retired as a Board Appointed Director under clause 19.6(a). Only Elected Directors may vote on such a resolution. Re-appointment under this clause is not member election.

(d) If the Board does not re-appoint a person who retired under clause 19.6(a), that position remains vacant and may be filled at any time under clause 19.3(c).

19.7. Directors may attend and speak at general meetings

A Director is entitled to receive all notices to be served or given under Clause 15.7 and is entitled to attend and speak at all meetings the subject of such notices and at every meeting of every class of membership.

19.8. Appointment of Directors by general meeting

Subject to the provisions of this Constitution, the Company in general meeting may by ordinary resolution appoint new Directors.

19.9. Resignation of Directors

A Director may resign from office on giving the Company notice in writing.

19.10. Removal of Directors by general meeting

Subject to the Law, the Company in general meeting convened on at least 21 days notice may by ordinary resolution:

(a) remove any Director; and

(b) appoint another qualified person in place of that Director.

19.11. Suspension of Director guilty of prejudicial behaviour

(a) If the conduct or position of any Director is such that continuance in office appears to a majority of the Directors to be prejudicial to the interests of the Company, a majority of the Directors at a meeting of the Directors specially convened for that purpose may suspend that Director.

(b) Within 14 days of the suspension, the Directors will call a general meeting, at which the Members may either confirm the suspension and remove that Director from office in accordance with Clause 19.10, or annul the suspension and reinstate that Director.

19.12. Vacation of office of Director: automatic

The office of a Director is vacated if that Director:

(a) is declared by a practicing medical practitioner duly qualified to make such a declaration to be of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(b) is absent without the consent of the Directors from all meetings of the Directors held

during a period of 3 months and the Directors resolve that his or her office be vacated;

(c) resigns the office of Director in accordance with Clause 19.9 or 21.3;

(d) is removed under the provisions of Clause 19.10 or 21.4;

(e) ceases to be a Director by virtue of Clause 21.4;

(f) becomes bankrupt or suspends payment or liquidates by arrangement or compounds with or assigns his or her estate for the benefit of his or her creditors; or

(g) otherwise ceases to be, or becomes prohibited from being, a Director by virtue of the Law.

19.13. Remuneration

Notwithstanding any other provision in this Constitution, where the Company is required to have an authority to conduct fundraising appeals in New South Wales pursuant to the *Charitable Fundraising Act 1991 (NSW)*, any remuneration or benefit to be provided to a director must comply with section 48 of the *Charitable Fundraising Act 1991 (NSW)*.

20. Retirement of Elected Directors

20.1. Retirement of elected Directors by rotation

(a) The number of Elected Directors to retire at each AGM by rotation shall be determined by the Board in accordance with the Board Charter.

(b) Default: if no determination is made:
  (1) take the maximum number of Elected Director positions (being 6, or such lesser number as determined by ordinary resolution)
  (2) deduct the number of Elected Director positions that became vacant since the last AGM for any reason and remain vacant at the AGM date (Vacancy Credits);
  (3) divide by three (3) and round up; then subtract Vacancy Credits. If the result is zero or negative, no Directors are required to retire by rotation.
  (4) Directors to retire: those longest serving since last election. If equal, by lot.
  (5) An Elected Director retiring by rotation is eligible for re-election.

(c) This clause applies to Elected Directors only. Board Appointed Directors retire under clause 19.6.

(d) Nothing in this clause affects the power of the Company to remove a Director by ordinary resolution.

20.2. Retiring Director stays for meeting

A Director retiring will retain office until the dissolution or adjournment of the general meeting at which that Director retires.

20.3. Election of Directors by general meeting

Subject to the provisions of this Constitution, the Company in general meeting at which any Director retires or at the conclusion of which any Director ceases to hold office may fill up all or any of the vacated offices by electing a like number of persons to be Directors.

