

Constitution

Perth Eye Foundation Limited

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Constitution of Perth Eye Foundation Limited

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Preliminary

1. Name of the Company

1.1 The name of the company is Perth Eye Foundation Limited (**Company**).

2. Objects

2.1 The Company is a company limited by guarantee and is a not-for-profit, non-political entity established and located in Australia for the purposes of promoting the prevention and control of blinding eye diseases such as cataract, glaucoma, macular degeneration and diabetic eye disease (**Eye Diseases**) (**Principal Purpose**).

2.2 The Principal Purpose will be furthered by means and activities related to Eye Diseases including:

(a) undertaking and supporting in areas of unmet need:

- (i) research into, distribution of new knowledge about and application of such knowledge to, eye health;
- (ii) education of the eye health workforce; and
- (iii) measures to improve diversity within eye health;

(b) working in partnership with other organisations with similar objects, to foster the delivery of eye health services; and

(c) providing funding to other organisations with similar objects and receiving funding from such organisations, whether as a beneficiary or otherwise.

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

(a) carry out the Principal Purpose in this clause 2; and

(b) do all things incidental, ancillary or convenient in relation to the exercise of power under clause 2.3(a).

3. Amending the Constitution

3.1 Subject to clause 3.2, the Ordinary Members may amend this Constitution by passing a special resolution.

3.2 The Ordinary Members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer comply with the requirements for registration as a charity with the ACNC.

Income and property of Company

4. Not-for-profit

4.1 The income and property of the Company will only be applied towards the promotion of the Principal Purpose of the Company set out in clause 2.

4.2 No income or property will be paid or transferred directly or indirectly to the Members of the Company except for payments:

- (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

5. Admission

- 5.1 The Company shall have no more than 50 Members.
- 5.2 Membership of the Company will be divided into the following categories:
 - (a) Ordinary Members; and
 - (b) Associate Members.
- 5.3 For the avoidance of doubt:
 - (a) the categories of membership give rise to the rights and obligations in this Constitution; and
 - (b) there does not need to be Members in a category of membership other than Ordinary Members.
- 5.4 The Directors may, in the best interests of the Company, and in their absolute discretion resolve to:
 - (a) admit an applicant to Associate membership;
 - (b) vary any categories of membership established under this clause 5 including the eligibility criteria upon which such categories are determined, and, acting reasonably, require Members to demonstrate their satisfaction of any such new criteria;
 - (c) specify additional information required for an application for membership;
 - (d) create new categories of membership; and
 - (e) establish any regulations or rules affecting the governance of the Company including the management of general meetings.
- 5.5 The Constitution shall be amended and republished to reflect changes in membership categories or membership eligibility criteria where the discretion of Directors is exercised under clause 5.4.
- 5.6 A person or entity is not entitled to have their name entered as a Member on the Register unless the person has first provided a written notice of consent signed by the person or entity.
- 5.7 Subject to clause 5.1, the Members of the Company will be as follows:
 - (a) Ordinary Members will comprise those who were directors of ESF (Australia) Pty Ltd as at 1 June 2019; and
 - (b) Associate Members will comprise any other persons, corporations or organisations whom or which the Directors admit to membership in accordance with this Constitution.
- 5.8 Applications for Associate Membership of the Company will be in writing, signed by the applicant, in a form approved by the Directors in their absolute discretion.
- 5.9 At the next meeting of Directors after the receipt of an application for membership as an Associate Member, the application will be considered by the Directors. The Directors will:

- (a) determine the admission or rejection of the applicant; or
 - (b) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- 5.10 Subject to clause 5.6, an applicant becomes an Associate Member when the Directors resolve to approve the application and admit the applicant to membership.
- 5.11 Subject to clause 5.6, a Director (other than an Initial Director or a Director appointed under clause 32) becomes an Ordinary Member on the date the person is appointed as a Director under clause 30.1.
- 5.12 The rights and privileges of the Members are personal to each Member and are not transferrable.

