

CONSTITUTION OF ARTHRITIS NSW

ACN 000 587 299

ABN 64 528 634 894

Company limited by guarantee

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1. Name of the Organisation

The name of the organisation shall be Arthritis NSW.

2. Definitions

In this Constitution:

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

Annual General Meeting or **AGM** is given the meaning as it appears from time to time in the Corporations Act 2001 (Cth).

Board means the Directors of the Company from time to time.

Business Day means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

Company means Arthritis NSW ACN 000 587 299.

Constitution means this constitution as amended or supplemented from time to time.

Corporate Representative means a person authorised in accordance with the Corporations Act by a Member which is a body corporate to act as its representative at a meeting of Members.

Corporations Act means the *Corporations Act 2001 (Commonwealth)*.

Director means a person who is, for the time being, a director of the Company.

Legal Costs of a person means legal costs calculated on a solicitor-and-client basis incurred by a person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

Liability of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate but does not include any liability arising from fraudulent behaviour of the person nor an act of wanton disregard for the interests of the Company

Member means a person whose name is entered in the Register as a member of the Company.

Notice means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

Personal Representative means the legal personal representative, executor or administrator of the estate of a deceased person.

President means the position set out in clause 18.

Register means the register of Members kept pursuant to the Corporations Act and, where appropriate, includes any branch register.

Registered Charity means a charity that is registered under the ACNC Act.

Relevant Officer means an "officer" as defined by the Corporations Act from time to time.

Secretary means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

Surplus Assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

Vice President means the position set out in clause 18.

3. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a reference to this constitution or any other document is a reference to this constitution or that other document as varied, novated or replaced in any way;
- (b) a word importing the singular includes the plural (and vice versa);
- (c) a word indicating a gender includes every other gender;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) the word "includes" in any form is not a word of limitation;
- (f) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (g) a reference to person includes firm, corporation, body corporate, unincorporated association and a governmental authority;
- (h) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this document, their substitutes and assigns;
- (i) an agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally;
- (j) a reference to includes means includes but without limitation;
- (k) a reference to a clause is a reference to a clause of this Constitution;
- (l) a reference to time is to the time in the place where a thing is to be done, unless specified otherwise;

- (m) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law;
- (n) a reference to a law includes any law, principle of equity, statute and official directive of any government agency; and
- (o) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements of it and any regulation or other statutory instrument issued under it.

4. Application of Corporations Act

- (a) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
 - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution or modified due to the ACNC Act; and
- (b) The replaceable rules in the Corporations Act do not apply to the Company.
- (c) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- (d) If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.

5. Enforcement

- (a) Each Member submits to the non-exclusive jurisdiction of the courts of the New South Wales Supreme Court, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
 - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

6. Objectives and Purposes of the Company

- (a) The objectives of the Company are to provide public benevolent relief to people in New South Wales who live with or who are impacted by arthritis and other musculoskeletal conditions.
- (b) The Company pursues the objectives through a range of activities and services that may include but are not limited to:
 - (i) providing information, education and services to support people living with arthritis and associated musculoskeletal conditions;
 - (ii) contributing to, and promoting research into the causes and treatment of arthritis and associated musculoskeletal conditions;
 - (iii) advocating for the development of policies and programs with government and other organisations which aim to promote quality of life for people with arthritis and other associated musculoskeletal conditions; and
 - (iv) doing anything ancillary or incidental to the objectives.