20.4. Director may continue if place not filled

If the vacated office is not filled by election, the retiring Director, if offering himself or herself for re-election and not being disqualified under the Law or by this Constitution from holding office as a Director, is deemed to have been re-elected unless at that meeting:

(a) it is expressly resolved not to fill the vacated office at that time; or

(b) a resolution for the re-election of that Director is put and lost.

20.5. Nomination of Directors for office

(a) No person other than an Elected Director retiring in accordance with this Constitution is eligible for election to the office of Director at any general meeting unless in the case of a person whose nomination is recommended by the Directors, at least 21 days, and in any other case, at least 30 Business Days before the meeting there has been left at the Office:

(1) a notice in writing signed by a Member duly entitled to attend and vote at the meeting for which such notice is given of that Member's intention to propose the person for election; and

(2) notice in writing signed by the person of his or her willingness to be elected.

(b) Members duly entitled to attend and vote at the meeting may also propose themselves for election in accordance with this Constitution. Notice of each and every candidature will be given to all Members at least 21 days before the meeting at which the election is to be held.

21. Managing Director and Executive Directors

21.1. Appointment of Managing Director

The Directors may appoint one or more of their number as Managing Directors:

(a) either for a fixed term or without any limitation as to the period for which the person appointed is to hold the office; and

(b) subject to this Constitution, on any terms and conditions that the Directors determine.

21.2. Removal, suspension, replacement of absent Managing Director

(a) Subject to the provisions of any contract between a Managing Director and the Company, the Directors may remove or dismiss or suspend a Managing Director from that office and appoint another or others in his or her place, or appoint a temporary substitute for a Managing Director while that Managing Director is absent or unable to act.

(b) No Managing Director is entitled to attend or vote at any meeting of Directors while under suspension from office.

21.3. Retirement of Managing Director

Subject to the provisions of any contract between each Managing Director and the Company, a Managing Director is subject to the same provisions as to resignation and removal as the other Directors, and will immediately cease to be a Managing Director if for any reason he or she ceases to hold the office of Director.

21.4. Executive Directors ceasing to be an employee

(a) Each Executive Director ceases to be a Director on ceasing to be a full time employee of the Company or a related body corporate of the Company.

(b) A person ceasing to be a Director by virtue of this Clause will not for that reason alone be rendered ineligible for appointment or election as a Director under any other Clause.

21.5. Powers of Managing Director and Executive Directors

(a) The Directors may entrust to and confer on each Managing Director and each Executive Director such of the powers exercisable under this Constitution by the Directors as they think fit.

(b) The Directors may so confer any such powers for the time and to be exercised for any objects and purposes and on any terms and conditions and with such restrictions as they think fit.

(c) The Directors may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may revoke, withdraw, alter or vary all or any of the powers.

(d) Notwithstanding any provision of this Constitution, every Managing Director and Executive Director will at all times and in all respects be subject to the control of the Directors.

22. Proceedings of Directors

22.1. Meetings of Directors

The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

22.2. Quorum for meetings of Directors

(a) The Directors may determine the quorum necessary for the transaction of business.

(b) Until otherwise determined, a quorum for the purpose of considering a matter at a meeting will be three persons each of whom is a Director or an Alternate Director and is entitled under the Law to vote on a motion that may be moved in relation to such matter at that meeting.

(c) Where a quorum cannot be established for a meeting of Directors (or consideration of a particular matter) a Director may convene a general meeting of Members to deal with the matter or the matters in question.

(d) For the purpose of determining whether a quorum is present, an Alternate Director who is present in both his or her own capacity as a Director and as an Alternate Director for one or more Appointors will be counted only once.

22.3. Convening meetings of Directors

A Director may at any time and the Secretary will on the request of a Director convene a meeting of the Directors.

22.4. Notice of meetings of Directors

(a) Notice of every Directors' meeting will be given to each Director and Alternate Director who is within Australia, but it is not necessary to give notice to any Director or Alternate Director who is outside Australia.

(b) Notice of a meeting of Directors may be given in writing or by radio, telephone, closed-circuit television or other electronic means of audio or audio-visual communication.

