

Constitution of
Hunter Medical Research Institute

ACN 081 436 919 (“Company”)

A Company Limited by Guarantee

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1 Definitions and Interpretation

1.1 Definitions

In this Constitution unless a contrary intention appears:

Alternate Director means a person appointed as an Alternate Director under clause 22.1

Appointed Director means a Director appointed under clause 10.4.

Auditor means the auditor for the time being of the Company.

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

Board Development Committee means the committee constituted under clause 18(e)(iii).

Business Day means the period from 9.00am to 5.00pm during a day of the week that is not a Saturday, Sunday or public holiday in New South Wales.

Chairman means the Chairman appointed under clause 21.1.

Committee means a committee constituted under clause 18.

Community Director means a Director elected under clause 10.3(b).

Company means Hunter Medical Research Institute being an Australian Public Company Limited by Guarantee established under the Corporations Act 2001 (Commonwealth) which bears the Australian Business Number (ABN) 27 081 436 919 and the principal place of business of which is HMRI Clinical Research Centre, John Hunter Hospital, Lookout Road, New Lambton, NSW 2305.

Constitution means this Constitution as amended from time to time and a reference to a clause is a reference to a clause of this Constitution.

Corporations Act means the Corporations Act 2001 (Commonwealth).

Director means a person holding office as Director of the Company.

Directors means all or some of the persons holding office as Directors of the Company.

Deputy Chairman means the Deputy Chairman appointed under clause 21.1.

Financial Year means each twelve (12) month period ending on 30 June or such other date as determined by the Board and approved by ASIC.

Foundation Chairman means the chairman of the Hunter Medical Research Foundation.

General Meeting means a meeting of the Members of the Company.

Health and Medical Research means the formal, experimental study of human health and disease processes and includes, but is not limited to, scientific research, clinical research, population health research, health service research and clinical trials.

Hunter Medical Research Foundation means the committee constituted under clause 18(e)(ii).

HMRI Scientific Advisory Committee means the committee constituted under clause 18(e)(i).

Hunter New England Health means the Hunter and New England Area Health Service (ABN 24 500 842 605) constituted by the Health Services Act 1997 (NSW) and its successors.

Institute means the Hunter Medical Research Institute and includes any successor to that Institute.

Institute Director means the person appointed from time to time in accordance with clause 17.

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

Register means the register of Members under the Corporations Act and if appropriate includes a branch register.

Registered Office means the registered office for the time being of the Company.

Related Body Corporate has the same meaning it has in the Corporations Act.

Representative means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

Rule means a rule made by the Board in accordance with clause 15.

Schedule means a schedule to this Constitution.

Seal means the common seal (if any) of the Company.

Secretary means a person appointed as a secretary of the Company and includes an honorary Secretary and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

University means the University of Newcastle, Australia (ABN 15 736 576 735).

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders,
- (b) the singular includes the plural and vice versa,
- (c) a reference to a law includes regulations and instruments made under the law,
- (d) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise,
- (e) a power, an authority or a discretion reposed in a Director, the Directors, the company in general meeting or a Member may be exercised at any time and from time to time,
- (f) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors,
- (g) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise,
- (h) a reference to an amount paid on a share includes an amount credited as paid on that share, and

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

1.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

1.4 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act, and
- (b) “section” means a section of the Corporations Act.

1.5 Headings

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

1.6 Replaceable rules do not apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2 Purpose of the Company

2.1 Objects

The objects of the Company are:

- (a) to initiate, promote, undertake, develop, conduct, carry out and directly facilitate Health and Medical Research through grants or donations,
- (b) to conduct Health and Medical Research into the causes, prevention, control, relief or cure of all types of human diseases and conditions,

- (c) to bring about the prevention, control, relief or cure of all types of human diseases and conditions,
- (d) to collate, assess and promote the results of the Health and Medical Research,
- (e) to make available knowledge obtained from the Health and Medical Research by way of publication, training and other means to the health and medical professions and to the general public,
- (f) to act as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects,
- (g) to do such other things as are incidental or conducive to the attainment of these objects, and
- (h) to do all or any of the things authorised by the Corporations Act.