6. Subscriptions

The Directors may determine an annual subscription payable by the Members or the Members of a category of membership. The Directors must specifically resolve that there will be an annual subscription fee and if there is no such resolution, no fee shall be payable. If there is such a resolution, the Directors must specifically resolve the amount of the fee (plus GST), and the terms of the payment.

7. Rights of the Members

7.1 Each Ordinary Member shall have the right:

- (a) to call general meetings in accordance with clause 11.2 and receive notice of general meetings;
- (b) to be present and to be heard at general meetings;
- (c) to vote at general meetings including on motions;
- (d) to nominate for election to the Directors;
- (e) to propose or to second a nomination for election to the Directors; and
- (f) to propose motions for consideration at a general meeting.

For the avoidance of doubt, these rights refer to any general meeting, and such a meeting will be attended by the Members and the Directors.

7.2 Each Associate Member shall:

- (a) have the right:
 - (i) to receive notice of general meetings; and
 - (ii) to be present and to be heard at general meetings; and
- (b) not have the right:
 - (i) to vote at a general meeting;
 - (ii) to nominate for election to the Directors;
 - (iii) to propose motions; or
 - (iv) to propose or to second a nomination of a person for election to the Directors.

8. Ceasing to be a Member

8.1 A Member's membership of the Company will cease:

- (a) if that Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if the Directors resolve to expel a Member and terminate their membership under clause 62.4;
- (c) where the Member is an Ordinary Member, if they have not attended an annual general meeting for three consecutive years in person or by proxy;
- (d) 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;
 - (iii) is convicted of an indictable offence; or
 - (iv) has been found guilty of unprofessional conduct by a professional body;
- (e) where the Member is not an individual, 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; or
- (f) where, following the passing of a resolution of the Ordinary Members to wind up the Company, the Company is wound up.

9. Powers of attorney

- 9.1 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:
- (a) the Member must deliver the instrument appointing the attorney to the Company for notation;
 - (b) if the Company asks a Member to file with it a certified copy of the instrument referred to in clause 9.1 for the Company to retain, that Member will promptly comply with that request; and
 - (c) the Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

10. Representatives

- 10.1 Any corporation or organisation which is a Member may by written notice 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.
- 10.2 A Representative is entitled to exercise at a general meeting all the powers or rights which the corporation or organisation which appointed him or her could exercise if it were a natural person.
- 10.3 A Representative of an Ordinary Member may be counted towards a quorum on the basis that the Ordinary Member corporation or organisation is to be considered personally present at a general meeting by its Representative.
- 10.4 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.

- 10.5 The chairperson of a general meeting may allow a Representative of an Ordinary 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.
- 10.6 The appointment of a Representative may set out restrictions on the Representative's powers.

General meetings

11. Calling general meeting

- 11.1 Any Director may, at any time, call a general meeting.
- 11.2 Subject to clause 7 and the Corporations Act, an Ordinary Member may:
- (a) only request the Directors 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. Notice of general meeting

- 12.1 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 the Members of any general meeting.
- 12.2 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, including, without limitation, a telephone activated with a conference call or speaker phone facility, video conference, or Skype or any similar data streaming medium;
 - (b) must, subject to clause 12.3, state the agenda and general nature of the business to be transacted at the meeting; and
 - (c) may specify a place and electronic address for the purposes of proxy appointment.
- 12.3 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 financial report, Directors' report and the Auditor's report;
 - (b) the election of Directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 12.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 11.2).
- 12.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 54 entitled to receive notices from the Company.
- 12.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to the Member or the non-receipt of a notice (or form) by the Member does not invalidate the proceedings at or any otherwise valid resolution passed at the general meeting.

Proceedings at general meetings

13. Member

- 13.1 In clauses 14, 15, and 22, Member, Ordinary Member and Associate Member includes a Member, Ordinary Member and Associate Member present in person or by proxy or attorney or Representative.