22.5. Meetings by electronic means

(a) Without limiting the discretion of the Directors to regulate their meetings under Clause 22.1, the Directors may, if they think fit, confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communication.

(b) Notwithstanding that the Directors are not present together in one place at the time of the conference, a resolution passed by such a conference will be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held.

(c) The provisions of this Constitution relating to proceedings of Directors apply to such

conferences to the extent that they are capable of applying, and with the necessary changes.

(d) A Director present at the commencement of the conference will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the conference.

(e) Any minutes of a conference of the type referred to in Clause 22.5(a) purporting to be signed by the chairperson of that conference or by the chairperson of the next succeeding meeting of Directors will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the conference.

(f) When by the operation of Clause 22.5(b) a resolution is deemed to have been passed at a meeting of the Directors, that meeting will be deemed to have been held at such place as is determined by the chairperson of the relevant conference, provided that at least one of the Directors who took part in the conference was at such place for the duration of the conference.

22.6. Votes at meetings of Directors

(a) Motions and resolutions arising at any meeting of the Directors will be decided by a majority of votes and each Director has one vote.

(b) A person who is an Alternate Director is entitled to one vote (in addition to the Alternate Director's own vote as a Director, if any) on behalf of each Appointor whose alternate the Alternate Director is and who is not personally present.

22.7. Casting vote for Chairperson of Directors

Subject to the Law, in case of an equality of votes the chairperson of a meeting of Directors will have a second or casting vote.

22.8. Chairperson and deputy chairperson of Directors

(a) The Directors may elect a chairperson of Directors.

(b) The Directors may also elect a deputy chairperson who in the absence of the chairperson at a meeting of the Directors may exercise all the powers and authorities of the chairperson.

(c) If no chairperson or deputy chairperson is elected or if at any meeting the chairperson or deputy chairperson is not present within half an hour of the time appointed for holding the meeting or is not willing to act as chairperson for all or part of that meeting, the Directors present will choose one of their number to be chairperson of that meeting or part of that meeting (as the case may be).

(d) The Directors may determine the period for which a person elected as chairperson or deputy chairperson is to hold office.

(e) If the Directors do not make such a determination under Clause 22.8(d), then the person concerned will hold office until otherwise resolved by the Directors or until the person ceases to be a Director.

(f) If the Directors do make such a determination then the person concerned will hold office until the first to occur of the expiration of that period, the person ceasing to be a Director or the Directors at any time during that period resolving that the person will from that time cease to hold that office.

(g) When a Director who is the chairperson or deputy chairperson retires at an annual general meeting either by retirement or otherwise and is re-appointed or re-elected as a Director at that meeting, that chairperson or deputy chairperson will not by that fact alone cease to be the chairperson or deputy chairperson as the case may be.

22.9. Committees of Directors

(a) The Directors may delegate any of their powers to committees consisting of one or more members who are Directors as they think fit, and the Directors may revoke that delegation.

(b) A committee will conform to any directions and regulations that may be imposed upon it by the Directors in the exercise of its powers.

(c) So far as they are capable of application and with the necessary changes, the provisions of the Clauses for regulating the meetings and proceedings of the Directors govern the meetings and proceedings of committees of 2 or more members to the extent that the same are consistent with any directions and regulations made by the Directors.

(d) Where a committee consists of 2 or more members, a quorum will be any 2 members or such larger number as the committee itself determines.

22.10. Defects in appointment or qualifications of Director

All acts done at any meeting of the Directors or of a committee of Directors or by any person acting as a Director will be as valid as if every such person or committee had been duly appointed and every Director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Director or of the committee or of the person acting as aforesaid, or that any Director was disqualified or not entitled to vote.

22.11. Written resolutions of Directors

(a) If all of the Directors required to be given notice of a meeting as specified in Clause 22.4, being not less than the number of Directors required to constitute a quorum for a meeting of the Directors, have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document or documents as the case may be, a resolution in those terms will be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document or documents on different days, on the day on which, and at the time at which the document was last signed by a Director.