3 Powers

The Company has the legal capacity and powers of an individual and also has all the powers of a Body Corporate under the Corporations Act.

4 Application of income for Objects only

4.1 Profits

The profits (if any) or other income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the purposes of the Company as set out in clause 2.1, and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

4.2 Payment in good faith

The above clause does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

- (a) of remuneration for services to the Company,
- (b) for goods supplied in the ordinary course of business,
- (c) of interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Company in a general meeting, or
- (d) of a reasonable rent for premises let by a Member.

5 Winding Up

5.1 Contributions by Members

- (a) Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within one year after they cease to be a Member.
- (b) This contribution is for:
 - (i) payment of the Company's debts and liabilities contracted before they ceased to be a Member,
 - (ii) the costs of winding up, and
 - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$20.

5.2 Application of Property

- (a) If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:
 - (i) having objects similar to the objects of the Company, and

- (ii) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as imposed on the Company under this Constitution.
- (b) The institution will be determined by the Members at or before the time of dissolution.

5.3 Revocation of Australian Tax Office Endorsement

- (a) Where the Company has established a tax deductible gift fund and has been endorsed as a deductible gift recipient in relation to that or any other fund under Subdivision 30-BA of the Income Tax Assessment Act 1997 (Commonwealth) (as amended), then where:

- (i) the Company is wound up, or
 - (ii) the gift fund is wound up, or
 - (iii) the endorsement under Subdivision 30-BA of the Income Tax Assessment Act 1997 (Commonwealth) is revoked,

then any surplus assets of the fund remaining after payment of all liabilities must be transferred to an institution or fund that complies with clause 5.2 and is an endorsed deductible gift recipient.

- (b) Where the Company operates more than one gift fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act 1997 is revoked only in relation to one of those gift funds then it may transfer any surplus assets of the fund after payment of all liabilities to any other gift fund for which it is endorsed as a deductible gift recipient.

6 Membership

6.1 Number of Members

- (a) The minimum number of Members of the Company will be nine (9) Full Members or such greater number as the Directors determine from time to time, subject to that number complying with the Corporations Act.

- (b) The Members at the date of adoption of this Constitution and any person the Directors admit to Membership under clause 6.2 are the Members of the Company.
- (c) The Directors may from time to time increase or decrease the maximum number of Members.

6.2 Admission as a Member

The Directors may admit any person or corporation as a Member if the person or corporation is eligible under clause 6.3 and agrees to be bound by this Constitution in any manner the Directors determine.

6.3 Membership Criteria

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

- (a) be proposed and seconded by an existing Member,
- (b) pay any subscription that may be prescribed by the Directors from time to time, and
- (c) consent in writing to become a Member of the Company.

6.4 Membership Process

- (a) The application for Membership must be made:
 - (i) in writing, signed by the applicant, and
 - (ii) in such form as the Directors from time to time prescribe.
- (b) Each application for Membership must be considered by the Directors at the meeting of Directors first occurring after the application is made. At that meeting the Directors must determine whether to admit the applicant to Membership of the Company or whether to reject the application.
- (c) When an applicant has been accepted or rejected for Membership the Secretary must immediately notify the applicant of the decision of the Directors.

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

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

6.6 Membership classes

- (a) The classes of Membership of the Company are:
 - (i) Full Members,
 - (ii) Associate Members, and
 - (iii) Life Members.
- (b) Each Full Member of the Company has the right to receive notice of, attend and vote at general meetings of the Company.
- (c) Each Associate Member and Life Member of the Company has the right to receive information about the Company's activities but is not entitled to attend or vote at general meetings of the Company.

6.7 The Secretary must keep a Register setting out the name and address of each Member and whether or not each Member is entitled to vote at general meetings of the Company.

7 Ceasing to be a Member

7.1 Cessation of Membership

A Member ceases to be a Member on:

- (a) death,
- (b) resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice,
- (c) failing to pay any subscription that may be prescribed by the Directors from time to time for a period of twelve months after the subscription was due and payable,

- (d) becoming of unsound mind or a person whose personal estate is liable to be dealt with in any way under a law related to mental health,
- (e) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally,
- (f) the passing of a resolution by the Directors or Members in general meeting pursuant to clause 7.2,
- (g) that Member (who is a corporation) going into liquidation whether voluntarily or compulsorily except for the aims of reconstruction or amalgamation,
- (h) that Member (who is a partnership) being dissolved for any reason provided that if more than half the former partners continue to carry on the former partnership business under the same name with or without new partners the new partnership will be entitled to continued Membership,
- (i) that Member ceasing to be a Director (in such circumstances the Member is able to make a new application for Membership pursuant to clause 6.2 and 6.4), or
- (j) termination of that Member's appointment as a Director pursuant to clause 13.