7. Application of income and property

- (a) Subject to clauses 7(b) and 7(c), the Company must apply the profits (if any), income and property of the Company solely towards the promotion of the objects of the Company set out in clause 6 and no portion of it may be paid or transferred, directly or indirectly, to any Member whether by way of dividend, or bonus.
- (b) The Company must not pay fees to or on behalf of Directors but the Company may make payments to a Director in good faith for:
 - (i) the payment or reimbursement of out-of-pocket expenses reasonably incurred by a Director in the performance of any duty as a director of the Company where that payment or reimbursement has been approved by the President, and complies with the Board Reimbursement Policy or guide that the Company has in force at the time;
 - (ii) for all usual professional or other charges for work done by any Director, being a solicitor, accountant or other person engaged in any profession or that person's firm or employer, 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;
 - (iii) an insurance premium in respect of a contract insuring a Director or Secretary for a liability incurred as an officer of the Company where the Board has approved the payment of the premium; or
 - (iv) any payment pursuant to clause 30.
- (c) Clause 7(a) does not prevent the Company from making the following payments provided they are done in good faith:

- (i) reasonable and proper remuneration to any employee of the Company;
- (ii) reasonable and proper amounts to any Member in return for any goods or services they provide to the Company;
- (iii) reimbursement in good faith of out-of-pocket expenses incurred on behalf of the Company where such expenses have been appropriately authorised in accordance with processes as determined by the Board from time to time;
- (iv) any other sums payable under this Constitution; and
- (v) for any other bona fide reason or purpose for the attainment of the objectives in clause 6.

8. Membership of Arthritis NSW

- (a) Any person is eligible to apply to become a Member.
- (b) To become a Member, each applicant must complete an application in the form the Board determines, and pay any subscription fee which the Board determines.
- (c) The Company may, at the Board's discretion, charge an annual subscription fee for Members.
- (d) The Board may at a regular meeting, determine in its absolute discretion whether an applicant may become a Member.
- (e) The Board may in its discretion from time to time, create, modify or change membership categories.
- (f) Subject to clause 8(c) membership will be awarded upon receipt by the Company of the written application form and payment of annual subscription.
- (g) Members have the following rights:
 - (i) to receive notices of and to attend general meetings;
 - (ii) to nominate for election and to be appointed as a Director; and
 - (iii) to exercise one vote at a general meeting and on resolutions put to the membership including but not limited to a resolution for an election of a Director.
- (h) A Member who has not paid any subscription payable under clause 8(b) or 8(c) by the due date may not exercise any of their membership rights and privileges while the subscription remains unpaid or until clause 9 (a) applies.
- (i) If an application to become a Member is accepted by the Board, the Company must enter the applicant's name in the Register.

- (j) If an application to become a Member is rejected by the Board, the Company must give written notice of the rejection to the applicant and refund in full the fee (if any) paid by the applicant within 60 days, without the necessity to give any reasons.
- (k) Failure by the Company to comply with any notice requirement in clause 8(jj) does not invalidate the decision regarding an application.
- (l) The liability of Members is limited.
- (m) Consistent with clause 8(l), every Member of the Company undertakes to contribute to the assets of the Company in the event of the Company being wound up while he/she is a Member or within one year after he/she ceases to be a Member, for payment of debts and liabilities. Such amount will not exceed twenty dollars.
- (n) Members listed as Honorary Life Members in the Register as at the adoption date of this Constitution will remain Honorary Life Members (entitling them to membership as a Member free from subscription fees) until they otherwise cease to be Members in accordance with this Constitution. The category of Honorary Life Member will otherwise cease and no further individuals will be admitted as Honorary Life Members.

9. Cessation of Membership

- (a) If the annual membership subscription remains unpaid for 4 months without reason after it becomes due, the name of such Members shall be removed by the Board from the Register, provided that the Board will restore the name of the Member to the Register upon payment of all arrears, if the Board deems it appropriate to do so.
- (b) A Member may at any time by giving notice in writing to the Chief Executive Officer or President resign his or her membership. Unless otherwise stated on the notice, resignation by a Member takes effect immediately from the date of receipt of that notice by the Company.
- (c) A person ceases to be a Member if they die, or in the case of a Corporate Member, the Company is wound up.
- (d) If any Member:
 - (i) wilfully refuses or neglects to comply with the provisions of the Constitution of the Company;
 - (ii) is guilty of any conduct which in the opinion of the Board is unbecoming of a Member;
 - (iii) that is a Corporate Member, becomes, or takes any steps to become, insolvent, under administration or an externally administered body corporate; or
 - (iv) prejudices the interest or reputation of the Company,

the Board shall have the power to expel the Member from the Company and remove the Member's name from the Register.

