

# Constitution

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The Westmead Institute for Medical Research

# Constitution of the Westmead Institute for Medical Research

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# Preliminary

## 1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

**ACNC Law** means a provision of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), or regulations made under that Act, that applies to the Company;

**Alternate Director** means a person appointed as an alternate director under clause 41.

**Annual Report** means the annual report referred to in clause 51.

**Auditor** means the Company's auditor.

**Board** means the board of Directors.

**Chairperson** means the chairperson of the Board appointed pursuant to clause 43.

**Company** means Westmead Institute for Medical Research.

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

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

**DGR** means an entity endorsed by the Australian Taxation Office as a deductible gift recipient pursuant to the *Income Tax Assessment Act 1997* (Cth).

**Director** includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director, an Independent Director, a University Director, a NSW Government Director and a WMRF Director.

**Ex-officio** means by virtue of office or official position, and will not be assumed to have voting rights other than as prescribed in this Constitution.

**Executive Director** means the executive director of the Company appointed pursuant to clause 33.

**Independent Directors** means the Directors appointed pursuant to clause 29.2(e) and (f).

**Member** means a member of the Company appointed as such under clause 7, and includes both Voting Members and Non-voting Members; and **Membership** has a corresponding meaning.

**Member's Guarantee Amount** means the amount referred to in clause 56.1.

**Non-voting Members** are those Members who are not entitled to vote at meetings of Members.

**NSW Government** means the Health Administration Corporation acting for and on behalf of the Crown in the right of the State of New South Wales.

**NSW Government Directors** means the Directors appointed pursuant to clause 29.2(c) by the NSW Government from time to time.

**Objects** means the objects of the Company as set out in clause 5.1.

**Original Members** means:

- (a) the NSW Government; and

(b) the University; and

(c) WMRF;

who are all Voting Members.

**Register** means the register of Members of the Company.

**Representative** means a person appointed as such under clause 11.

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

**Secretary** means any person appointed by the Board to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

**University** means The University of Sydney.

**University Directors** means the Directors appointed pursuant to clause 29.2(b) by the University from time to time.

**Voting Members** are those Members who are entitled to vote at meetings of Members, and include the Original Members.

**WMRF** means Westmead Medical Research Foundation A.C.N. 050 329 925.

**WMRF Directors** means the Directors appointed pursuant to clause 29.2(d) by WMRF from time to time.

- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause has the same meaning as in the Corporations Act and the ACNC Law (as the case may be). Where the expression has more than one meaning in the Corporations Act or the ACNC Law (as the case may be) and a provision of the Corporations Act or the ACNC Law (as the case may be) deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

## 2. Interpretation

- 2.1 In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

- 2.2 Notes do not form part of this Constitution but may be taken into account for the purposes of interpreting a provision of this Constitution, where that provision may have more than one meaning, in which case, the provision shall be interpreted in the manner most consistent with the note that relates to that provision.

### 3. Replaceable rules

This Constitution displaces the replaceable rules in the Corporations Act to the extent that it is inconsistent with any replaceable rules.

### 4. Type of Company

The Company is a not-for-profit public company limited by guarantee.

## Objects

### 5. Objects

5.1 The Company is a charitable institution and a health promotion charity working in partnership with the Original Members and the Westmead Hospital. The principal Objects of the Company shall be to:

- (a) discover the origins of human disease by furthering knowledge in the fields of biology and medicine;
- (b) improve methods of preventing, diagnosing and treating diseases, as well as promoting health in human beings;
- (c) enhance selected areas of excellence in both basic, population health, translational and clinical research;
- (d) encourage research of international standing in both existing and emerging areas of such research;
- (e) support and encourage educational activities relating to health and medical research;
- (f) disseminate, within and outside the State, information concerning the work of the Company;
- (g) provide outstanding training for junior scientists in the intellectual, practical and ethical aspects of biomedical, population health, translational and clinical research;
- (h) conduct clinical trials to discover the most effective treatments of human disease;
- (i) achieve best practice research governance and provide leadership, guidance and advice to other researchers;
- (j) encourage translation of research to improve health outcomes, including for the people of Western Sydney and NSW, and;
- (k) anything ancillary to the objects set out in clauses 5.1(a) to 5.1(j).

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

- (a) carry out the Objects in clause 5.1; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 5.2(a).

5.3 The Company must not exercise any power in contravention of the Corporations Act or the ACNC Law.

# Income and property of Company

## 6. Income and property of Company

**Note:** ACNC Governance Standard 1 requires, among other things, that the Company comply with its purposes and character as a not-for-profit entity. ACNC Governance Standard 3 requires, amongst other things, that the Company not commit a serious infringement of Australian laws.

