

Date 30 March 2016

Constitution of The Australia Institute Ltd ACN 061 969 284

**A Public Company Limited by Guarantee
Corporations Act 2001**

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Constitution

1. Definitions and interpretation

1.1 Definitions

In this Constitution, unless expressed or implied to the contrary:

Board means the board of Directors of the Company.

Business Day means a day other than a Saturday, Sunday or public holiday in the Australian Capital Territory.

Chair means the Director who is elected to this office under clause 15.7.1.

Company means the company described in clause 2.

Constitution means this constitution, including any amendments.

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

Deputy Chair means the person who is elected to this office under clause 15.7.2.

Directors means the members individually or collectively of the Board.

Executive Director means the person who is appointed to this office under clause 15.4.

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

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in Australia; and
- (b) any statute, regulation, proclamation, ordinance or by-law in Australia.

Member means a person admitted to membership of the Company in accordance with this Constitution.

Objects means the objects of the Company set out in clause 3.

Register means the register of Members kept in accordance with the Corporations Act.

Registered Address means the address of a Member as shown in the Register.

Relevant Law means:

- (a) the *Australian Charities and Not-for-Profits Commission Act 2012 (Cth)*;
- (b) the Australian Charities and Not-for-Profits Commission Regulation 2013 (Cth);

- (c) the *Charities Act 2013* (Cth);
- (d) the Corporations Act;
- (e) the Corporations Regulations (2001) (Cth); and
- (f) a Ruling.

Ruling means any:

- (a) class order or regulatory guide issued by the Australian Securities and Investments Commission;
- (b) public or private ruling issued by the Australian Taxation Office; and
- (c) Commissioner's interpretation statement issued by the Australian Charities and Not-for-profits Commission.

Special Resolution means, subject to any Relevant Law, a resolution:

- (a) of which notice has been in accordance with clause 11.2; and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

1.2 **Replaceable rules do not apply**

The replaceable rules of the Corporations Act do not apply to the Company.

1.3 **Inconsistency with Relevant Law**

The Relevant Law prevails over any inconsistency with this Constitution.

1.4 **Interpretation**

In this Constitution, unless the context requires otherwise:

- 1.4.1 a person includes a firm, partnership or other unincorporated body, joint venture, association, corporation or other body corporate;
- 1.4.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 1.4.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.4.4 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body;
- 1.4.5 in general terms to a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;

- 1.4.6 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.4.7 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.4.8 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.4.9 the singular includes the plural and vice versa;
- 1.4.10 a gender includes every other gender;
- 1.4.11 the word **includes** in any form is not a word of limitation; and
- 1.4.12 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

2. Name

The name of the Company is The Australia Institute Ltd.

3. Objects

The Company is established to:

- 3.1 conduct research that will contribute to a more just, sustainable and peaceful society; and
- 3.2 publicise the results of the Company's research and analysis.

4. Powers

Subject to this Constitution and solely for carrying out the Objects, the Company has the legal capacity and powers of an individual and all the powers of a body corporate under the Corporations Act other than the power to issue shares.

5. Member liability and guarantee

- 5.1 The liability of each Member is limited to the amount specified in clause 5.2.
 - 5.2 Each Member undertakes to contribute a maximum of \$10.00 to the Company if it is wound up:
 - 5.2.1 while the Member is a Member; or
 - 5.2.2 within one year after that Member ceases to be a Member,
- in respect of:

- 5.2.3 the debts and liabilities of the Company contracted before that Member ceases to be a Member;
- 5.2.4 the costs, charges and expenses of winding up; and
- 5.2.5 any adjustments of the rights of Members among themselves.

6. Application of income and property

6.1 Promotion of Objects

- 6.1.1 The Company must apply all of its income and assets solely towards the furtherance and promotion of the Objects.
- 6.1.2 Except as provided in clauses 6.2 and 28, the Company may not pay or transfer directly or indirectly any Company income or assets to any of the Members (in their capacity as Members) or Directors.