(b) For the purposes of this Clause 22.11:

(1) 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be deemed to constitute one document containing a statement in those terms signed by the Directors;

(2) a reference to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution;

(3) a document signed by an Alternate Director need not also be signed by the Alternate Director's Appointor and, if signed by a Director who has appointed an Alternate Director, need not be signed by the Alternate Director in that capacity; and

(4) any document so signed by a Director may be received by the Company at the Office (or other place agreed by the Directors) by post, by facsimile or other electronic means or by being delivered personally by that Director.

23. Alternate Directors

23.1. Appointment and removal of Alternate Directors

(a) Each Director has power to appoint any person who is not an auditor of the Company or

a partner or employer or employee of an auditor of the Company approved for that purpose by a majority of the other Directors, to be the alternate of the Director in the Appointor's place during such times as the Appointor determines.

(b) An Alternate Director need not be a Member.

(c) The Appointor, at any time and regardless of whether the appointment of an Alternate Director is for a specified period, may revoke the appointment of a person as his or her Alternate Director.

23.2. Notice of appointment or removal of Alternate Directors

Any appointment or removal of an Alternate Director will be effected by email, telegram, telex, cable, facsimile or other notice in writing to the Company.

23.3. Rights and powers of Alternate Directors

(a) Subject to the Law, an Alternate Director:

(1) may act in the place of his or her Appointor;

(2) is entitled to attend and vote and be counted in determining a quorum at any meeting of the Directors except while his or her Appointor is present;

(3) has all the rights and powers of his or her Appointor (other than those conferred by Clause 23.1) and will be subject to the duties of his or her Appointor;

(4) will be subject in all respects to the conditions applicable to the other Directors; and

(5) may act as an Alternate Director to more than one Director and is entitled to one vote in respect of each Appointor where the Appointor is not present.

(b) Subject to the Law, an Alternate Director is not prohibited from voting or being present in respect of a matter by reason only that the Alternate Director's Appointor is prohibited from voting or being present in respect of that matter.

23.4. Alternate Director is an Officer of Company

An Alternate Director is an Officer of the Company and will not be deemed to be the agent of his or her Appointor.

23.5. Alternate goes when Appointor goes

(a) Subject to Clause 23.5(b), if any Appointor ceases to be a Director, his or her Alternate Director (if any) immediately ceases to be an Alternate Director.

(b) When an Appointor retires at a general meeting and is re-appointed as a Director at that meeting, his or her Alternate Director (if any) will remain an Alternate Director for that Director unless the instrument of appointment of the Alternate Director otherwise provides.

23.6. Form of appointment of Alternate Director

Any instrument appointing an Alternate Director will as nearly as circumstances will admit be in the following form or to the effect of the following:

"[Name of Company]

I, the undersigned being a Director of the above named Company in pursuance of the power in that behalf contained in the Constitution of the Company DO HEREBY NOMINATE AND APPOINT

of ,
to act as Alternate Director in my place and to exercise and discharge all my duties as a Director.

Signed this day of , 20 ."

or in such other form as the Directors may accept.

24. Associate Directors

24.1. Appointment and removal of Associate Directors

The Directors may appoint any person to be an Associate Director and may cancel that appointment.

24.2. Powers of Associate Directors

(a) The Directors may fix, determine and vary the powers, duties and remuneration of any person appointed as an Associate Director.

(b) An Associate Director need not be a Member of the Company, and does not have any right to attend at any meeting of the Directors except by the invitation of the Directors.

(c) If an Associate Director attends any Directors' meeting, he or she will not be counted in a quorum and does not have the right to vote.

25. Minutes

25.1. Minutes of all proceedings to be kept

The Directors will cause minutes of:

(a) all proceedings and resolutions of meetings of Members;

(b) all proceedings and resolutions of meetings of the Directors, including meetings of committees of Directors;

(c) all resolutions passed by Members without a meeting; and

(d) all resolutions passed by the Directors without a meeting,

to be duly entered in books kept for that purpose in accordance with the Law.