- 6.1 The income and property of the Company will only be applied towards the promotion of the Objects.
- 6.2 No income or property may be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
  - (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## Membership of the Company

### 7. Admission and Fees

- 7.1 The number of Members with which the Company proposes to operate is unlimited.
- 7.2 The Members of the Company are:
  - (a) the Original Members; and
  - (b) any other persons or bodies corporate approved by:
    - (i) an 80% majority of the Board; and
    - (ii) the Original Members pursuant to clause 7.7(b).
- 7.3 Each new Member admitted to Membership pursuant to clause 7.2(b) may only be admitted to Membership if they agree to be bound by the terms of this Constitution, including agreeing to assume the liability to pay the Member's Guarantee Amount.
- 7.4 Applications for Membership of the Company must be in writing, signed by the applicant and in a form approved by the Board in its absolute discretion.
- 7.5 The Board will consider each application for Membership at the next Board meeting after the application is received, including considering to which class of Membership to admit the applicant. In considering an application for Membership, the Board may:
  - (a) accept or reject the application; or
  - (b) ask the applicant to give more evidence of eligibility for Membership.
- 7.6 There are two classes of Membership in the Company:
  - (a) Voting Members; and
  - (b) Non-voting Members.



- 7.7 (a) Upon the Board resolving to accept an application pursuant to clause 7.5(a), the Secretary will then write to all of the Original Members providing them with a copy of the application and the reasoning behind the Board's decision to accept the applicant for Membership, along with the class of Membership to which the Board wishes to admit the applicant.
- (b) If:
- (i) in the case of Voting Members, all of the Original Members; or
- (ii) in the case of Non-voting Members, a majority of the Original Members,
- confirms in writing within one (1) month of the date of receipt of the information from the Secretary (Notice Date) that the applicant should be accepted into Membership into the proposed class of Membership, that applicant will be admitted to Membership of the Company in that particular class.
- (c) If the Board has not received written confirmation from, in the case of a proposal to admit a Voting Member, all of the Original Members or, in the case of a proposal to admit a Non-Voting Member, a majority of the Original Members within one month of the Notice Date, the application will be deemed to be rejected.
- 7.8 If the Board asks for more evidence under clause 7.5, its determination of the application for Membership is deferred until such evidence is given.
- 7.9 The Board and the Original Members do not have to give any reason for rejecting an application for Membership.
- 7.10 A person or body corporate becomes a Member on the registration of that person's or body corporate's name in the Register.
- 7.11 The rights, obligations and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.
- 7.12 (a) The Membership fees for Members in each financial year shall be determined by the Board prior to the commencement of that financial year or, failing such a determination, the amount payable in the immediately preceding financial year. The Board may charge different Membership fees to Voting Members and Non-voting Members respectively and for this purpose Original Members shall be Voting Members.
- (b) The Board may in its discretion extend the time for payment of Membership fees by any Member.
- (c) No part of any Membership fee shall be refunded to a Member who ceases to be a Member in accordance with clause 8.

## 8. Ceasing to be a Member

- 8.1 A Member's Membership of the Company will cease:
- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if the Member is expelled pursuant to clause 9;
- (c) where the Member is an individual, if the Member:
- (i) dies;

- (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health or bankruptcy; or
- (iii) is convicted of an indictable offence; and
- (d) where the Member is a body corporate, if:
  - (i) a liquidator is appointed in connection with the winding-up of the Member; or
  - (ii) an order is made by a Court for the winding-up or deregistration of the Member;
- (e) where a Member fails to pay the Membership fee for a financial year in respect of that class of Membership within six (6) calendar months immediately following the commencement of that financial year, provided that the Member has been reminded on at least two occasions during that six (6) month period that its Membership fee has not been paid and that the second of these two reminders was given at least fourteen days prior to the expiry of that six (6) month period.

8.2 A Member may at any time, pursuant to clause 8.1(a), resign as a Member, but shall continue to be liable for:

- (a) any Membership Fees and all arrears due and unpaid at the date of resignation;
- (b) all other monies due by the Member to the Company; and
- (c) if applicable, the Member's Guarantee Amount.

## 9. Disciplining of Members

9.1 Other than in the case of an Original Member, the Board may resolve to expel any Member or to suspend any Member from Membership of the Company if the Member:

- (a) has persistently refused or neglected to comply with a provision or provisions of this Constitution; or
- (b) has persistently or wilfully acted in a manner prejudicial to the interests of the Company.

9.2 A resolution of the Board pursuant to clause 9.1 will be of no effect unless the Board confirms the resolution in accordance with this clause at the meeting held pursuant to clause 9.3.

9.3 If the Board resolves under clause 9.1 to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:

- (a) setting out the resolution of the Board and the grounds upon which it is based;
- (b) stating that the Member may address the Board at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice;
- (c) stating the date, place and time of that meeting; and
- (d) informing the Member that the Member may do either or both of the following:
  - (i) attend and speak at that meeting;
  - (ii) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.