6.2 Payments in good faith

- 6.2.1 Clause 6.1 does not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:
 - (a) of remuneration for services to the Company (including as an Executive Director or as any other Director appointed to a salaried office in the Company);
 - (b) of reimbursement for expenses properly incurred on behalf of or for the purposes of the Company;
 - (c) for goods supplied to the Company in the ordinary course of business;
 - (d) of interest on money borrowed by the Company and rent for premises let to the Company, where:
 - (i) the interest or rent of the service has the prior approval of the Board; and
 - (ii) the amount payable is not more than an amount which commercially would be reasonably paid,

provided that any such payment to a Director must comply with clause 6.2.3.

- 6.2.2 The Company must not make any payment to a Director for acting as a Director.
- 6.2.3 The Company must not make any payment to a Director under clause 6.2.1 unless:
 - (a) the provision of those services has the prior consent of the Board;
 - (b) the amount payable is on reasonable commercial terms; and
 - (c) the payment has the prior approval of the Board.

- 6.2.4 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by Law and this Constitution.

7. Gift fund

7.1 Establishment and maintenance

If the Company is endorsed as a deductible gift recipient under subdivision 30-40(1) of the ITAA (**Approved Research Institute**), it must maintain a gift fund (**Gift Fund**) to support the principal purposes of the Company and which complies with that Act and any other applicable Commonwealth taxation legislation.

7.2 Accounting procedures

- 7.2.1 The Company must establish and maintain a separate fund for the Gift Fund.
- 7.2.2 All gifts of money or property for the principal purposes of the Company will be made to the Gift Fund.
- 7.2.3 Money from interest on donations, income derived from donated property and money from the realisation of such property is to be credited to the Gift Fund.
- 7.2.4 The Gift Fund must not receive any other money or property.
- 7.2.5 The Gift Fund must be used only for the principal purposes of the Company.
- 7.2.6 Receipts must be issued in the name of the Gift Fund and proper accounting records and procedures must be kept and used for the Gift Fund.

7.3 Winding up of Gift Fund

If the Gift Fund is wound up or if the endorsement of the Company as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after satisfaction of the liabilities attributed to it must be transferred to one or more charities in Australia:

- 7.3.1 being Approved Research Institute(s) with objects similar to, or inclusive of, the Objects;
- 7.3.2 which prohibits the distribution of its assets to its members to at least the same extent as this Constitution; and
- 7.3.3 to which income tax deductible gifts may be made.

8. Membership

8.1 General

- 8.1.1 Each person who is appointed as a Director is admitted to membership of the Company immediately on such appointment taking effect.

8.1.2 The Company may at any time determine other categories of membership of the Company.

8.2 **Register**

The Company must establish and maintain a Register at its registered office or its principal place of business.

8.3 **Member's rights generally**

A Member has the right to receive notices of any general meeting, to attend and be heard at any general meeting and to one vote at any general meeting.

8.4 **Not transferrable**

Membership may not be transferred to another person.

9. **Cessation of Membership**

9.1 **Grounds for cessation**

A person will cease to be a Member if the person:

9.1.1 ceases to be a Director for any reason; or

9.1.2 resigns in writing to the Company, which will take effect from the date of receipt of the notice or any later date set out in the notice.

9.2 **Effect of cessation**

If a person ceases to be a Member, then:

9.2.1 they will forfeit all rights and privileges attaching to membership and all rights which they may have against the Company arising out of the membership; and

9.2.2 the Company will have no liability to that person arising from the cessation of their membership or their removal from the Register.

9.3 **Removal from the Register**

If a Member ceases to be a Member, their name must be removed from the Register.

9.4 **Surviving liability**

Any person who ceases to be a Member remains liable for:

9.4.1 any moneys which may be owing to the Company; and

9.4.2 in the case of the Company being wound up within one year of the date of cessation of membership, the relevant contribution under clause 5.2.

10. General meetings

10.1 General meetings called by the Board

10.1.1 The Board may convene a general meeting at such time and place as the Board thinks fit.

10.1.2 Subject to the Relevant Law, if Members with at least 20% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the Board must:

(a) within 21 days of the Members' request, give all Members notice of a general meeting; and

(b) hold the general meeting within 2 months of the Members' request.

10.2 For the purposes of clause 10.1.2, the percentage of votes held by Members requesting the general meeting is calculated as at midnight immediately prior to the request being made of the Company.