25.2. Minutes to be signed by Chairperson

The Directors will cause the minutes referred to in Clauses 25.1(a) and 25.1(b) to be signed by:

(a) the chairperson of the meeting at which the proceedings took place or at which the resolutions were proposed; or

(b) the chairperson of the next succeeding meeting.

25.3. Minutes to be presumed accurate

Where the minutes referred to in Clauses 25.1(a) and 25.1(b) are signed in accordance with Clause 25.2, those minutes shall be presumed to be an accurate record of the relevant proceedings and resolutions unless the contrary is proved.

25.4. Inspection of minutes of general meetings

Books containing the minutes of proceedings of meetings of Members will be open for inspection

by any Member without charge.

26. Secretary

26.1. Appointment and removal of Secretary

A Secretary or Secretaries will be appointed by the Directors in accordance with the Law for such term, at such remuneration and on such conditions as they think fit, and any Secretary so appointed may be removed by the Directors.

26.2. Acting Secretary

The Directors may appoint a person as an acting Secretary or as a temporary substitute for a Secretary who for the purpose of this Constitution will be deemed to be a Secretary.

27. Local Management

27.1. Management in specified localities

(a) The Directors may provide for the management and transaction of the affairs of the Company in any specified locality whether in New South Wales or elsewhere in such manner as they think fit.

(b) The provisions contained in Clauses 27.2, 27.3 and 27.4 are without prejudice to the general powers conferred by this Clause 27.1.

27.2. Local boards and management committees

(a) The Directors may establish any local boards, management committees or agencies for managing any of the affairs of the Company in the specified locality.

(b) The Directors may appoint any persons to be members of local boards or any managers or agents, and may fix their remuneration.

(c) The Directors may delegate to those appointees any of the powers, authorities and discretions for the time being vested in the Directors other than the power of making calls, and may authorise some or all of the members for the time being of any local board to fill up any existing vacancies and to act notwithstanding vacancies.

(d) An appointment or delegation may be made on any terms and subject to any conditions as the Directors think fit.

(e) The Directors may remove any appointee and revoke or vary that delegation.

27.3. Members of local boards and management committees may be attorneys or agents of Directors

An appointment of an attorney or agent under Clause 14.8 if the Directors think fit may be made in favour of the members or any of the members of any local board or management committee or agency established as aforesaid or in favour of any corporation or of the members, directors, nominees or managers of any corporation or firm, or in favour of any fluctuating body of persons whether nominated directly or indirectly by the Directors.

27.4. Power of sub-delegation

Any such local board, management committee or agency established as aforesaid may be authorised by the Directors to sub-delegate all or any of the authorities and discretions for the time being vested in them.

28. Execution of Documents

28.1. Custody and use of Seal

(a) The Directors may provide a Seal for the Company and will provide for the safe custody of that Seal.

(b) The Seal will only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that behalf.

28.2. Execution of documents

(a) The Company may execute a document using a Seal if the Seal is affixed to the document and the affixing of the Seal is witnessed by:

(1) 2 Directors;

(2) a Director and a Secretary; or

(3) a Director and another person appointed by the Directors for this purpose.

(b) The Company may execute a document without using a Seal if the document is signed by:

(1) 2 Directors;

(2) a Director and a Secretary; or

(3) a Director and another person appointed by the Directors for this purpose.

(c) The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Clause 28.2, 28.2(a) or 28.2(a)(3), 28.2(b).

28.3. Facsimile signature under Seals

The Directors may determine either generally or in a particular case and in any event subject to such conditions as they think fit that wherever a signature is required by this Constitution on a document to or in which the Seal is affixed or incorporated, that requirement will be satisfied by a facsimile of the signature affixed by mechanical or other means.

28.4. Effect of sealing

Any instrument bearing the Seal if issued for valuable consideration will be binding on the Company notwithstanding any irregularity touching the authority of the Directors to issue the same, or the circumstances of its issue.

29. Accounts

29.1. Company to keep

The Company will keep such accounting and other records of the business of the Company as it is required to keep by the Law.