9.4 At a meeting of the Board held in accordance with clause 9.3, the Board must:

- (a) give the Member an opportunity to make oral representations;

- (b) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
  - (c) resolve whether to confirm or to revoke the decision to expel or suspend the Member.
- 9.5 The Member must be notified in writing of the decision of the Board within seven days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under clauses 9.7 to 9.10.
- 9.6 A resolution confirmed by the Board under clause 9.4 does not take effect:
- (a) until the expiration of the period within which the Member is entitled to appeal against the resolution; or
  - (b) if the Member exercises the right of appeal, until the Company confirms the resolution pursuant to clause 9.10.
- 9.7 A Member may appeal to the Company in general meeting against a resolution of the Board, which is confirmed under clause 9.10. Written notice of such an appeal must be lodged with the Secretary within seven days of service of the notice required under clause 9.5.
- 9.8 Upon receipt of a notice of appeal the Secretary must convene a general meeting of the Company to be held within 28 days after the date of receipt of the notice of appeal.
- 9.9 At a general meeting of the Company convened under clause 9.8:
- (a) no business other than the question of the appeal may be transacted;
  - (b) the Board and the Member must be given the opportunity to state their respective cases orally or in the writing, or both; and
  - (c) the Voting Members present must vote by secret ballot on the question of whether the resolution will be confirmed.
- 9.10 Confirmation of the resolution is by a simple majority of those Voting Members present.

## 10. Powers of attorney

- 10.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's Membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 10.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 10.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## 11. Representatives

- 11.1 Any body corporate which is a Member may by written notice signed by the chief executive (or equivalent) or his or her nominee to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
  - (b) remove a Representative.

- 11.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the body corporate which appointed him or her could exercise if it were a natural person (subject to the right of a body corporate Member to appoint a proxy pursuant to clause 25), except for voting, which is limited to Representatives of body corporate Voting Members;
  - (b) subject to any conditions set out in this Constitution concerning the appointment or election of Directors, stand for election as a Director; and
  - (c) in the event of the body corporate Member being a Voting Member, be counted towards a quorum on the basis that the body corporate Member is to be considered personally present at a general meeting by its Representative.
- 11.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 11.4 The chairperson of a general meeting may allow a Representative of a Voting Member to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 11.5 The appointment of a Representative may set out restrictions on the Representative's powers.
- 11.6 The actions of a Representative bind the body corporate Member which is represented by that particular Representative.
- 11.7 Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

## General meetings

### 12. Calling general meeting

**Note:** ACNC Governance Standard 2 requires, among other things, that the Company must take reasonable steps to ensure it is accountable to its members.

- 12.1 Any Director may, at any time, call a general meeting.
- 12.2 A Voting Member may:
- (a) only request the Board to call a general meeting in accordance with section 249D of the Corporations Act; and
  - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.
- 12.3 A general meeting of the Company may be convened at two or more venues using any technology that gives Members a reasonable opportunity to participate in the meeting.
- 12.4 The chairperson of a general meeting may invite any person who is not a Member to attend and address a meeting.
- 12.5 The Auditor shall be entitled to attend and address a general meeting.

## 13. Notice of general meeting

- 13.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 13.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (b) must state the general nature of the business to be transacted at the meeting; and
  - (c) if a special resolution is to be proposed, the details of and intention to propose it; and
  - (d) may specify a place, facsimile number and electronic address for the purposes of proxy appointment; and
  - (e) any other information required by the Corporations Act.
- 13.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the Annual Report; or
  - (b) the appointment and fixing of the remuneration of the Auditor.
- 13.4 The Board may postpone or cancel any general meeting:
- (a) whenever it thinks fit if it was convened by the Board;
  - (b) which has been convened pursuant to clause 12.2 upon receipt by the Company of a written notice withdrawing the requisition signed by that Voting Member or those Voting Members.
- 13.5 The Board must endeavour to give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 54.1 entitled to receive notices from the Company. However, any failure to notify any person entitled to receive a written notice shall not affect the validity of the cancellation or the postponement of the meeting.
- 13.6 With the exception of Original Members, the failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## Proceedings at general meetings

### 14. Member

In clauses 15, 16, 18 and 23, Member includes a Member present in person or by proxy, attorney or Representative.

### 15. Quorum

- 15.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

- 15.2 A quorum of Members shall be the Original Members and a majority in number of the other Voting Members.
- 15.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Board; and
    - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved; and
    - (iii) for the purposes of clause 15.3(b)(ii), a quorum shall be a majority of the Original Members and no other Voting Members.