- (e) Clause 9(d) is made subject to the provision that at least one week prior to a Board meeting at which a Member's expulsion is to be considered, the Member shall be given notice of such meeting and of the allegations against the Member giving rise to the motion to expel the Member from the Company. At the meeting the Member will have the opportunity to address the Board, either orally or in writing, and give an explanation or defence that he or she sees fit. Any explanation or defence the Member wishes to rely on must be submitted to the Secretary at least twenty-four hours prior to the meeting at which the resolution for his or her expulsion is to be considered.

10. Effect of Cessation

- (a) A person who ceases to be a Member:
 - (i) remains liable to pay to the Company, all outstanding amounts that at the date of cessation were payable by that person to the Company as a Member. In addition any amounts payable under clause 8(m), if any, will also be payable by the Member.
- (b) The Company by a Board resolution may waive any of the outstanding amounts owed by a person who ceases to be a Member.

Proceedings of Members

11. Calling general meetings of Members

- (a) A formal meeting of the Members is a general meeting.
- (b) A general meeting may be held using any technology approved by the Board that gives the Members a reasonable opportunity to participate.
- (c) A Member who participates in a general meeting using that technology is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.
- (d) The Board may call and arrange to hold an Annual General Meeting.
- (e) The business of an Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:
 - (i) the consideration of any annual financial statements, Directors' declaration and Directors' report and auditor's report;
 - (ii) the election or announcement of Directors;
 - (iii) the appointment and payment of the auditor; if any.
- (f) The Board must call a general meeting upon the written request of:

- (i) 5% of Members of the Company if the Company has 200 Members or more as at the date of the request; or
 - (ii) 10% of Members of the Company if the Company has less than 200 Members as at the date of the request.
- (g) Upon the written request of:
- (i) 5% of Members of the Company, if the Company has 200 Members or more as at the date of the request; or
 - (ii) 10% of Members of the Company, if the Company has less than 200 Members as at the date of the request;
- the Board must include the proposed resolution for consideration at the next general meeting of the Company that occurs more than 2 months after the written request is given.
- (h) For the purposes of clause 11 (f) and 11(g):
- (i) a requisition may be in electronic form, and
 - (ii) a signature may be transmitted, and a requisition may be lodged, by electronic means.

12. Notice of general meetings

- (b) At least twenty-one days notice (excluding the day of the meeting) shall be given of a general meeting.
- (c) Subject to clause 12(c), where the Company has called a meeting, notice of the meeting may be given in the form and in the manner which the Board resolves, subject to any requirement in the Corporations Act.
- (d) The notice of a general meeting must:
 - (i) specify the place, the day and the time of the meeting (and, if the meeting is to be held by technology, the technology that will be used to facilitate this);
 - (ii) state the general nature of the meeting's business to be conducted at the meeting; and
 - (iii) set out the wording of the proposed resolution; and
 - (iv) indicate if a special resolution is to be proposed at the meeting; and
 - (v) include any prescribed information in clause 17.
- (e) Notice of a general meeting shall be given to:
 - (i) to every Member; and
 - (ii) to every Director and the auditor for the time being of the Company.

13. Quorum

- (a) No business shall be transacted at a general meeting unless a quorum is present.
- (b) A quorum for a general meeting is five Members entitled to vote on a resolution at that meeting. If a quorum is not present within 15 minutes from the time appointed for a general meeting:
 - (i) in the case of a meeting convened at the request of Members—the meeting must be dissolved;
 - (ii) in any other case — the meeting must be adjourned to a date, time and place as determined by the President or the individual who would have been chair of the meeting with the consent of the Directors. If within thirty minutes of the start of the adjourned meeting a quorum is not present, the Members present being not less than three shall constitute a quorum.
- (c) Except in the case of a general meeting called at the request of Members, the Board may by resolution, cancel, postpone or change the venue of a general meeting at any time prior to the meeting. The Board must give reasonable notice of the postponement, cancellation or change of venue to all persons entitled to receive notice of a general meeting