29.2. Annual accounts to be laid before annual general meeting

At the Annual General Meeting in every year the Directors will lay before the Company the financial report for the last financial year of the Company, together with such other accounts, reports and statements as are required by the Law.

29.3. Copy of accounts to be sent

Other than those Members who have provided written notice to the Company stating that they do not wish to receive a copy of every document which is required to be laid before each Annual General Meeting by Clause 29.1, a copy of these documents will be sent to all persons entitled to receive notices of meetings of the Company's Members together with the notice of meeting, as required by the Law.

29.4. Accounts conclusive

Every account of the Directors when audited and approved or received by a general meeting at which it is presented will be conclusive except as regards any material error discovered in it within 3 months next after its approval or adoption. Whenever any material error is discovered within that period the account will forthwith be corrected and then it will be conclusive.

29.5. Receipts

(a) The Company may receive capital and other money and give valid receipts for all purposes including:

(1) the provisions of the *Charitable Fundraising Act 1991 (NSW)*;

(2) those of any statute in any other State or Territory in Australia; and

(3) the receipt of any capital money which may or may not be deemed to be capital money for the purposes of any law relating to settled land.

(b) The receipts as issued by the Company must state the information required by section 30-228 of the ITAA 97.

30. Auditors: Appointment and Removal

The auditors of the Company will:

(a) be appointed and may be removed as provided in the Law; and

(b) perform the duties and have the rights and powers as may be provided in the Law.

31. Secrecy

31.1. Members not entitled to discovery

(a) The Directors will determine whether and to what extent, at what time and place or places, and under what conditions, the accounting records and other documents of the Company will be open to the inspection of Members other than Directors.

(b) Subject to the Law, (but excluding section 247D of the Law), a Member not being a Director does not have the right, but may in the absolute discretion of the Directors be authorised, to inspect or to require or receive any information, or to require discovery of any record or document of the Company or any information respecting any detail of the Company's trading or business, or any matter which is or may be in the nature of a trade secret, confidential information, mystery of trade or secret process which may relate to the conduct of the business of the Company.

31.2. Officers of Company not to disclose information

(a) Every Director, Managing Director, manager, Secretary, auditor, trustee, member of a committee, agent, accountant or other Officer is bound to observe secrecy with respect to all transactions of the Company with its customers, the state of the account of any individual, and all related matters.

(b) If required by the Directors, every such person will, before commencing that person's duties or employment or at any time afterwards, sign and make a declaration in a book to

be kept for that purpose that they will not reveal or make known any of the matters, affairs or concerns which may come to their knowledge as Director, Managing Director, manager, Secretary, auditor, trustee, member of a committee, agent, accountant or other Officer and whether relating to transactions of the Company with its customers or the state of the account of any individual or to anything else, to any person or persons except in the course and in the performance of their duties, or under compulsion or obligation of law, or when officially required so to do by the Directors or by the auditors for the time being, or by any general meeting of Members.

32. Notices

32.1. Method of service of notices

A notice may be served by the Company on a Member or other person receiving notice under this Constitution by any of the following methods:

(a) by serving it personally on the Member;

(b) by leaving it at the address of the Member in the Register;

(c) by sending it by post in a prepaid letter, envelope or wrapper addressed to the Member at the address of the Member in the Register;

(d) by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on the Member; or

(e) by sending it by email transmission to an email address nominated by the Member for the purpose of serving notices on the Member.

For the purposes of Clauses 32.1(b) and 32.1(c), a Member may provide the Company with an address other than that of the address of the Member in the Register for the purpose of serving notice on that Member.

32.2. Notification of address facsimile number

Each Member whose address in the Register is not in Australia may at any time notify in writing to the Company an address, email address or facsimile number in Australia which will be deemed to be that Member's address, email address or facsimile number in the Register within the meaning of Clause 32.1.

32.3. Notice to overseas members without Australian address

If the address of a Member in the Register is not within Australia, all notices will be posted by air mail, or sent by facsimile transmission, air courier, or by email.