7.2 Termination of Membership

- (a) Subject to this Constitution the Directors or Members in a general meeting may at any time censure, suspend or terminate the Membership of a Member if the Member:
 - (i) refuses or neglects to comply with this Constitution or any applicable Rules or regulations made by the Directors,
 - (ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company, or
 - (iii) fails to pay any debt due to the Company for a period of three months after the date for payment.

- (b) For a decision of the Directors or the Members in general meeting under this clause 7.2 to be effective the dispute resolution procedure contained in clause 30 must be followed. The general nature of the allegations made against the Member must be notified to the Member and for the purposes of clause 30.1(a) this notification will be the notice of the Dispute.

7.3 Limited liability

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

8 General Meetings

8.1 Annual general meetings

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

8.2 Business of annual general meetings

The business of the Company's annual general meeting is to receive and consider the financial report, the Directors report and the Auditors report and to appoint and fix the remuneration of the Auditors.

8.3 Convening a general meeting

The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.

8.4 Notice of a general meeting

Notice of a meeting of Members must be given in accordance with clause 36 and the Corporations Act.

8.5 Calculation of period of notice

In computing the period of notice under clause 8.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.6 Cancellation or postponement of general meeting

- (a) Where a meeting of Members (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause 8.6 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

8.7 Notice of cancellation or postponement of a meeting

- (a) Notice of cancellation, postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:
 - (i) to each Member individually, and
 - (ii) to each other person entitled to be given notice of a meeting of the Company's Members under the Corporations Act.

8.8 Contents of notice of postponement of meeting

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting,
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting, and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

8.9 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

8.10 Business at postponed meeting

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

8.11 Proxy at postponed meeting

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date, and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy,

then, by force of this clause 8.11, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

8.12 Non-receipt of notice

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

8.13 Director entitled to notice of meeting

A Director is entitled to receive notice of and to attend all general meetings and is entitled to speak at those meetings.

9 Proceedings at general meetings

9.1 Reference to a Member

Unless a contrary intention appears, a reference to a Member in this clause 9 means a person who is a Full Member or a proxy of that Member.

9.2 Number of a quorum

- (a) Subject to clause 9.1, five (5) of the current Members (at least three of whom are Directors) present in person or by proxy are a quorum at a general meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy is to be counted, except that:
 - (i) where a Member has appointed more than one proxy, only one is to be counted, and
 - (ii) where an individual is attending both as a Member and as a proxy, that individual is to be counted only once.

9.3 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the Chairman of the meeting (on the Chairman's own motion or at the request of a Member or proxy who is present) declares otherwise.

9.4 If quorum not present

If within thirty (30) minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director or at the request of Members, is dissolved, and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

9.5 Adjourned meeting

At a meeting adjourned under clause 9.4(b), four (4) of the current Members (at least two (2) of whom are Directors) each being a Member or proxy present at the

meeting are a quorum. If a quorum is not present within fifteen minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

9.6 Appointment and powers of Chairman of general meeting

If the Directors have elected one of their number as Chairman of their meetings, that person is entitled to preside as Chairman at a general meeting.

9.7 Absence of Chairman at general meeting

If a general meeting is held and:

- (a) a Chairman has not been elected by the Directors, or
- (b) the elected Chairman is not present within 25 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the following may preside as chair of the meeting (in order of precedence):

- (c) the Deputy Chairman if a Director has been so elected by the Directors, or
- (d) a Director or Member elected by the Members present to preside as Chairman of the meeting.

9.8 Conduct of general meetings

- (a) The Chairman of a general meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting,
 - (ii) may require the adoption of any procedure which is, in the Chairman's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting, and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chairman considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the Chairman under this clause is final.