10.3 The Members who make the request for a general meeting must:

10.3.1 state in the request any resolution to be proposed at the meeting;

10.3.2 sign the request; and

10.3.3 give the request to the Company.

10.4 Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

10.5 General meetings called by Members

10.5.1 If the Directors do not call the meeting within 21 days of being requested under clause 10.1.2, 50% or more of the Members who made the request may call and arrange to hold a general meeting.

10.5.2 To call and hold a meeting under clause 10.5.1, the Members must:

(a) as far as possible, follow the procedures for general meetings set out in this Constitution;

(b) call the meeting using the list of Members on the Register, which the Company must provide to the Members making the request at no cost; and

(c) hold the general meeting within 3 months after the request was given to the Company.

10.5.3 The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

10.6 **Annual general meeting**

- 10.6.1 The Company must hold an annual general meeting at least once in every calendar year at the time and place determined by the Board.
- 10.6.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of Directors;
 - (e) the appointment and payment of auditors, if any; and
 - (f) any other business which may lawfully be transacted at a general meeting.
- 10.6.3 Before or at the annual general meeting, the Board must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.

11. **Notice of general meetings**

11.1 **General**

The Board must give not less than 21 days' written notice of a general meeting to the Members, the Directors and the auditor, if any.

11.2 **Shorter notice**

- 11.2.1 Subject to clause 11.2.2, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
 - (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 11.2.2 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
 - (b) appoint a Director in order to replace a Director who was removed; or
 - (c) remove an auditor.

11.3 **Contents of notice**

The notice of general meeting must specify the following information:

- 11.3.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- 11.3.2 the general nature of the meeting's business;
- 11.3.3 if applicable, a statement that a special resolution is to be proposed and the words of the proposed resolution;
- 11.3.4 a statement that a Member entitled to vote has the right to appoint a proxy and that, if a Member appoints a proxy:
 - (a) the proxy must be a Member entitled to vote in their own capacity;
 - (b) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - (c) the proxy form must be delivered to the Company at least 48 hours before the meeting.

11.4 **Failure to receive notice**

- 11.4.1 The accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.
- 11.4.2 A person's attendance at a general meeting waives any objection that the person may have to:
 - (a) a failure to give notice, to the giving of a defective notice, of a general meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
 - (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

12. **Proceedings at general meetings**

12.1 **Quorum**

- 12.1.1 No business may be transacted at a general meeting, except the adjournment of the meeting, unless a quorum is present.
- 12.1.2 A quorum for general meetings is 4 Members, present in person or by proxy.
- 12.1.3 If a quorum is not present within 30 minutes from the time appointed for a general meeting:

- (a) if convened on the requisition of Members, the meeting will be dissolved; and
- (b) in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned meeting a quorum is not present within 30 minutes from the time appointed for holding the meeting, the Members present will be a quorum.

12.2 **Chairperson**

- 12.2.1 The Chair, or in the Chair's absence, the Deputy Chair (if any) will be the chairperson at every general meeting.
- 12.2.2 If at any general meeting neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for holding the meeting, or is not willing to preside, the Members present will choose another Director to preside.
- 12.2.3 At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson. That person is to be taken to be the chairperson of the meeting and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- 12.2.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

12.3 **General conduct of proceedings**

- 12.3.1 The general conduct of each general meeting and the procedures to be adopted at the meeting will be determined by the chairperson.
- 12.3.2 The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
 - (a) ask questions about or make comments on the management of the Company; and
 - (b) ask the auditor or their representative (if any and if present) questions relevant to the conduct of the audit and the preparation and content of the auditor's report (if any) for the Company.

12.4 **Adjournment**

- 12.4.1 The chairperson of a general meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by a vote at any meeting at which a quorum is present, adjourn the meeting to another time or place (or both).
- 12.4.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a general meeting.
- 12.4.3 Where a general meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

12.4.4 A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.

12.5 **Members' resolutions and statements**

12.5.1 Members with at least 5% of the votes that may be cast on a resolution may give:

- (a) written notice to the Company of a resolution they propose to move at a general meeting (**Members' resolution**), and/or
- (b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (**Members' statement**).