14. Quorum

- 14.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 14.2 A quorum of Members is three Ordinary Members present in person, by proxy or Representative. If there is only one Ordinary Member, that Ordinary Member must be present for there to be a quorum.
- 14.3 If a quorum is not present within 15 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of an Ordinary Member, it is automatically dissolved; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place five Business Days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 15 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

15. Chairperson

- 15.1 The chairperson, or, in the chairperson's absence the deputy chairperson of Directors' meetings will be the chairperson at every general meeting.
- 15.2 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.
- 15.3 If no election is made under clause 15.2, then the Ordinary Members present may elect one of the Directors present as chairperson.
- 15.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

16. Adjournment

- 16.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting if the Ordinary Members present at the general meeting pass a resolution consenting to him or her doing so; and

- (b) must adjourn the general meeting if the Ordinary Members present at the general meeting pass a resolution directing him or her to do so.
- 16.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 16.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 16.4 Notice of an adjourned general meeting must only be given if a general meeting has been adjourned for more than 30 days.

17. Decision on questions

- 17.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the valid votes cast on the resolution are in favour of the resolution.
- 17.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 17.3 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.
- 17.4 The demand for a poll may be withdrawn.
- 17.5 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.

18. Taking a poll

- 18.1 A poll will be taken when and in the manner that the chairperson directs.
- 18.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 18.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 18.4 The chairperson's determination under clause 18.3, if made in good faith, will be final and conclusive.
- 18.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 18.6 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.

19. Casting vote of chairperson

- 19.1 The chairperson has a casting vote in addition to any chairperson's vote as an Ordinary Member, or a proxy or attorney of an Ordinary Member.

20. Offensive material

- 20.1 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.

21. Written resolution of Members

- 21.1 The Ordinary Members may pass a resolution without a general meeting being held if all the Ordinary Members 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 Ordinary Member entitled to sign the resolution signs.
- 21.2 For the purposes of clause 21.1, separate copies of a document may be used for signing by Ordinary Members if the wording of the resolution and statement is identical in each copy.
- 21.3 Any document referred to in this clause 21 may be in the form of a facsimile or electronic transmission.
- 21.4 The minutes of general meetings must record that a meeting was held in accordance with this clause 21.

Votes of Members

22. Entitlement to vote

Each Ordinary Member has one vote.

23. Objections

- 23.1 An objection to the qualification of a person to vote at a general meeting may only be raised at the general meeting or adjourned general meeting at which the voter tendered his, her or its vote.
- 23.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 23.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

24. Votes by proxy

- 24.1 If an Ordinary Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 24.2 A proxy need not be a Member.
- 24.3 A proxy of an Ordinary Member may demand or join in demanding a poll.
- 24.4 A proxy or attorney of an Ordinary Member may vote on a poll
- 24.5 A proxy of an Ordinary Member may vote or abstain as he or she chooses except where the appointment of the proxy under clause 25 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 a directed proxy in the manner directed.

25. Document appointing proxy

- 25.1 An appointment of a proxy is valid if it is signed by the Ordinary Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by subsection 250A(1) of the Corporations Act.
- 25.2 For the purposes of clause 25.1, an appointment received at an electronic address will be taken to be signed by the Ordinary Member if:
- (a) a personal identification code allocated by the Company to the Ordinary Member has been included in the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 25.3 A proxy's appointment is valid at an adjourned general meeting.
- 25.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 25.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney of the Ordinary Member 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.
- 25.6 If a proxy appointment is signed by an Ordinary 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. Lodgement of proxy

- 26.1 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.
- 26.2 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; or
 - (b) a place or electronic address specified for that purpose in the notice of meeting.

27. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid unless before the vote was cast the Ordinary Member revoked the proxy and written notification of the revocation was received by the Company before the relevant general meeting or adjourned general meeting.