9.9 Adjournment of general meeting

- (a) The Chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
 - (i) in exercising the discretion to do so, the Chairman may, but need not, seek the approval of the Members present in person or by proxy, and
 - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the Chairman, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

9.10 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

9.11 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

9.12 Equality of votes – casting vote for Chairman

If there is an equality of votes, either on a show of hands or on a poll, then the Chairman of the meeting is entitled to a casting vote in addition to any votes to which the Chairman is entitled as a Member or proxy or attorney or Representative.

9.13 Voting on show of hands

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the Chairman that a resolution has on a show of hands

been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the Chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

9.14 Poll

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the Chairman and the result of the poll is the resolution of the meeting at which the poll was demanded,
- (b) on the election of a Chairman or on a question of adjournment, it must be taken immediately,
- (c) the demand may be withdrawn, and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

9.15 Votes of Members

- (a) Every Member has one vote.
- (b) Subject to this Constitution:
 - (i) on a show of hands, each Member present in person and each other person present as a proxy of a Member has one vote, and
 - (ii) on a poll, each Member present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

9.16 Right to appoint proxy

- (a) Subject to the Corporations Act, a Member entitled to attend a meeting of the Company is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has

the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.

- (b) The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct his proxy to vote in favour of or against any proposed resolutions., The proxy may vote as he thinks fit unless otherwise instructed.
- (c) No Member, and no other person, may hold and vote in accordance with more than three proxies.
- (d) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.
- (e) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority will be deposited at the registered office of the Company, or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid.
- (f) A vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of such death unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office by 5pm on the day before the commencement of the meeting or adjourned meeting at which the instrument is used.

9.17 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies, or
- (b) the Member revokes the appointment or authority.

9.18 Objection to voting qualification

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

10 Directors

10.1 Number of Directors

The number of Directors shall be such number not less than nine (9) or more than twelve (12) as determined by the Board of Directors from time to time, subject to clause 10.2.

10.2 Change of number of Directors

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number of Directors is to retire from office.

10.3 Composition of Board of Directors

The Board shall be comprised of the following Directors:

- (a) no more than six (6) Appointed Directors,

- (b) between two (2) and five (5) members of the community who shall be independent persons with a demonstrated interest and capacity to act in the general interests of the community (Community Directors) including the Foundation Chairman elected at general meeting, and
- (c) the Institute Director appointed in accordance with clause 17.

10.4 Appointed Directors

The following persons are entitled to be Appointed Directors:

- (a) two (2) or three (3) persons nominated by Hunter New England Health, and
- (b) two (2) or three (3) persons nominated by the University

provided that at no time may the Appointed Directors under clause 10.4(a) or 10.4(b) constitute a majority of the Board of Directors.

10.5 Directors elected at general meeting

The Company may, at a general meeting at which a Community Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

10.6 Qualification of Directors

- (a) To be eligible for the office of a Director or to fill a casual vacancy, a person must:
 - (i) be a Full Member of the Company,
 - (ii) consent in writing to act as a Director (and if seeking election as an Community Director at a general meeting of the Company for the first time, the signed consent must be lodged at the Registered Office at least thirty (30) days before the general meeting), and
 - (iii) (except in the case of an Appointed Director or the Institute Director) not be a member of the governing body, an officer, or an employee of Hunter New England Health or the University, other than conjoint employees of the University.

- (b) A majority of the Directors must be persons who, because of their tenure of some public office or other position or activity in the community, have a responsibility to the community as a whole, and a high degree of responsibility to the public in controlling and administering the Company.

10.7 Election of officers

- (a) At the second meeting of the Directors held following the Company's adoption of this Constitution, the Directors shall elect the officers of the Company. Thereafter, the Directors shall elect those officers with such frequency as the Directors from time to time determine.

10.8 Rotation of Community Directors

- (a) At each annual general meeting a third of the Community Directors for the time being, or, if their number is not three nor a multiple of three, then the number nearest one third, and any other Community Director who has held office for three years or more since last being elected, must retire from office.
- (b) In determining the number of Community Directors to retire, account is not to be taken of a Community Director who only holds office until the conclusion of the meeting in accordance with clause 10.11.
- (c) The Community Directors to retire at any annual general meeting in accordance with this clause must be those who have been longest in office since their last election, but, as between persons who were last elected as Community Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.
- (d) The Members may by Ordinary resolution remove any Community Director before the expiration of that Community Director's period of office, and may by an Ordinary Resolution appoint another person in the place of that Community Director.