12.5.2 A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

12.5.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.

12.5.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.

12.5.5 The percentage of votes that Members have (as described in clause 12.5.1) is to be worked out as at midnight before the request or notice is given to the Company.

12.5.6 If the Company has been given notice of a Members' resolution under clause 12.5.1(a), the resolution must be considered at the next general meeting held more than 2 months after the notice is given.

12.5.7 This clause does not limit any other right that a Member has to propose a resolution at a general meeting.

12.6 **Company must give notice of proposed resolution or distribute statement**

12.6.1 If the Company has been given a notice or request under clause 12.5:

- (a) in time to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, it must do so at the Company's cost; or
- (b) too late to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members' resolution or a copy of the Members' statement. However, at a general meeting, the Members may pass a resolution that the Company will pay these expenses.

12.6.2 The Company does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:

- (a) it is more than 1,000 words long;

- (b) the Directors consider it may be defamatory;
- (c) clause 12.6.1(b) applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' resolution or a copy of the Members' statement to Members; or
- (d) in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the Members.

12.7 **Show of hands**

Every item of business submitted to a general meeting will be decided in the first instance by a show of hands. Those entitled to vote on a show of hands are the Members present in person or their proxy. The chairperson will have a casting vote in addition to any vote to which they are entitled as a Member. The chairperson has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

12.8 **Poll**

- 12.8.1 The chairperson or any Members present personally or by proxy may demand a poll before or on the declaration of the result of a show of hands.
- 12.8.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 12.8.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 12.8.4 The demand for a poll may be withdrawn.
- 12.8.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.
- 12.8.6 At a poll, the chairperson will have a casting vote in addition to which they are entitled as a Member. The chairperson has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

12.9 **Demand for poll**

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

12.10 **Evidence of resolution**

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

12.11 Auditor's right to be heard

The auditor, if any, is entitled to:

- 12.11.1 attend any general meeting of the Company;
- 12.11.2 be heard at any general meeting of the Company on any part of the business of the meeting that concerns the auditor in their capacity as auditor, even if:
 - (a) the auditor retires at the general meeting; or
 - (b) the Members pass a resolution to remove the auditor from office; and
- 12.11.3 authorise a person in writing to attend and speak at any general meeting as the auditor's representative.

12.12 Meetings conducted by electronic means

- 12.12.1 All provisions of this Constitution relating to general meetings apply, as far as they can and with any necessary changes, to general meetings by telephone or other electronic means.
- 12.12.2 The Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 12.12.3 A Member who participates in a general meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 12.12.4 A general meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Members involved was at the place for the duration of the meeting.

12.13 Circular resolutions of Members

- 12.13.1 Subject to clause 12.13.3, the Board may put a resolution to the Members to pass a resolution without a general meeting being held (**circular resolution**).
- 12.13.2 The Directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 12.13.3 Circular resolutions may not be used:
 - (a) for a resolution to remove an auditor, appoint a Director or remove a Director;
 - (b) for passing a Special Resolution; or
 - (c) where the Corporations Act or this Constitution requires a meeting to be held.
- 12.13.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clauses 12.13.5 or 12.13.6.

12.13.5 Members may sign:

- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording is the same in each copy.

12.13.6 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

12.13.7 The single or several documents constituting the circular resolution under this clause 12.13 must be entered in the relevant book of minutes of the Company.

13. Proxy

13.1 General

Any Member entitled to vote may appoint a natural person who is a Member entitled to vote in their own capacity as a proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.

13.2 Instrument appointing proxy

13.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

- (a) the Registered Office;
- (b) a fax number at the Registered Office;
- (c) a place, fax number or electronic address specified for such purpose in the notice of meeting,

not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

13.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

13.3 Form of proxy

An instrument appointing a proxy must contain the following information:

- 13.3.1 the Member's name and address;
- 13.3.2 the Company name;
- 13.3.3 the type of membership held by the Member;
- 13.3.4 the proxy's name or the name of the office held by the proxy; and

13.3.5 the meetings at which the appointment may be used,
and be signed by the appointor or his or her attorney.