32.4. Notice by advertisement

Any notice by a court of law or otherwise required or allowed to be given by the Company to the Members or any of them by advertisement will unless otherwise stipulated be sufficiently advertised if advertised once in a daily newspaper circulating in the States and Territories of Australia.

32.5. Time of service by post

Any notice sent by post, air-mail or air courier will be deemed to have been served on the day following that on which the letter, envelope or wrapper containing the notice is posted or delivered to the air courier, and in proving service it will be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier. A certificate in writing signed by any manager Secretary or other Officer of the Company that the letter envelope or wrapper containing the notice was so addressed and posted is conclusive evidence thereof.

32.6. Time of service by facsimile transmission

Any notice sent by facsimile transmission will be deemed to have been served on receipt by the company of a transmission report confirming successful transmission.

32.7. Time of service by email

Any notice sent by email will be deemed to have been served on the next Business Day, unless the sender receives a failure of delivery notification.

32.8. Signatures on notices

The signature to any notice to be given by the Company may be written or printed or a facsimile thereof may be affixed by mechanical or other means.

32.9. Calculation of notice period

Where a period of notice is required to be given, the day on which the notice is dispatched and the day of doing the act or other thing will not be included in the number of days or other period.

33. Officers: Indemnities and Insurance

33.1. Indemnities

To the extent permitted by law:

(a) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending any Proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the Law; and

(b) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly owned subsidiary of the Company against any liability incurred by the person, as an Officer of the Company or of a wholly owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.

33.2. Insurance

To the extent permitted by law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:

(a) incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company or otherwise arising out of the Officer's holding such office, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of sections 182, 183 or 199B of the Law; or

(b) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

33.3. Interpretation

In Clauses 33.1 and 33.2:

(a) the term "Proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as such an Officer or in the course of acting in

connection with the affairs of the Company or a wholly owned subsidiary (in Clause 33.1) or subsidiary (in Clause 33.2) of the Company or otherwise arising out of the Officer's holding such office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly owned subsidiary (in Clause 33.1) or subsidiary (in Clause 33.2) of the Company); and

(b) the term "Officer" has the meaning given to that term in section 9 of the Law.

First Schedule

The objects for which the Company is established are:

1. To support high-quality, targeted clinical trials evaluating new treatments and management approaches for lung and thoracic cancer in Australia and New Zealand

2. To secure stable, long-term cancer specific funding for TOGA including the development of an Innovation fund to support start-up/seed funding for projects and appropriate fellowship awards/travel grants.

3. To facilitate and increase participation by patients, researchers and collaborators in the development, conduct, evaluation and reporting of clinical trials in lung and thoracic cancers, including mesothelioma.

4. To promote, sponsor and facilitate research and health care delivery to those individuals in the community affected by all forms of lung cancer including mesothelioma.

5. To provide leadership and excellence in lung cancer research activities including mesothelioma.

6. To promote, sponsor and facilitate lung cancer education and training in relevant health disciplines.

7. To further knowledge within the medical and scientific communities by promoting the conduct of clinical and translational research in the area of lung cancer including mesothelioma.

8. To achieve a better understanding of the nature of and causes of lung cancer including mesothelioma.

9. To improve the methods of preventing, diagnosing and treating lung cancer including mesothelioma.

10. To develop, wherever possible, through research and other activities, either directly or indirectly, the development of relevant products and treatments, preventative strategies and practices in relation to improving treatment outcomes for lung cancer including mesothelioma.

11. Through educational programs, and guideline development to actively promote the translation of clinical trial findings into clinical practice

and to undertake and pursue all other such similar, related or compatible objects or activities incidental to the primary objects as may from time to time be considered appropriate by the Company.

Execution

I/We, the persons whose full name is set out below and who consents to becoming a member of the Company agree to the form of the Constitution for the Company set out above.

SIGNED, SEALED and DELIVERED by

[redacted]

in the presence of:

[redacted]

Sig[redacted]

15 / 5 / 26

Date