10.9 Re-election and Reappointment of Community Directors

Community Directors are entitled to seek re-election and reappointment as Directors on three (3) occasions only so that a Director's period of service to the Company shall not exceed a period of twelve (12) years.

10.10 Rotation of Appointed Directors

The appointor of an Appointed Director:

- (a) may at any time remove the Appointed Director from office, and
- (b) will re-affirm the appointment of each Appointed Director every three years from the date of appointment of that Appointed Director. If the appointor fails to re-affirm the appointment of any Appointed Director, the Appointed Director continues in the position of Director until either re-affirmed or removed by the appointor.

Any appointment, re-affirmation or removal of an Appointed Director must be in writing served on the Company.

10.11 Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting at which that Director retires but, subject to this clause 10 is eligible for re-election.

10.12 Casual vacancy or additional Director

- (a) The Directors may at any time appoint any person to be a Community Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with this clause 10.
- (b) A Director appointed under this clause holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

11 Remuneration and employment of Directors

11.1 Remuneration as Directors

The Directors may not be paid any remuneration for their services as Directors.

11.2 Paid employment of Directors

A Director may be a paid employee of, or be interested in any contract to provide services to, the Company provided:

- (a) such contract or services are not in breach of any provision of the *Charitable Fundraising Act 1991* (NSW); and
- (b) the provisions of the *Corporations Act* with regard to material personal interests, and registration of the Company without the word “Limited”, are complied with.

12 Expenses of Directors

A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company. Any payment to a Director must be approved by the Directors.

13 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health,
- (b) resigns from the office by notice in writing to the Company,
- (c) becomes insolvent or bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditors,
- (d) is absent personally or by proxy or Alternate Director at three successive meetings of the Directors without leave of absence from the Directors,
- (e) becomes prohibited for being a Director by reason of any order of any court of competent jurisdiction, or
- (f) (except in the case of an Appointed Director or the Institute Director) becomes member of the governing body, an officer, or an employee of Hunter New England Health or the University.

14 Powers and duties of Directors

14.1 Directors to manage the Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

14.2 Specific powers of Directors

Without limiting the generality of clause 14.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company, and to give any security for a debt, liability or obligation of the Company or of any other person.

14.3 Delegation to officers and employees

- (a) The Directors may at any time delegate any of its powers to an officer or employee of the Company subject to any conditions or limitations which the Board sees fit to impose and the Directors may, at any time, revoke or vary a delegation made under this clause 14.3.
- (b) Notwithstanding any delegation made under this clause 14.3, the Directors may continue to exercise any or all of its powers.

15 Rules

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

16 Appointment of attorney

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.

- (b) A power of attorney granted under this clause 16 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

17 Institute Director

- 17.1 The Directors shall appoint an Institute Director who will be an eminent health and medical researcher as determined by the Directors. The Institute Director will oversee the research within the Institute.
- 17.2 The Institute Director will be responsible to the Directors for the management and administration of the work of the Company and the Institute.
- 17.3 Without affecting the generality of this clause 17 the Institute Director will:
 - (a) be the chief executive officer of the Company,
 - (b) pursue a program of scientific or clinical research and oversee all scientific and clinical work of the Institute,
 - (c) conduct and supervise his or her own program of research within the Institute,
 - (d) use his or her best endeavours to enhance the good name of the Institute and through that the hospitals administered by Hunter New England Health in the areas of teaching and research and the University of Newcastle,
 - (e) implement the policies of the Directors so far as the Company's resources permit,
 - (f) prepare an annual report for the Directors each Financial Year on the work and activities of the Institute during the preceding year, and
 - (g) exercise all other functions, duties and responsibilities as are determined by the Directors from time to time.

- 17.4 The Directors may appoint an acting Institute Director who will have and may exercise the powers, duties and functions of the Institute Director.
- 17.5 The Directors may revoke or vary the appointment of the Institute Director as they see fit.