13.4 **Voting instructions**

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

13.5 **Authority**

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

14. **Attorneys**

The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as the Directors think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

15. **Board**

15.1 **Number and qualifications of Directors**

15.1.1 The Board will consist of no less than 7 and no more than 12 Directors, one of whom may be an Executive Director.

15.1.2 Each candidate for appointment as Director must be:

- (a) eligible under the Relevant Law to be a Director; and
- (b) give their prior written consent to be a Director and a Member and to abide by the Constitution.

15.2 **Term of appointment generally**

Except as provided in clauses 15.3.1(a) (determination of term), 15.4 (Executive Director) and 15.5.2 (casual vacancy), Directors will hold office for a term of approximately 4 years commencing at the end of the annual general meeting at which they were elected and expiring at the end of the fourth annual general meeting after their election, at which time they will retire. Subject to clause 15.1.2 (general eligibility), a retiring Director will be eligible for re-appointment.

15.3 **Appointment**

15.3.1 No later than 30 days prior to an annual general meeting at which one or more Directors will retire, the Board will:

- (a) determine the terms of appointment of candidates to any forthcoming vacancy on the Board; and
- (b) identify, consider and approve candidates for appointment to any forthcoming vacancy on the Board.

15.3.2 The chairperson of the annual general meeting will declare an individual approved by the Board under clause 15.3.1 to be duly elected and appointed as a Director.

15.4 **Executive Director**

15.4.1 The Board may appoint a person to act as Executive Director and may at any time suspend or remove a person from that office.

15.4.2 The Executive Director holds office on such terms and conditions (including as to remuneration) and with the powers, duties and authorities as determined by the Board.

15.5 **Vacancies**

15.5.1 The Board may appoint additional Directors having regard to the composition of the Board described in clause 15.1.

15.5.2 The Board may appoint a replacement person to fill any casual vacancy.

15.5.3 Any Director appointed under this clause 15.4 will retire at the end of the next annual general meeting but will be eligible for re-election.

15.6 **Vacation of office of Director**

The office of a Director will be vacated if:

15.6.1 the Director becomes bankrupt on the making of a sequestration order or makes any arrangement or composition with his or her creditors;

15.6.2 the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;

15.6.3 without leave of the Board the Director is absent from meetings of the Board for 3 consecutive meetings, unless the Board makes a resolution to the contrary;

15.6.4 by notice in writing to the Company the Director resigns from office;

15.6.5 by notice in writing to the Company the Director resigns as a Member;

15.6.6 the Director becomes ineligible to be a director under a Relevant Law; or

15.6.7 ceases to hold office by reason of any order made under a Relevant Law.

15.7 **Chair and Deputy Chair**

- 15.7.1 The Directors will elect from among their number a Chair who will hold office for a term determined by the Directors, after which they will retire. A retiring Chair will be eligible for re-election.
- 15.7.2 The Directors may elect from among their number a Deputy Chair who will hold office for a term determined by the Directors, after which they will retire. A retiring Deputy Chair will be eligible for re-election.
- 15.7.3 The Directors may remove either or both of the Chair and the Deputy Chair from office by resolution at a meeting of Directors of which no less than 14 days' notice has been given.

16. **Powers of the Board**

The Board is responsible for managing the business and affairs of the Company. The Board may exercise all powers and do all things that are within the Company's power and are not expressly required by the Corporations Act or this Constitution to be exercised by the Company in a general meeting.

17. **Duties and conflicts**

17.1 **Duties of Directors**

- 17.1.1 The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and, if the Company is registered as a charity under the ACNC Act, comply with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director;
 - (b) to act in good faith in the best interests of the Company and to further the charitable purpose of the Company set out in the Objects;
 - (c) not to misuse their position as a Director;
 - (d) not to misuse information they gain in their role as a Director;
 - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 17.2;
 - (f) to ensure that the financial affairs of the Company are managed responsibly;
and
 - (g) not to allow the Company to operate while it is insolvent.