Appointment and removal of Directors

28. Number and composition of Directors

- 28.1 The Company shall at all times have at least five Directors.
- 28.2 The Initial Directors of the Company hold office subject to this Constitution.
- 28.3 The Directors of the Company must comprise:
- (a) at least two persons who at the time of their appointment or reappointment are fellows of the Royal Australian and New Zealand College of Ophthalmologists; and
 - (b) three other persons who at the time of their appointment or reappointment have the skills and qualifications the Board considers necessary.
- 28.4 The Company may by resolution at an annual general meeting amend the composition of Directors as set out in clause 28.3.
- 28.5 The Directors must, during the time they hold office as a Director, be Ordinary Members of the Company under clause 5.2(a).
- 28.6 A person is not eligible for appointment as a Director unless the person has first provided a written notice of consent signed by him or her.

29. Responsible Persons

- 29.1 If required by law or by a Government Authority, a majority of the Directors must at all times be Responsible Persons.
- 29.2 If at any time the requirement in clause 29.1 is not met when it is required by law or by a Government Authority to be met, the Directors must not exercise any discretion or power until the requirement is met, except:
- (a) for the purpose of appointing an additional Director;
 - (b) to protect the assets of the Company; or
 - (c) in the case of emergency.

30. Appointment and removal of Directors

- 30.1 Subject to clauses 28 and 29, the Ordinary Members may by resolution passed:
- (a) appoint new Directors; and
 - (b) remove any Director and appoint another person in the Director's place.

31. Initial Directors

- 31.1 An Initial Director's term of office commences on the date of the registration of the Company as a company and ends on the date of the general meeting at which they retire in accordance with clause 31.2 (**Initial Term**).
- 31.2 The date upon which an Initial Director must retire from office will be determined as follows:
- (a) At the first annual general meeting after the registration of the Company, two of the Initial Directors must retire. The Initial Directors to retire under this subclause will be decided by lot unless otherwise agreed by the Initial Directors.
 - (b) At the second annual general meeting after the registration of the Company, two of the Initial Directors who have not retired under clause 31.2(a) must retire. The Initial Directors to retire under this subclause will be decided by lot unless otherwise agreed by the Initial Directors who have not retired under clause 31.2(a).
 - (c) At the third annual general meeting after the registration of the Company, the remaining Initial Directors who have not retired under clauses 31.2(a) or 31.2(b) must retire.
- 31.3 An Initial Director will be eligible for re-appointment at the end of their Initial Term.
- 31.4 If an Initial Director is re-appointed, the provisions of clause 34 will apply except that the Initial Term will not count towards the maximum number of terms specified in clause 34.4.

32. Additional Directors

- 32.1 Subject to clauses 28 and 29, the Directors may appoint any person as a Director as an addition to the existing Directors.
- 32.2 A Director appointed under clause 32.1 will hold office until the next annual general meeting of the Company when the Director may be re-appointed under clause 30.

33. Alternate Directors

- 33.1 A Director may, with the approval of a majority of the other Directors, appoint any person as his or her alternate for a period determined by that Director, subject to clause 33.2.
- 33.2 If the Director is a fellow of the Royal Australian and New Zealand College of Ophthalmologists, the Director must only appoint another fellow of the Royal Australian and New Zealand College of Ophthalmologists as his or her alternate.
- 33.3 An Alternate Director is entitled to notice of Directors' 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.
- 33.4 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 33.5 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 33.6 The appointment of an Alternate Director may be revoked at any time by the appointor.
- 33.7 An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- 33.8 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

34. Term of Office

- 34.1 Subject to clause 34.5 a Director (other than an Initial Director or Director appointed under clause 32) will hold office for a period of three years from the date the Director is appointed or reappointed (**Term**) commencing on the date of the annual general meeting at which they are appointed or reappointed.
- 34.2 Subject to clause 34.5, a Director must retire from office at the annual general meeting following the end of their Term.
- 34.3 Subject to clause 34.4, a retiring Director is eligible for re-appointment at the annual general meeting following the end of their Term.
- 34.4 A Director may only hold office for a maximum of three Terms.
- 34.5 If at an annual general meeting of the Company, more than two Directors would be required to retire pursuant to Clause 34.2, only two Directors will retire from office and those two Directors to retire will be decided by lot unless the Directors required to retire agree otherwise among themselves. The Director or Directors not chosen will continue to hold office until the next annual general meeting.