## 16. Chairperson

- 16.1 The Chairperson, or in the Chairperson's absence the deputy chairperson, of Board meetings will be the chairperson at every general meeting.
- 16.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no Chairperson or deputy chairperson; or
  - (b) neither the Chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the Chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 16.3 If no election is made under clause 16.2, then:
- (a) the Voting Members may elect one of the Directors present as chairperson; or
  - (b) if no Director is present or is willing to take the chair, the Voting Members may elect one of the Voting Members present as chairperson.
- 16.4 The rulings of the chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

## 17. Adjournment

- 17.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so;
- to a time and place as determined.
- 17.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 17.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

- 17.4 Notice of an adjourned general meeting must only be given in accordance with clause 13.1 if a general meeting has been adjourned for more than 21 days.
- 17.5 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

## 18. Decision on questions

- 18.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 18.2 A resolution put to the vote of a meeting is to be decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 18.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 18.4 Before a vote on a resolution is taken, the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- 18.5 The demand for a poll may be withdrawn.
- 18.6 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## 19. Changes to Constitution

- 19.1 Notwithstanding any other provision of this Constitution or of the Corporations Act, a Special Resolution to change this Constitution shall not be carried unless all of the Original Members cast a vote in favour of the resolution.

## 20. Taking a poll

- 20.1 A poll will be taken when and in the manner that the chairperson directs.
- 20.2 A poll may be demanded:
- (a) before a vote on a resolution is taken;
  - (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.
- 20.3 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 20.4 The chairperson may determine any dispute about the admission or rejection of a vote.
- 20.5 The chairperson's determination, if made in good faith, will be final and conclusive.
- 20.6 If a poll is demanded it must be taken in such manner and at such time and place as the chairperson of the meeting directs, subject to clause 20.7.
- 20.7 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

20.8 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

20.9 The demand for a poll may be withdrawn.

## 21. Casting vote of chairperson

The chairperson does not have a casting vote.

## 22. Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
  - (i) electronic or recording device;
  - (ii) placard or banner; or
  - (iii) other article,

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

## Votes of Members

### 23. Entitlement to vote

23.1 Subject to this Constitution on a show of hands and on a poll every Voting Member has one vote.

### 24. Objections

24.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

24.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

24.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

### 25. Votes by proxy

25.1 A Voting Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

25.2 If a Voting Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may vote on a show of hands and on a poll.

25.3 A proxy need not be a Member but, in the case of an Original Member, the proxy should preferably not be the same person as the Original Member's nominee to the Board pursuant to clauses 29.2(b), 29.2(c), or 29.2(d)).

25.4 A proxy may demand or join in demanding a poll.



- 25.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.
- 25.6 A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- 25.7 The chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the chairperson that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity, he may be excluded from voting either upon a show of hands or upon a poll.

## 26. Document appointing proxy

- 26.1 An appointment of a proxy is valid if it is in the form set out in Schedule 1 and signed by the Voting Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Board may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 26.2 For the purposes of clause 26.1, an appointment received at an electronic address will be taken to be signed by the Voting Member if:
- (a) a personal identification code allocated by the Company to the Voting Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Board.
- 26.3 A proxy's appointment is valid at an adjourned general meeting.
- 26.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 26.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 26.6 If a proxy appointment is signed by the Voting Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.
- 26.7 An instrument of proxy may be revoked at any time by notice in writing to the Company.

## 27. Lodgement of proxy

- 27.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - (b) the taking of a poll on which the appointee proposes to vote.
- 27.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
  - (b) a facsimile number at the Company's registered office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## 28. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

# Appointment and removal of Directors

## 29. Appointment and removal of Directors

- 29.1 There shall be a maximum of 12 Directors unless the Board determines otherwise.
- 29.2 The Board of Directors shall comprise (subject to Clause 29.1):
- (a) the Executive Director of the Company as an Ex-officio voting member;
  - (b) two Directors appointed by the Vice-Chancellor of the University (**University Directors**);
  - (c) two Directors appointed by the Minister for Health ; one of those appointments shall be a senior executive of Sydney West Area Health Service or any successor in law to the said Sydney West Area Health Service (**NSW Government Directors**);
  - (d) two Directors appointed by WMRF (**WMRF Directors**) who are not subject to the direction or influence of the NSW Government or any higher education institution; and
  - (e) a maximum of five Independent Directors appointed by all of the Original Members. (**Independent Directors**).
- 29.3 The Independent Directors must not be subject to the direction or influence of the University of Sydney, the NSW Government or Sydney West Area Health Service or any successor in law to

Sydney West Area Health Service and must have expertise and experience (including without limitation in law or commerce) to provide proper stewardship and control of the Company.

- 29.4 The Vice-Chancellor of the University shall be entitled at any time to appoint, remove and replace the University Directors.
- 29.5 The Minister for Health shall jointly be entitled to appoint, remove and replace the NSW Government Directors.
- 29.6 WMRF shall be entitled to appoint, remove and replace the WMRF Directors.