17.2 Conflicts of interest

- 17.2.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):
- (a) to the other Directors, or
 - (b) if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.
- 17.2.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 17.2.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clause 17.2.4:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 17.2.4 A Director may still be present and vote if:
- (a) their interest arises because they are a Member and the other Members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director (see clause 24);
 - (c) their interest relates to a payment by the Company under clause 24 (indemnity), or any contract relating to an indemnity that is allowed under the Act;
 - (d) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
 - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

18. Proceedings of the Board

18.1 General

- 18.1.1 The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

- 18.1.2 The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to a meeting of the Board by telephone or other electronic means.
- 18.1.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present at the meeting.
- 18.1.4 A meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

18.2 **Convening and notice of Board meetings**

- 18.2.1 The Board must meet at least 4 times a year.
- 18.2.2 The Chair or the Executive Director (if any) may convene a meeting of the Board whenever they think fit.
- 18.2.3 The Secretary must, on the request of two Directors, convene a meeting of the Board.
- 18.2.4 Notice of a Board meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Board.
- 18.2.5 Notice of a Board meeting:
- (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting; and
 - (c) may be given in person or by post, telephone, fax or other electronic means.
- 18.2.6 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.
- 18.2.7 A Director's attendance at a Board meeting waives any objection that Director may have to a failure to be given notice of the meeting.

18.3 **Quorum**

- 18.3.1 No business may be transacted at a Board meeting unless a quorum is present at the time the business is considered.
- 18.3.2 A quorum for meetings of the Board is half the Directors, or if the number of Directors is not a multiple of 2, then the odd number nearest to and greater than half of the Directors.
- 18.3.1 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:
- (a) must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and

- (b) until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

18.4 **Chairperson and voting**

- 18.4.1 The Chair, or in the Chair's absence, the Deputy Chair (if any) will be the chairperson at the Board meetings.
- 18.4.2 If the Chair or the Deputy Chair is not present at any Board meeting within 10 minutes after the time appointed for the meeting to begin, or is present but is unwilling to act, the Directors present must elect a Director to be chairperson of the meeting.
- 18.4.3 Except as provided by the Corporations Act and by clause 18.4.4 , questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.
- 18.4.4 The chairperson of a Board meeting will have a casting vote in addition to any deliberative vote they have as a Director. The chairperson has discretion both as to whether or not to use the casting vote and as to the way in which it is used.

18.5 **Circular resolutions of the Board**

- 18.5.1 The Directors may pass a circular resolution without a Board meeting being held.
- 18.5.2 A circular resolution is passed if a majority of the Directors (other than a Director on leave of absence approved by the Directors) entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 18.5.5.
- 18.5.3 If all the Directors (other than a Director on leave of absence approved by the Directors) have approved a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the resolution was approved and at that time at which the document was last approved by a Director or, if the Directors approved the document on different days, on the day on which, and at the time at which, the document was last approved by a Director.
- 18.5.4 Any such resolution in writing may consist of several documents in identical terms, each approved by one or more Directors and must be entered in the relevant book of minutes of the Company.
- 18.5.5 In this clause 18.5, a Director gives approval by:
 - (a) signing a document containing the resolution;
 - (b) affixing an electronic signature to a document containing the resolution; or
 - (c) using such other written means approved by the Directors.
- 18.5.6 A reference in clause 18.5.2 to the majority of Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

18.6 Delegation by the Board

- 18.6.1 The Board may delegate any of its powers to employees, individual Directors, Members or to committees consisting of such employees, Directors, Members or such other individuals as the Board thinks fit. Any individual or committee so formed must conform to any direction given to it by the Board in the execution of the delegated powers.
- 18.6.2 Any such delegations must be specified in writing and maintained in a register of delegated authorities.
- 18.6.3 The delegate must exercise the powers delegated in accordance with any directions of the Board.
- 18.6.4 The exercise of a power by a delegate is as effective as if the Board had exercised it.
- 18.6.5 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

18.7 Validity of acts

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director is valid despite:

- 18.7.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee;
- 18.7.2 the disqualification of any of them; or
- 18.7.3 the person not being entitled to vote.