35. Vacation of office

- 35.1 The office of a Director immediately becomes vacant if the Director:
- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
 - (b) 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 Directors incapable of performing his or her duties;
 - (c) resigns by notice in writing to the Company;
 - (d) is removed by a resolution of the Company;
 - (e) is absent from Directors' meetings for 3 consecutive meetings without leave of absence from the Directors; or
 - (f) 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.

Powers and duties of Directors

36. Powers and duties of Directors

- 36.1 Subject to clause 2, the business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution or the Corporations Act do not require to be exercised by the Company in general meeting or by the Ordinary Members passing a resolution.
- 36.2 Without limiting the generality of clause 36.1, the Directors may exercise all the powers of the Company to:
- (a) register the Company with relevant regulators including but not limited to the ACNC, Commissioner and the Australian Securities and Investments Commission; and
 - (b) subject to clause 2, to:
 - (i) borrow money;

- (ii) charge any property or business of the Company;
 - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (iv) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 36.3 The Directors will cause the Company to comply with any obligations under the ACNC Act or any other legislation, including, without limitation, any governance standards and reporting requirements.
- 36.4 The Directors may appoint a person nominated by the Ordinary Members as the executive director to be responsible for the day to day management and general administration of the Company, subject to the Directors supervision and lawful direction.
- 36.5 The executive director will be entitled to brief the Members in relation to any of the activities of the Company.

Proceedings of Directors

37. Directors' meetings

- 37.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 37.2 A Directors' meeting must be called on at least five Business Days written notice of a meeting to each Director.
- 37.3 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able to simultaneously hear each other and to participate in discussion.
- 37.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 37.5 Subject to clause 47, 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.
- 37.6 Clauses 37.3 to 37.4 apply to meetings of Directors' committees as if all committee members were Directors.
- 37.7 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 37.8 A quorum for a Directors' meeting is not less than three of the Directors.
- 37.9 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may request that the Ordinary Members deal with the matter.
- 37.10 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

38. Decision on questions

- 38.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 47, each Director has one vote.

38.2 In the case of any equality of votes, the chairperson of a meeting shall have a casting vote in addition to his or her deliberative vote under clause 38.1.

39. Remaining Directors

39.1 The Directors may act even if there are vacancies on the board.

39.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting or the Directors are no longer compliant with clause 28.3, the Directors may act only to:

- (a) appoint an additional Director; or
- (b) recommend that the Ordinary Members appoint a Director in accordance with clause 30.1.

39.3 Within 28 days of the appointment of an additional Director under clause 39.2(a), the Directors must notify the Members of the appointment and request that the Ordinary Members either confirm at the next general meeting of the Company the appointment of the Director, or remove the Director and appoint another Director in accordance with clause 30.1(a).

40. Chairperson

40.1 The Ordinary Members may appoint a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office. The Ordinary Members may also appoint a Director as deputy chairperson to act as chairperson in the chairperson's absence.

40.2 If the chairperson and any deputy chairperson are not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

41. Delegation

41.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.

41.2 The Directors may at any time revoke any delegation of power to a committee.

41.3 A committee cannot bind the Company, can only make recommendations to the Directors and must exercise its powers in accordance with any directions of the Directors.

41.4 Unless the Directors determine otherwise, at least one Director must be a member of a committee.

41.5 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

41.6 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

41.7 Meetings of a Directors' committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member of the committee was a Director.

42. Remuneration

42.1 Subject to clause 42.3, the remuneration to be paid to Directors will be determined by the Board from time to time.

- 42.2 When setting Director remuneration, the Board will take into account the remuneration paid to directors of similar not-for-profit organisations.
- 42.3 Any increase in the aggregate annual remuneration to be paid to Directors requires approval of the Company by resolution passed at a general meeting.