18 Board committees

- (a) The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of any person they think fit.
- (b) Any committee formed in accordance with this clause 18 shall be constituted according to Terms of Reference adopted at a meeting of the Directors. The Terms of Reference must contain the:
- (i) name of the committee,
 - (ii) purpose of the committee,
 - (iii) membership,
 - (iv) chair,
 - (v) scope,
 - (vi) delegated authority, including the power to establish sub-committees and the terms of reference of such sub-committees,
 - (vii) proceedings (meetings, quorum, minutes),
 - (viii) reporting requirements, and
 - (ix) duration, including revision and term.
- (c) A committee to which any powers have been delegated under this clause 18 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.
- (d) Any committee formed under this clause 18 shall include in its membership at least one (1) Director.

- (e) Notwithstanding the generality of this clause 18 there shall be the following committees:
- (i) the HMRI Scientific Advisory Committee,
 - (ii) the Hunter Medical Research Foundation, which shall be responsible for advising the Board of Directors on matters to do with fundraising and promotion of the work of the Company, and
 - (iii) the Board Development Committee, which shall be responsible for advising the Board of Directors on matters to do with corporate governance, including the appointment and nomination of suitable persons as Directors and Officers of the Company and members of committees.

19 Powers of delegation

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by Section 198D of the Corporations Act.

20 Proceedings of directors

20.1 Directors meetings

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.
- (c) A meeting of Directors includes the Directors communicating with each other by any technological means by which they are able to participate in discussion where the Directors (or any one or more of them) are not physically present in the same place. A Director participating in such a meeting is deemed to be present (including for the aims of constituting a quorum) and entitled to vote at the meeting.

20.2 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

20.3 Alternate Director or proxy and voting

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or a proxy. If that person is also a Director, then that person also has one vote as a Director in that capacity.

21 Chairman and deputy chairman of directors

21.1 Election of Chairman

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

21.2 Absence of Chairman at Directors' meeting

If a Directors' meeting is held and:

- (a) a Chairman has not been elected under clause 21.1, or
- (b) the Chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the Deputy Chairman, if elected under clause 21.1, must be the Chairman of the meeting or, if the Deputy Chairman is not present, the Directors present must elect one of their number to be a Chairman of the meeting.

21.3 Casting vote for Chairman at Directors' meetings

In the event of an equality of votes cast for and against a question, the Chairman of the Directors' meeting has a second or casting vote.

22 Appointment of Alternate Director

22.1 Appointment

- (a) Subject to the Corporations Act, a Director may appoint a person, with the approval of the Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit.
- (b) Subject to the Corporations Act, an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment, and delivered to the Company.

22.2 Notice

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

22.3 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

22.4 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor, and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

22.5 Alternate Director and remuneration

An Alternate Director is not entitled to receive from the Company any remuneration or benefit other than as provided in clause 12.

22.6 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period, if any, of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

22.7 Termination in writing

The termination of an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who made the appointment and delivered to the Company.

22.8 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

23 Quorum for directors' meeting

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is five (5) and must include at least one Director appointed by Hunter New England Health, one Director appointed by the University and one Community Director.
- (b) The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 10.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

24 Chairman of directors' committee

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

- (a) a Chairman has not been elected, or

- (b) the Chairman is not present within five (5) minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the Members involved may elect one of their number to be Chairman of the meeting.

25 Meetings of committee

25.1 Adjourning a meeting

A Committee may meet and adjourn as it thinks proper.

25.2 Determination of questions

- (a) Questions arising at a meeting of a Committee are to be determined by a majority of votes of the Members present and voting.
- (b) In the event of an equality of votes, the Chairman of the meeting does not have a casting vote.

26 Circulating resolutions

The Directors may pass a resolution without a meeting being held if all of 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. 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. The resolution is passed when the last Director signs.

27 Validity of acts of directors

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting, or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

28 Amendments to Constitution

No alteration to the Constitution for the time being in force will be considered at a general meeting of the Company unless the proposed alteration has been notified in writing to Hunter New England Health and the University and:

- (a) neither Hunter New England Health nor the University object in writing to the proposed alteration within ninety (90) days of the date of notification; or
- (b) both Hunter New England Health and the University consent in writing to the proposed alteration.