14. Chairperson of General Meetings

- (a) The President or his/her delegate, shall preside as chairperson at every general meeting of the Company.
- (b) If at a meeting;
 - (i) the President is unwilling or unavailable, the Vice President or his/her delegate shall preside; or
 - (ii) if the Vice President is unavailable or unwilling to act as chairperson,the Members present shall elect a chairperson.
- (c) A chairperson of a general meeting may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her.
- (d) Subject to the Corporations Act, the chairperson of a general meeting is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (e) The chairperson of a general meeting may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (f) The chairperson of a general meeting may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.

- (g) The chairperson of a general meeting may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (h) The chairperson of a general meeting may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to this Constitution without being referred to in the notice of meeting.

15. Voting at a general meeting

- (a) At any general meeting a resolution put to the vote of the meeting shall be decided upon a show of hands, unless a poll (before or after the show of hands) is demanded by:
 - (i) the chairperson; or
 - (ii) at least three Members present in person or by proxy.
- (b) If a poll is duly demanded and held it shall be taken in such manner as determined by the Chairman.
- (c) Subject to this Constitution and any rights or restrictions of a class of Members, on a show of hands at a general meeting, each Member in attendance having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution and any rights or restrictions of a class of Members, on a poll at a general meeting, each Member in attendance having the right to vote on the resolution has one vote for each Member that this Member represents.
- (e) Except where a resolution at a general meeting requires a special resolution pursuant to the law, the resolution is passed if more votes are cast by Members entitled to vote in favour of the resolution than against it.
- (f) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a general meeting following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.
- (g) In the case where the vote is equal (either by show of hands, or by a poll) the chairperson shall have a second and deciding vote.
- (h) The Board may determine that at any general meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A “direct vote” includes a vote delivered to the Company by any means approved by the Board, which may include post or electronic means. The Board may prescribe by-laws in

relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

16. Restrictions on voting rights

- (a) A Member who is of unsound mind or who is liable to be dealt with under the laws relating to mental health, may vote by the person responsible for his estate or his legal representative. This shall be the case both on a show of hands and a poll.
- (b) No Member shall be entitled to vote at any general or annual general meeting if their annual subscription is unpaid and overdue at the date of the meeting.
- (c) The authority of a proxy or attorney for a Member to speak or vote at a general meeting to which the authority relates is suspended while the Member is present in person at that meeting.
- (d) A Member is not entitled to vote on a resolution at a general meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (e) The Company must disregard any vote on a resolution at a general meeting purported to be cast by a Member where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

17. Proxies for General Meetings

- (a) A Member who is entitled to attend and vote may appoint a person in proxy to attend and vote for the Member.
- (b) The Board may prescribe a form of proxy but a proxy will be valid provided an instrument appointing a proxy is in writing, contains the Member's name and address, the Company's name, the proxy's name or the office held by the proxy, the meeting at which the appointment may be used and how the proxy is to vote on the matter/s before the meeting.
- (c) The form appointing the proxy must be received by the office of the Company not less than forty-eight hours prior to the meeting or adjourned meeting, otherwise, the proxy may not vote at the meeting without the approval of the chairperson.
- (d) If the name of the proxy or the name of the office of the proxy in the proxy appointment is not filled in, the proxy of that Member is:
 - (i) the person specified by the Company in the form of proxy in the case that Member does not choose; or
 - (ii) if no person is so specified, the chairperson of that meeting.