## 30. Vacancies

- 30.1 (a) In the event that a University Director, WMRF Director or NSW Government Director vacates their position throughout a term, the Original Member who appointed that vacating Director will appoint another Director to fill that vacancy within three months of the vacancy occurring. The new Director will commence a new term and not merely fill the vacancy until the expiry of the term of the vacating Director.
- (b) In the event that the Original Member does not appoint a replacement Director within three months of the vacancy occurring, as required by clause 30.1, the Board may then appoint a person previously nominated by the Original Member as a Director to fill that casual vacancy, and the new Director will hold office until the expiry of the term of the vacating Director.
- 30.2 In the event that an Independent Director vacates their position throughout a term, the Original Members will appoint another Director to fill that vacancy who satisfies the criteria as set out in clause 29.229.3. The new Director will commence a new term and not merely fill the vacancy until the expiry of the term of the vacating Director.

## 31. Retirement

- 31.1 In relation to each Director (excluding the Executive Director):
- (a) Each Director must retire from office at the conclusion of three years from the date they were last appointed.
- (b) A retiring Director will be eligible for re-appointment up to a maximum of four consecutive terms. After a hiatus of one year, the Director will be eligible again for appointment to the Board.
- 31.2 In relation to the Executive Director:
- (a) The Executive Director will remain as a Director of the Board for so long as the Executive Director is employed by the Company as the Executive Director.
- (b) In the event that the Executive Director is no longer the Executive Director of the Company during a term of office as a Director of the Board, the Executive Director will automatically vacate his or her position as a Director of the Board and the succeeding Executive Director of the Company will be appointed as Director for the purposes of clause 29.229.2(a).

## 32. Vacation of office

**Note:** ACNC Governance Standard 4 requires, among other things, that the Company must take reasonable steps to ensure the directors are not disqualified under the Corporations Act or the ACNC Law from managing the Company.

- 32.1 Subject to the provisions of Part 2D of the Corporations Act, the office of a Director immediately becomes vacant if the Director:
- (a) dies;
  - (b) is prohibited by the Corporations Act from holding office or continuing as a Director;
  - (c) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Board incapable of performing his or her duties;
  - (d) resigns by notice in writing to the Company and the resignation shall take effect at the time expressed in the notice (provided that the time is not earlier than the date of delivery of the written notice to the Company); or
  - (e) is removed by a resolution of the Company in accordance with the Corporations Act;
  - (f) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (g) is absent from Board meetings for 6 consecutive months without leave of absence from the Board;
  - (h) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
  - (i) is a University Director, NSW Government Director or WMRF Director and is removed from office by the Original Member who nominated the Director by notice in writing, which may be given without any reason being ascribed to it;
  - (j) is an Independent Board Member whose continuation on the Board is opposed by all Original Members;
  - (k) is a Director referred to in clause 29.2(a) and is no longer the Executive Director of the Company; or
  - (l) is nominated by an Original Member and that Original Member is no longer a Member of the Company.

## 33. Executive Director

- 33.1 The Board shall appoint an Executive Director of the Company in consultation with the University. The Executive Director will be an eminent health and medical researcher and will oversee the research within the Company.
- 33.2 The Executive Director must be, or be appointable as, a Professor in the Sydney Medical School, The University of Sydney, and it is expected that such an appointment will be made, subject to the University's policies and guidelines.
- 33.3 The Executive Director will be responsible to the Board for the management and administration of the work of the Company.
- 33.4 Without affecting the generality of this clause 33, the Executive Director will:

- (a) determine and pursue the direction and program of the health and medical research and oversee such research of the Company;
- (b) conduct and supervise his or her own program of research within the Company;
- (c) use his or her best endeavours to enhance the reputation of the Company and the Original Members in the area of health and medical research;
- (d) implement the policies of the Company so far as the Company's resources permit;
- (e) prepare an annual report for the Board each financial year on the work and activities of the Company during the preceding year; and
- (f) exercise all other functions, duties and responsibilities as are determined by the Board from time to time; and
- (g) the Board may appoint an acting Executive Director who will have and may exercise the powers, duties and functions of the Executive Director.

33.5 The Board may revoke or vary the appointment of the Executive Director as it thinks fit.

## Powers and duties of Directors

### 34. Powers of Directors

- 34.1 The business of the Company is managed by the Board which may, subject to clause 34.2, exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 34.2 The Board must at all times while any of the Original Members are still Members of the Company:
- (a) adopt and evaluate their own governance principles;
  - (b) document and keep updated a corporate or business strategy containing achievable and measurable performance targets; and
  - (c) without limiting the provisions of clause 51, ensure that a protocol is established regarding reporting by the Board to the Original Members.
- 34.3 Without limiting the generality of clause 34.1, the Board may exercise all the powers of the Company to:
- (a) borrow money;
  - (b) charge any property or business of the Company;
  - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

## 35. Duties of Directors

**Note:** Concurrent with the adoption of the ACNC Law, the Corporations Act was amended so that the statutory duties of directors, and the business judgment rule, no longer apply (see s 111L of the Corporations Act). ACNC Governance Standard 5 requires, among other things, that the Company take reasonable steps to ensure that the Directors are subject to, and comply with, duties corresponding to those under the Corporations Act. The intent of clause 35 is to maintain the status quo as to the statutory duties of directors, and the business judgement rule, as each stood prior to the passing of s 111L).