29 Secretary

29.1 Appointment of Secretary

There must be at least one Secretary who is to be appointed by the Directors.

29.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

29.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

30 Dispute resolution

30.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of these rules or otherwise

("Dispute"), then either must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) The Member and the Company must in the period fourteen days from the service of the notice of the Dispute ("Initial Period") use their best endeavours to resolve the Dispute.
- (b) If the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company.
- (c) If the disputants are unable to agree on a mediator within seven days of the Initial Period, the Member or the Company may request a mediator appointed by the Association of Dispute Resolvers (LEADR).
- (d) The costs of the mediation will be shared equally between the Member and the Company.
- (e) Where:
 - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 30.1(b), or
 - (ii) the mediation has not occurred within six weeks of the date of the notice of the Dispute, or
 - (iii) the mediation fails to resolve the Dispute,then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.
- (f) The procedure in this clause will not apply in respect of proceedings for urgent or interlocutory relief.

31 Minutes

31.1 The Directors must ensure that minutes are made that record:

- (a) proceedings and resolutions of meetings of the Members;

- (b) proceedings and resolutions of Directors' meetings (including meetings of a Committee and of the Board); and
 - (c) resolutions passed by Directors without a meeting.
- 31.2 The Directors must ensure that minutes made in accordance with clause 31.1 are signed within a reasonable time after the meeting by one of the following:
- (a) the person who chairs the meeting at which proceedings were held; or
 - (b) the person who chairs the next succeeding meeting.
- 31.3 The Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within reasonable time after the resolution is passed.

32 Documents

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

- (a) two Directors,
- (b) a Director and the Secretary, or
- (c) such other persons as the Directors by resolution appoint from time to time.

33 Accounts

The Directors must cause proper accounting and other records to be kept and must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the Corporations Act, provided, however, that the Directors must cause to be made out and laid before each annual general meeting a balance sheet and profit and loss account made up to date not more than six months before the date of the meeting.

34 Seals

34.1 Safe custody of common seals

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

34.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use, and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

35 Inspection of records

35.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors).

35.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

36 Service of documents

36.1 Document includes notice

In this clause 36, a reference to a document includes a notice.

36.2 Methods of service

- (a) The Company may give a document to a Member:
 - (i) personally,
 - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member, or
 - (iii) by sending it to a fax number or electronic address nominated by the Member.
- (b) A document sent by post:
 - (i) if sent to an address in Australia, may be sent by ordinary post, and
 - (ii) if sent to an address outside Australia, must be sent by airmail, and
 - (iii) in either case is taken to have been received on the day after the date of its posting.
- (c) If a document is sent by fax or electronic transmission, delivery of the document is taken:
 - (i) to be effected by properly addressing and transmitting the fax or electronic transmission, and
 - (ii) to have been delivered on the day following its transmission.

36.3 Evidence of service

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

37 Indemnity

The Company may indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs), and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (a) the Company is forbidden by statute to indemnify the person against the liability or legal costs, or
- (b) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

38 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium, or
- (b) the contract would, if the Company paid the premium, be made void by statute.

39 Directors' liability insurance

To the extent permitted by the Corporations Act, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been a Director of the Company against costs and expenses incurred by the person as a director in defending proceedings (whether civil or criminal, and whatever their outcome) provided that the liability does not arise out of conduct involving:

- (a) a wilful breach of duty in relation to the Company, or

- (b) a contravention of Subsections 232(5) or (6) or any other provision of the Corporations Act.

40 Contract

The Company may enter into an agreement with a person referred to in clauses 37, 38 and 39 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

41 Audit

The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.

Appointment of Proxy

Hunter Medical Research Institute

ACN 081 436 919

Appointment of Proxy

I/We _____

being a Member/Members of the above named Company hereby appoint

of _____

or, in his or her absence

of _____

as my/our proxy to vote for me/us on my/our behalf at the meeting of the
Company's Members of the Company to be held on the _____ day of
_____ 20__ and at any adjournment of that meeting.

This form is to be used *in favour of / *against the resolution

SIGNED _____

NAME _____

DATED _____

To be inserted if desired

* Strike out whichever is not desired