18. Appointment and election of Directors

- (a) The Board will comprise such number of Directors as the Board determines, being a number not less than five and not more than nine Directors.
- (b) A Director must be a Member or Corporate Representative.
- (c) The Board in appointing a person as a Director under clause 18(i) will prescribe selection criteria for candidates and:
 - (i) where available, have regard to having a Director on the Board that is a representative of the branches or support groups; and
 - (ii) ensure that the Board is represented by at least one Director that is a person affected by arthritis and/or other musculoskeletal conditions.
- (d) Following the Annual General Meeting the Board shall elect from amongst their number, the following officer bearers:
 - (i) President; and
 - (ii) Vice President.
- (e) Subject to clause 18(g), the Board may determine the period for which a Director is to hold the office of President or Vice President.
- (f) The President and Vice President have such powers and duties as specified in this Constitution, and as determined by the Board.
- (g) The maximum term that a Director may serve as President is 3 consecutive years. The maximum term that a Director may serve as Vice President is 3 consecutive years.
 - (i) Any time served by a Director as President or Vice President prior to the 2021 Annual General Meeting will not count in determining the maximum term under this clause 18(g).
- (h) The election or re-election of the Directors shall take place in the following manner:
 - (i) Subject to this clause 18(h), the Board may determine the procedures for the conduct of elections and the nomination process.
 - (ii) Members entitled to vote may, prior to the annual general meeting at which a Director retires or at which a vacancy in the position of Director exists, determine an eligible Member or Corporate Representative to fill the vacated position by electing an individual to that office in accordance with procedures determined by the Board for the conduct of a ballot.

- (iii) Prior to the Annual General Meeting, the Board must give notice of the number of vacancies that may be filled and invite nominations from eligible individuals for election as Directors.
 - (iv) Nominations of candidates for election as a Director must be received by the Secretary in the time prescribed in the by-laws.
 - (v) The nomination form will:
 - 1. be in writing in the form as determined by the Board;
 - 2. include any required information (such as the candidate's skills and experience) as determined by the Board from time to time;
 - 3. contain the signed consent of the candidate.
 - (vi) At the close of nominations if there are more candidates for election than there are vacant Director positions to be filled, then a ballot will be conducted.
 - (vii) The voting instructions and processes shall be as prescribed by the Board and set out in the by-laws.
 - (viii) The Board will appoint a returning officer for the ballot who must not be a Director or a candidate.
 - (ix) If at the close of nominations there are the same number or fewer candidates for election than there are vacant Director positions to be filled then all eligible nominations shall be deemed to have been elected subject to clause 18(h)(x) and no ballot shall be held. Any resulting vacancies in the position of Director shall be casual vacancies to which clause 18(i) applies.
 - (x) The result of the election process shall be announced at the Annual General Meeting and, if a ballot has not been completed, shall be subject to endorsement by separate ordinary resolution of the Board for each candidate.
- (i) The Board shall have the power at any time to appoint any Member or Corporate Representative to the Board to either fill a casual vacancy, or as an addition to existing Board members. This can be done on the basis that the number of Board members shall not at any time exceed the number fixed in accordance with clause 18(a). Any Member or Corporate Representative so appointed shall hold office only until the time of the next Annual General Meeting unless his/her appointment is confirmed at that meeting. Any time served by the appointee until that Annual General Meeting will not count in determining the maximum term limit in clause 19(b).

19. Retirement of Directors

- (a) At each Annual General Meeting, two Directors will retire from office. The two Directors that will retire from office will be those who have served the longest in office since their appointment or re-election.
- (b) A retiring Director will be eligible for re-election however a Director may serve on the Board for a maximum of 9 consecutive years. At the completion of the ninth consecutive year, or if the Director ceases to be a Director for any reason during the ninth consecutive year, they will not be eligible to be appointed or elected a Director until at least 24 months has passed from when they ceased to be a Director.
- (c) For the purpose of clause 19(a), if there are more than two Directors who have served equal terms of office since their appointment or re-election, it will be determined by lot to defer retirement of one of the Directors to the following year's Annual General Meeting.
- (d) The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