- 35.1 If the provisions of the Corporations Act with regard to directors' duties do not apply to the Company, the following provisions of this clause 35 apply (but only as between the Directors and the Company).
- 35.2 Each Director of the Company must:
- (a) exercise the Director's powers and discharge the Director's duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
  - (b) act in good faith in the Company's best interests and further the purposes of the Company;
  - (c) not misuse the Director's position;
  - (d) not misuse information obtained in the performance of the Director's duties as a Director of the Company;
  - (e) ensure that the Company's financial affairs are managed in a responsible manner;
- 35.3 (a) A Director who makes a business judgment is taken to meet the requirements of clause 35.2, and their equivalent duties at common law and in equity, in respect of the judgment if they:
- (i) make the judgment in good faith for a proper purpose; and
  - (ii) do not have a material personal interest in the subject matter of the judgment; and
  - (iii) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
  - (iv) rationally believe that the judgment is in the best interests of the Company.
- (b) A Director's belief that the judgment is in the best interests of the Company is a rational one unless the belief is one that no reasonable person in their position would hold.
- (c) For the purposes of this clause 35.3, business judgment means any decision to take or not take action in respect of a matter relevant to the business operations of the Company.
- 35.4 In the exercise of the Director's duties under this clause 35 or at common law or in equity, the Director may reasonably rely on information, including professional or expert advice, in good faith and after the Director has made an independent assessment of the information, if that information has been given by:
- (a) an employee of the Company that the Director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
  - (b) a professional adviser or expert in relation to matters that the Director believes on reasonable grounds to be within the individual's professional or expert competence; or
  - (c) another Director in relation to matters within their authority or area of responsibility; or

- (d) an authorised committee of Directors that does not include the Director.

In determining whether the Director has made an independent assessment of the information or advice, regard must be had to the Director's knowledge of the Company and the complexity of the structure and operations of the Company.

## Proceedings of Directors

### 36. Board meetings

- 36.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that they shall meet together not less than six times each calendar year.
- 36.2 A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting.
- 36.3 A Board meeting must be called on at least 48 hours' notice of a meeting to each Director.
- 36.4 It is not necessary to give notice of a meeting of the Board to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 36.5 Subject to the Corporations Act, a Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 36.6 The Directors need not all be physically present in the same place for a Board meeting to be held.
- 36.7 Subject to clause 40, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 36.8 Clauses 36.5 to 36.6 apply to meetings of Board committees as if all committee members were Directors.
- 36.9 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 36.10 The quorum for a meeting of the Board is a majority of the total number of then Directors, of whom at least:
- (a) one must be a University Director; and
  - (b) one must be a NSW Government Director; and
  - (c) one must be a WMRF Director.
- 36.11 The quorum may be present in person or in conference in accordance with clause 36.5.
- 36.12 A Director who is disqualified from voting on a matter pursuant to clause 40 shall be counted in the quorum despite that disqualification.
- 36.13 Notice of a meeting of the Board may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.
- 36.14 All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

36.15 No resolution of the Board shall be invalid by reason of there being a vacancy in its membership.

## 37. Decision on questions

37.1 Questions arising at a meeting of the Board are to be decided by a majority of votes of the Directors present and voting and, subject to clause 40, each Director has one vote.

37.2 The chairperson of a Board meeting does not have a casting vote in addition to his or her deliberative vote.

37.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.

## 38. Special Matters

38.1 The Board of Directors shall ensure that the Company does not undertake any of the matters set out below without a majority vote of at least 80% of the votes cast by Directors present and entitled to vote on the matter:

- (a) the sale or purchase of assets having a value greater than \$100,000;
- (b) the borrowing of, or entering into any borrowing arrangement in respect of, an amount in excess of \$50,000;
- (c) the adoption or material variation of any business plan;
- (d) the adoption or material variation of any operating budget;
- (e) the making of any loan, credit facility, guarantee, or any other type of financial accommodation to any person otherwise than in the ordinary course of business and in accordance with the terms of this Constitution;
- (f) departure from the accounting standards or principles prescribed by law for the preparation of its accounts or financial statements;
- (g) the incorporation of a subsidiary or entry into any partnership, joint venture or agency agreement;
- (h) any material commercial transaction between the Company and a related party of the Company (as defined in section 228 of the Corporations Act);
- (i) subject to paragraph (b), the incurring of any liabilities in an amount in excess of \$100,000;
- (j) change this Constitution in any way.