43. Written resolutions

- 43.1 The Directors may pass a resolution without a Director's 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.
- 43.2 For the purposes of clause 43.1, 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.
- 43.3 Any document referred to in this clause 43 may be in the form of a facsimile or electronic transmission.
- 43.4 If a resolution is passed in accordance with this clause 43, the minutes of Directors' meetings must record that a meeting was held in accordance with this clause 43.
- 43.5 This clause 43 applies to meetings of Directors' committees established under clause 41 as if all members of the committee were Directors.

44. Validity of acts of Directors

- 44.1 If it is discovered that:
- (a) there was a defect in the appointment of a person as a Director or member of a Directors' committee; or
 - (b) a person appointed to one of those positions was disqualified,
- all acts of the Directors or the Directors' committee established under clause 41 before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

45. Minutes and Registers

- 45.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of the Company, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 43;
 - (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 47.
- 45.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 45.3 The Company must keep all registers required by this Constitution, the ACNC Act, the Corporations Act and any other regulatory or legislative requirements.

Payments to Directors

46. Payments to Directors

46.1 The Directors may receive payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors 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 Directors of the Company and where the amount payable is approved by the Directors of the Company 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 Directors of the Company, or under their delegation; 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.

46.2 In addition to any payments received by the Directors in accordance with clause 46.1, the Directors as a whole may be paid or provided reasonable remuneration for their services in accordance with clause 42.

47. Directors' interests

47.1 Each Director is obliged to inform the other Directors of any potential personal interest that a Director is aware of in a matter which is to be considered at a Directors' meeting.

47.2 If the Directors have, as a majority, determined that a particular Director has a personal interest in a matter that is being considered at a Directors' meeting, that particular Director must not:

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

47.3 The Directors may determine from time to time whether a Director has a personal interest for the purposes of clause 47.2 and, for the avoidance of doubt, a Director will not be precluded from being present at or voting at a Directors' meeting unless the Directors have made a determination in accordance with clause 47.2.

Attorneys and agents

48. Appointment of attorneys and agents

48.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person 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 Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,
determined by the Directors.
- 48.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
 - (b) any company;
 - (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 48.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 48.4 The Directors may appoint attorneys or agents by post, facsimile transmission or electronic transmission to act for and on behalf of the Company.
- 48.5 An attorney or agent appointed under this clause 48 may be authorised by the Directors 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 Directors for a term and on conditions determined by them.
- 49.2 In the event the Secretary is not also a Director of the Company, the Secretary is entitled to attend and be heard on any matter at all Directors' meetings.
- 49.3 The Directors may, subject to the terms of the Secretary's appointment, suspend, remove or dismiss the Secretary.

Seals

50. Common Seal

- 50.1 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
 - (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal; and
 - (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 Directors to countersign the document.

51. Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face; and
- (b) must not be used except with the authority of the Directors.

Inspection of records

52. Inspection of records

The financial records and other documents of the Company or any of them will be open for inspection by the Members at all reasonable times.

Notices

53. Service of notices

53.1 Notice may be given by the Company to any person who is entitled to notice 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 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.

53.5 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.

53.6 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.

Audit and accounts

55. Financial year

55.1 The Company's financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

56. Audit and accounts

56.1 The Directors must cause the Company to keep written financial records and any other records in relation to the business of the Company in accordance with the requirements of the Corporations Act and the ACNC Act.

56.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act and the ACNC Act as applicable.

Winding up

57. Winding up

57.1 The Company must be wound up if the Ordinary Members resolve that the Company should be wound up, and/or if the Company is required to be wound up at law.

57.2 If the Company is wound up, the Members undertake to contribute to the property of the Company for the payment of debts and liabilities of the Company and payment of costs, charges and expenses of winding up such amount as may be required, such amount not exceeding \$10 each.

57.3 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed to the Members or Directors, but will be given or transferred to another organisation which, by its constitution, is a charity registered under the ACNC Act or approved as such by the Commissioner, and, by its constitution, is:

- (a) required to pursue charitable purposes only that are similar to the Principal Purpose of the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its directors,

such organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Western Australia for determination.