20. Vacation of office of Director

- (a) Subject to clauses 20(b) & 20(c), an individual vacates their office of Director at the conclusion of the Annual General Meeting at which they retire or their term of office expires subject to them being re-appointed or re-elected a Director in accordance with this Constitution.
- (b) A Director may resign by giving written notice to the Company through the Secretary of their intention to resign and the resignation will take effect at the time of receipt of the notice or a later time expressed in the notice.
- (c) The office of a Director becomes vacant if the Director:
 - (i) is prohibited from holding or is no longer eligible to hold office as a director pursuant to the Corporations Act or the ACNC Act;
 - (ii) becomes an individual who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
 - (iii) dies;
 - (iv) becomes bankrupt or makes any arrangement or composition with their creditors generally unless the Board resolves otherwise;
 - (v) is convicted on indictment of an offence and the Board does not within 2 months after that conviction resolve to confirm the Director's appointment to the office of Director;
 - (vi) is absent from all meetings of the Board during a 6 months' period, with or without the consent of the Board, unless at the next meeting of the Board, the Board resolves otherwise;

- (vii) has failed to disclose a material personal interest that would be required to be disclosed under the Corporations Act or ACNC Act, unless at the next meeting of the Board, the Board resolves otherwise;
 - (viii) ceases to be a Member;
 - (ix) is removed as a Director by an ordinary resolution of the Company in general meeting, subject to the Corporations Act; or
 - (x) is, or becomes a paid employee of the Company.
- (d) The Board may act even if there are vacancies on the Board. If the number of Directors is reduced below the minimum of five in clause 18(a), the continuing Directors may act only:
- (i) in an emergency; or
 - (ii) for the purposes of appointing additional eligible individuals as Directors up to the minimum number; or
 - (iii) to convene a general meeting.

21. Secretary

- (a) A Company Secretary shall be appointed by the Board.
- (b) Subject to an agreement between the Company and the Secretary, the Board may vary or terminate the appointment of the Secretary at any time, with or without cause.

22. Powers and Duties of the Board

- (a) The business of the Company is to be managed by or under the direction of the Directors who may 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.
- (b) The Board may exercise the power to borrow and to mortgage or charge its property or any part thereof whether outright or as security for any debt, liability or obligation of the Company.
- (c) The Board must decide on the responsible financial management of the Company including:
 - (i) any suitable written delegations of power under clause 23, and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved..
- (d) The Board may make and from time to time revoke or amend by-laws not inconsistent with this Constitution to govern procedures and activities of

the Company. The by-laws, as they are in effect from time to time, bind the Directors and the Members.

- (e) For the avoidance of doubt, the Board's powers specified in this clause 22 are subject at all times to clause 6.

23. Committees and delegates

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, clause 24 applies with the necessary changes to meetings and resolutions of a committee of the Board.

24. Board Proceedings

- (a) Subject to this Constitution, the Board shall meet together to conduct business, adjourn and otherwise regulate its meetings as it thinks appropriate. The President and one other Board member may summon a meeting of the Board if they deem it appropriate.
- (b) A Board meeting may be held using technology that allows the Directors in attendance to communicate with each other clearly and simultaneously.
- (c) A Director participating in a meeting by technology in accordance with clause 24(b) is taken to be present in person at the meeting.
- (d) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (e) Resolutions of the Board shall be decided by a majority of votes and where there is any equality of votes, the chair of the meeting shall have the right to a second or casting vote.
- (f) Until otherwise determined by the Board, a quorum for a Board meeting is a majority of Directors in office at the time of the meeting.. A quorum for a Board meeting must be present at all times during the meeting.
- (g) The President will preside as chairperson at every Board meeting. Where the chairperson is unavailable or not in attendance at least ten minutes after the scheduled commencement of the meeting or is unwilling to chair, the Vice President, or other nominated Board member shall chair the meeting.

- (h) If a majority of the Directors entitled to vote on a resolution have signed a document to the effect that they support the resolution (the terms of which are set out in the document), then a resolution in those terms is taken to have been passed by the Board without a meeting. The resolution is passed when the document is last signed by the Directors who constitute such a majority.
- (i) For the purposes of clause 24(h):
 - (i) two or more separate documents in identical terms, each of which is signed by one or more Directors, is to be treated as one document; and
 - (ii) any form of electronic transmission including an email, containing the text of the document expressed to have been signed by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.
- (j) Any document referred to in clauses 24(h) and 24(i) must be sent to every Director who is entitled to vote on the resolution.