38.2 The Company may not apply for research and infrastructure grants (national and international) which impose financial or other obligations on a Member or on Sydney West Area Health Service or Westmead Hospital without the consent of that Member, except to the extent that the Member is already committed to accepting the obligations under a separate agreement in place at the time of the grant application.



# Payments to Directors

## 39. Payments to Directors

No payment will be made to any Director of the Company other than a payment approved by the Board:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

## 40. Directors' interests

- 40.1 In accordance with s191 of the Corporations Act, a director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest.
- 40.2 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.3 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.4 A Director is not disqualified, merely because of being a Director, from contracting with the Company in any respect.
- 40.5 A Director or a body or entity in which a Director has a direct or indirect interest may:
  - (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than the Auditor; and
  - (c) act in a professional capacity other than as the Auditor,and, subject to clause 39, the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 40.6 A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:
  - (a) be present while the matter is being considered at the meeting; or

- (b) vote on the matter,

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

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

40.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

## 41. Alternate Directors

41.1 A Director may, with the prior approval of the Board, appoint any person (who is not already an existing Director of the Board) as his or her alternate for a period determined by that Director.

41.2 An Alternate Director is entitled to receive notice of Board meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.

41.3 An Alternate Director is an officer of the Company and is not an agent of the appointor. The Alternate Director may exercise any powers that the Director making the appointment may exercise, and if the Alternate Director does so exercise a power, it will be taken to be an exercise of power by the Director who appointed the Alternate Director.

41.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.

41.5 The Alternate Director may be terminated from the office of Director at any time, even if the period of initial appointment has not yet expired by either:

- (a) the Director who initially appointed that Alternate Director; or
- (b) the Board having passed a resolution terminating the appointment.

41.6 Any appointment or termination of an Alternate Director must:

- (a) be effected by a notice signed by the Director making the appointment or termination (or by the Secretary on behalf of the Board where the Board has terminated the appointment); and
- (b) be served on the Board; and
- (c) set out the terms (if any) of the appointment or termination.

## 42. Remaining Directors

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

42.2 If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Board may act only to:

- (a) appoint Directors to satisfy the quorum;

- (b) act in emergencies; or
- (c) call a general meeting.

## 43. Chairperson

- 43.1 The Chairperson will be elected by 80% majority of the University Directors, NSW Government Directors and the WMRF Directors from amongst the Directors referred to in clause 43.2.
- 43.2 The Independent Directors and the WMRF Directors will be eligible for election as the Chairperson.
- 43.3 The Chairperson will hold office for a term of three (3) years or until the Chairperson is no longer a Director, whichever occurs first. A Director who held office as the Chairperson is eligible for re-election as a Chairperson for so long as they satisfy the requirements referred to in clause 43.2.
- 43.4 The Chairperson will chair the Board meetings.
- 43.5 If the Chairperson is not present at any Board meeting within ten minutes after the time appointed for the meeting to begin, the remaining Directors present must, before conducting any other business of that meeting, elect a Director to be chairperson of the meeting.
- 43.6 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

## 44. Delegation

- 44.1
  - (a) The Board may from time to time confer upon any Director for the time being, or any other person as they may select, such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
  - (b) Powers conferred under this clause 44.1 may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- 44.2 The Board may delegate any of its powers, other than those which by law must be dealt with by the Board, to a committee or committees.
- 44.3 The Board may at any time revoke any delegation of power to a committee.
- 44.4 At least one member of each committee must be a Director.
- 44.5 A committee must exercise its powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.
- 44.6 A committee may be authorised by the Board to sub-delegate all or any of the powers for the time being vested in it.
- 44.7 Meetings of any committee of the Board will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if each member was a Director.

## 45. Written resolutions

- 45.1 The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 45.2 For the purposes of clause 45.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 45.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 45.4 The minutes of Board meetings must record that a meeting was held in accordance with this clause 45.
- 45.5 This clause applies to meetings of Board committees as if all members of the committee were Directors.

## 46. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Board committee; or
- (b) a person appointed to one of those positions was disqualified or not entitled to vote,
- all acts of the Board or the Board committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 47. Minutes and Registers

- 47.1 The Board must cause minutes to be made of:
- (a) the names of the Directors present at all Board meetings and meetings of Board committees;
- (b) all proceedings and resolutions of general meetings, Board meetings and meetings of Board committees;
- (c) all resolutions passed by the Board in accordance with clause 45;
- (d) all appointments of officers;
- (e) all orders made by the Board and Board committees; and
- (f) all disclosures of interests made under clause 40.
- 47.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 47.3 The Company must keep all registers required by this Constitution and the Corporations Act.