57.4 If the Company is endorsed as having deductible gift recipient status under the ITAA 1997, upon the winding up of the Company any surplus:

- (a) gifts of money or property received by the Company for the Principal Purpose;
- (b) Deductible Contributions received by the Company in relation to a fund-raising event held for the Principal Purpose;

- (c) money received by the Company because of the gifts or Deductible Contributions mentioned in clauses 57.4(a) and 57.4(b) including, without limitation, any money received because of investment of those gifts or Deductible Contributions; and
- (d) assets held by the Company other than those mentioned above;

will not be paid to or distributed to the Members or Directors, but will be given or transferred to another fund, authority or institution:

- (e) which is charitable at law and has objects similar to the Principal Purpose of the Company;
- (f) gifts to which can be deducted under Division 30 of the ITAA 1997; and
- (g) which has constituent documents which prohibit the distribution of its income and property among its members on terms substantially similar to clause 4,

such fund, authority or institution to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Western Australia for determination.

Revocation of deductible gift recipient endorsement

58. Revocation of deductible gift recipient endorsement

58.1 If the Company's endorsement as a deductible gift recipient in accordance with Division 30 of the ITAA 1997 is revoked, any surplus:

- (a) gifts of money or property received by the Company for the Principal Purpose;
- (b) Deductible Contributions received by the Company in relation to a fund-raising event held for the Principal Purpose;
- (c) money received by the Company because of the gifts or Deductible Contributions mentioned in clauses 58.1(a) and 58.1(b) including, without limitation, any money received because of investment of those gifts or Deductible Contributions; and
- (d) assets held by the Company other than those mentioned above;

will not be paid to or distributed to the Members, but will be given or transferred to another fund, authority or institution:

- (a) which is charitable at law and has objects similar to the Principal Purpose;
- (b) gifts to which can be deducted under Division 30 of the ITAA 1997; and
- (c) has constituent documents which prohibit the distribution of its income and property among its members on terms substantially similar to clause 4,

such fund, authority or institution to be determined by the Members and in default, by application to the Supreme Court of Western Australia for determination.

Indemnity

59. Indemnity

- 59.1 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); or
 - (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).
- 59.2 The amount of any indemnity payable under clauses 59.1 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.
- 59.3 For the purposes of this clause 59, **officer** means:
- (a) a Director;
 - (b) a Secretary; or
 - (c) other officer.

Gifts or Deductible Contributions

60. Gifts or Deductible Contributions

- 60.1 The Company must cause receipts to be issued for any gifts or Deductible Contributions. Receipts for gifts must state:
- (a) the ABN of the Company; and
 - (b) the fact that the receipt is for a gift.
- 60.2 Receipts for Deductible Contributions must state:
- (a) the ABN of the Company;
 - (b) the fact that the Deductible Contribution was made in return for either or both:
 - (i) a right to attend or participate in a specific fund-raising event; and
 - (ii) the purchase of goods and services at an auction held at a fund-raising event;
 - (c) the amount of the Deductible Contribution if the Deductible Contribution is money; and
 - (d) the GST inclusive market value of the minor benefit provided in return for the Deductible Contribution.

Dispute resolution and disciplinary procedures

61. Dispute resolution

- 61.1 The dispute resolution procedure in this clause applies to disputes or disagreements under this constitution between a Member or Director and:
- (a) one or more Members
 - (b) one or more Directors, or
 - (c) the Company.
- 61.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 62 until the disciplinary procedure is completed.
- 61.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 61.4 If those involved in the dispute do not resolve it under clause 61.3, they must within 10 days:
- (a) notify the Directors of the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 61.5 The mediator referred to in clause 61.4(b) must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - (i) for disputes between Members, a person chosen by the Directors, or
 - (ii) for other disputes, a person chosen by either the Commissioner of the ACNC or the President of the Law Society of Western Australia.
- 61.6 A mediator chosen by the Directors under clause 61.5(b)(i):
- (a) may be a Member or former Member of the Company;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 61.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not seek to arbitrate or make a decision on the dispute.