25. Company Seal

- (a) The Board shall provide for safe custody of the seal which shall only be used under the authority of the Board. Every document to which the seal is affixed shall be signed by the President and one other nominated Board member.

26. Interests of Directors

- (a) A Director is disqualified from holding a place of profit or employment in the Company or related body corporate of the Company.
- (b) Subject to clause 26(a), a Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
 - (i) holding a place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
 - (ii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
 - (iii) entering into any agreement or arrangement with the Company; or
 - (iv) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (c) Each Director must comply with Corporations Act and the ACNC Act in relation to the disclosure of the Director's interests.

- (d) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act or the ACNC Act.
- (e) If a Director has an interest in a matter, then subject to clause 26(d), clause 26(f) and this Constitution:
 - (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
 - (ii) that Director may participate in and vote on matters that relate to the interest;
 - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and
 - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (f) If an interest of a Director is required to be disclosed pursuant to clause 26(c), clause 26(e)(iv) applies only if the interest is disclosed before the transaction is entered into.
- (g) A Board Director may sit on the Board of another organisation where that organisation does not present a conflict of interest.
- (h) A Board Director shall not sit on the Board of Arthritis Australia or Osteoporosis Australia because of a conflict of interest.

27. Financial Management

- (a) The Board will ensure true and proper accounting and financial records be kept and provide copies of the profit & loss account and balance sheet (including every document required by law to be attached) to every Annual General Meeting.
- (b) An annual audit shall be conducted by a qualified auditor appointed by the Board. The remuneration of the auditor shall be fixed by the Board.
- (c) The Board may determine whether and to what extent, at what times and places and under what conditions, the accounting records and other documents of the Company, will be open to the inspection of Members other than Directors. A Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Board.

- (d) Payments shall be made in good faith and based on agreed remuneration to employees of the Company.
- (e) The Company shall abide by the wishes of the estate in regard to all bequests which are received, using the funds as stipulated by the deceased's Will.

28. Winding Up

- (a) Subject to the Corporations Act and ACNC Act, if upon winding up or dissolution of the assets, there remains after payment of all debts and liabilities, any assets (including Gift Funds), the same shall not be paid or distributed to Members but shall be given or transferred to one or more charities:
 - (i) whose objects are similar to the objects of the Company;
 - (ii) whose constitution prohibits the distribution of its or their income or assets to Members to no lesser extent than that imposed on the Company pursuant to clause 28; and
 - (iii) that are endorsed as a deductible gift recipient.
- (b) If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any Gift Funds must be transferred to one or more charities that meet the requirements of 28(a)(i),(ii) and (iii).
- (c) The decision as to the charity or charities to be given the Surplus Assets must be made by a special resolution of Members at or before the time of winding up or dissolution. If the Members do not make this decision, the Company may apply to the Supreme Court of New South Wales to make this decision.
- (d) For the purpose of this clause:
 - (i) **Gift Funds** means:
 - A. gifts of money or property for the principal purpose of the Company;
 - B. Contributions made in relation to a Fund-Raising Event held for the principal purpose of the Company; and
 - C. money received by the Company because of such gifts and contributions.
 - (ii) **Contributions** and **Fund-Raising Event** have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

29. Amendments to the Constitution

The Company may modify or repeal the Constitution or a provision of the Constitution by special resolution of the Members.

30. Indemnity and insurance

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to clause 30(a):
 - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
 - (iii) applies to Liabilities and Legal Costs incurred both before and after this clause became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
 - (i) enter into, or agree to enter into; or
 - (ii) pay, or agree to pay, a premium for,a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
 - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) indemnify that person against any Liability and Legal Costs of that person;
 - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
 - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).