# Attorneys and Agents

## 48. Appointment of attorneys and agents

- 48.1 The Board may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a person in accordance with clause 48.2 to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions, determined by the Board.
- 48.2 An appointment by the Board of an attorney or agent of the Company may be made in favour of:
- (a) any company;
  - (b) the members, directors, nominees or managers of any company or firm; or
  - (c) any fluctuating body of persons whether nominated directly or indirectly by the Board.
- 48.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Board thinks fit.
- 48.4 An attorney or agent appointed under this clause 48 may be authorised by the Board to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

# Secretary

## 49. Secretary

- 49.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Board for a term and at remuneration and on conditions determined by the Board.
- 49.2 The Secretary is entitled to attend and be heard on any matter at all Board and general meetings.
- 49.3 The Board may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

# Seals

## 50. Common Seal

If the Company has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Board or a Board committee authorised to use the Seal;

- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Board to countersign the document.

## Report to Members

### 51. Annual Report

**Note:** ACNC Governance Standard 2 requires, among other things, that the Company must take reasonable steps to ensure it is accountable to its members.

- 51.1 The Company must provide an annual report (**Annual Report**) to the Members of the Company.
- 51.2 A copy of the Annual Report must be given to each Member in accordance with the provisions of clause 53.
- 51.3 The Annual Report must:
  - (a) include information about the Company's activities and finances for that year;
  - (b) include a Directors' report for that year;
  - (c) include a copy of the Company's Auditor's report for that year; and
  - (d) outline the procedure for members to follow should they wish to raise any questions or concerns about the Company's activities and finances including, but not limited to, providing the relevant contact details of the Company's auditor who prepared the audit report.

## Inspection of records

### 52. Inspection of records

- 52.1 Except as otherwise required by the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 52.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.

## Notices

### 53. Service of notices

- 53.1 Notice or any other information may be given by the Company to any person who is entitled to receive notice or any other information under this Constitution:
  - (a) by serving it on the person; or

- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 53.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 53.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 53.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 53.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 53.
- 53.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 53.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 53.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

## 54. Persons entitled to notice

- 54.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director and Alternate Director; and
  - (c) any Auditor.
- 54.2 No other person is entitled to receive notice of a general meeting unless the Board determines otherwise.

## Audit and accounts

### 55. Audit and accounts

- 55.1 The Board must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act and/or the ACNC Law (as the case may be).
- 55.2 The Board must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act and/or the ACNC Law (as the case may be).

# Winding up

## 56. Winding up

56.1 If the Company is wound up:

- (a) each Member; and
  - (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
    - (c) payment of debts and liabilities of the Company (in relation to clause 56.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
    - (d) adjustment of the rights of the contributories amongst themselves,
- the amount of \$2.00.

56.2 If any surplus remains following the winding up of the Company, the surplus must not be paid to or distributed amongst Members, but must be given or transferred to another corporation which, by its constitution, is:

- (a) has objects similar to the Objects only; and
- (b) which is charitable at law; and
- (c) which is endorsed as a DGR;

such corporation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

56.3 In the event that the Company ever has its endorsement as a DGR revoked, the Company must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another DGR, which is charitable at law and has objects similar to the Objects only, such DGR to be determined by the Members and failing such determination being made, by application to the Supreme Court for determination.

# Indemnity

## 57. Indemnity

57.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment) where the liability does not arise out of conduct involving a lack of good faith; and
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment) where judgment is given in favour of that person or in which the person is acquitted.



57.2 The amount of any indemnity payable under clauses 57.1(a) or 57.1(b) will include an additional amount (GST Amount) equal to any GST payable by the officer being indemnified (Indemnified Officer) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

## 58. Payment of Indemnity Policy Premium

58.1 To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an officer (or former officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (a) a liability (other than for legal costs) arising out of conduct involving a wilful breach of duty in relation to the Company;
- (b) a liability (other than for legal costs) arising out of a breach of clause 35 of this Constitution; or
- (c) a liability (other than for legal costs) arising out of a contravention of sections 182 or 183 of the Corporations Act.

58.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

58.3 Where an officer (or former officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions, then the Company shall not be required to indemnify the Officer under clause 57 except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

## 59. Indemnity to Continue

59.1 The indemnity granted by the Company contained in clauses 57 and 58 shall continue in full force and effect notwithstanding the deletion or modification of those clauses, in respect of acts and omissions occurring prior to the date of the deletion or modification.

# Schedule 1 – Form of Appointment of Proxy

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Westmead Institute for Medical Research  
Form of Appointment of Proxy

**PROXY FORM**

**(1) Your details**

*(Please print your name and address)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**(2) Appoints**

Name: \_\_\_\_\_  
*(Please print name of proxy)*

or failing the person so named, or if no person is named, the Chair of the Meeting to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chair sees fit at the General Meeting of Westmead Institute for Medical Research to be held on [insert date] commencing at [insert time] and at any adjournment thereof.

**(3) Directions**

**(4) Signature**

**(5) Date**