62. Disciplining Members

- 62.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:
- (a) the Member has breached this Constitution; or

- (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 62.2 At least 14 days before the Directors' meeting at which a resolution under clause 62.1 will be considered, the Secretary must notify the Member in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
 - (b) that this resolution will be considered at a Directors' meeting and the date of that meeting;
 - (c) what the Member is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the Member may provide an explanation to the Directors, and details of how to do so.
- 62.3 Before the Directors pass any resolution under clause 62.1, the Member must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Directors' meeting; and/or
 - (b) speaking at the Directors meeting at which a resolution under clause 62.1 will be considered..
- 62.4 After considering any explanation under clause 62.3, a majority of the Directors present and voting at the meeting of Directors may by resolution determine to:
- (a) take no further action;
 - (b) warn the Member;
 - (c) suspend the Member's rights as a Member for a period of no more than 12 months;
 - (d) expel the Member and terminate their membership;
 - (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or
 - (f) require the matter to be determined at a general meeting.
- 62.5 The Directors cannot fine a Member.
- 62.6 The Secretary must give written notice to the Member of the decision under clause 62.4 as soon as possible.
- 62.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 62.8 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

Definitions and interpretation

63. Defined terms

63.1 In this Constitution unless the contrary intention appears:

ACNC means the Australian Charities and Not-for-profits Commission as established under the ACNC Act and includes any other regulator which subsequently takes over the functions of the

Australian Charities and Not-for-profits Commission, including without limitation, the Australian Taxation Office and the Australian Securities and Investments Commission as applicable.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth) as modified or amended from time to time, and includes any regulations made under those Acts, any exemption or modification to those Acts, and also includes any legislation or regulation which replaces or supplements those Acts including, without limitation, the ITAA 1997.

Alternate Director means a person appointed as an alternate director under clause 33.

Applicable Not-for-Profits Law means any laws relating to the regulation and operation of charities or not-for-profit entities applicable to the Company, including the ITAA 1997 and the ACNC Act.

Associate Member means a person admitted to membership under clause 5.7(b).

Auditor means the Company's auditor (if any).

Authority means any government or any public, statutory, governmental, semi-governmental, local governmental, municipal or judicial body, entity or authority and includes a Minister of the Crown (in any right), and any person, body, entity or authority exercising a power pursuant to an Act of Parliament.

Business Day means:

- (a) for receiving a notice under clause 53, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia, Australia.

Commissioner means the Federal Commissioner of Taxation in Australia or his or her authorised delegates.

Company means the company referred to in clause 1.1.

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.

Deductible Contribution means a contribution that is deductible under items 7 or 8 of the table in subsection 30-15(2) of the ITAA 1997 and any amendment or re-enactment of these.

Director includes any person occupying the position of director of the Company.

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

Eye Diseases has the meaning given in clause 2.1.

GST means goods and services tax payable pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Director means the persons who have consented to act as directors and are set out in the Company's application for registration as a company.

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

Member means person whose name is entered from time to time on the Register.

Ordinary Member means a member under clause 5.7(a).

Principal Purpose has the meaning given in clause 2.1.

Register means the register of Members of the Company.

Representative means a person appointed as such under clause 10.

Responsible Person means an individual who:

- (a) satisfies the requirements of subsection 45-20(3) of the ACNC Act, which are persons that:
 - (i) are not disqualified from managing a corporation within the meaning of the Corporations Law; and
 - (ii) have not been disqualified by the Commissioner of the ACNC at any time during the preceding 12 months, from being a responsible entity of a registered charity; and
- (b) who satisfy the requirements of the Commissioner for being a 'responsible person', and imposed by the Applicable Not-for-Profits Law, as amended or replaced from time to time.

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

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company under clause 49 and if there are joint secretaries, any one or more of those joint secretaries.

- 63.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

64. Interpretation

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.

65. Reading this Constitution with the Corporations Act

- 65.1 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.
- 65.2 While the Company is registered as a charity with the ACNC, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- 65.3 If the Company is not registered as a charity with the ACNC, the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.