18.8 Research Committee

- 18.8.1 The Board must maintain as a standing committee of the Board a research committee (**Research Committee**) comprising at least 5 persons selected by the Board who are:
- (a) appropriately qualified and capable of scientific research; and
 - (b) approved by the Department of Innovation, Industry, Science and Research (or any other approving authority) to sit on the Research Committee.
- 18.8.2 Subject to final endorsement by the Board, The function of the Research Committee will be:
- (a) to determine the Company's research priorities;
 - (b) to retain control and effective ownership of the research; and
 - (c) to control and allocate the funds of the Gift Fund established and maintained under clause 7 in accordance with any requirements of under subdivision 30-40(1) of the ITAA and any other applicable Commonwealth taxation legislation.

- 18.8.3 The Company may approve a Research Committee Terms of Reference from time to time which will set out the roles, powers and responsibilities of the Research Committee.

19. Secretary

- 19.1 The Directors will appoint at least one secretary and may at any time suspend or remove a person from that office.
- 19.2 The secretary holds office on such terms and conditions (including as to remuneration) and with the powers, duties and authorities as determined by the Directors.

20. Minutes and records

20.1 Minutes to be kept

The Board must cause:

- 20.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
- 20.1.2 the minutes to be entered in books kept for that purpose; and
- 20.1.3 the minutes to be signed within a reasonable time by the chairperson of the meeting or by the chairperson of the next meeting.

20.2 Evidence of proceedings and resolutions

A minute that is recorded and signed in accordance with clause 20.1 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

21. Accounts

21.1 Books of account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

21.2 Location of books of account

The books of account will be kept at the registered office or place or places as the Board thinks fit and will be open to the inspection of the Directors during usual business hours.

22. Auditor

The Company will observe the provisions of the Relevant Laws in relation to the appointment, removal and resignation of an auditor.

23. Amendments to this Constitution

Subject to any provision in any Relevant Law to the contrary, the Company may vary, amend or repeal this Constitution by passing a Special Resolution.

24. Indemnity

24.1 For the purposes of this clause 24:

Indemnified Loss means, in relation to any fact, matter or circumstance:

- (c) all Loss arising out of or in connection with that fact, matter or circumstance; and
- (d) all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

Loss means damage, liability, action, loss, charge, cost or expense.

Officer means:

- (a) a Director;
- (b) a secretary; or
- (c) any other officer of the Company, and includes former officers, but does not include any auditor or agent of the Company.

24.2 Subject to clause 24.3, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Loss of the Officer as a result of or in connection with that person's role as an Officer.

24.3 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.

24.4 The obligation of the Company in clause 24.2:

24.4.1 is enforceable without the Officer having to first incur any expense or make any payment;

24.4.2 is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the relevant company;

- 24.4.3 applies to Loss incurred both before and after the date of the adoption of this Constitution; and
- 24.4.4 does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.
- 24.5 The obligation of the Company in clauses 24.2 - 24.4 will not apply to the extent that:
 - 24.5.1 the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;
 - 24.5.2 an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or
 - 24.5.3 the Company is not allowed by Law to make a payment for legal costs.
- 24.6 To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.
- 24.7 The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 24.

25. Access to records

- 25.1 A person who is not a Director does not have the right to inspect any of the Board papers, books, records or documents of the Company, except as:
 - 25.1.1 allowed or required by Law; or
 - 25.1.2 as authorised by the Directors or by resolution of the Members.
- 25.2 The Company may agree to provide continuing access for a specified period after a person ceases to be an officer of the Company to Board papers, books, records or documents of the Company and any relevant related bodies corporate which relate to the period during which the person was an Officer.

26. By-laws

- 26.1 The Board may by resolution make, revoke and amend by-laws to give effect to this Constitution.
- 26.2 Members and Directors must comply with the by-laws as if they were part of this Constitution.

27. Notices

- 27.1 A notice required by this Constitution must be in writing and may be delivered:
 - 27.1.1 personally;

- 27.1.2 by leaving it at the person's address in the Register;
 - 27.1.3 by posting it by prepaid post addressed to that person at the person's address for service;
 - 27.1.4 by facsimile to the person's facsimile number; or
 - 27.1.5 by electronic mail to the person's email address.
- 27.2 If the person receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.
- 27.3 A person may change their address, facsimile number or email address by giving notice to the Company
- 27.4 A notice sent by post or courier is taken to be served:
- 27.4.1 by properly addressing, prepaying and posting or directing the delivery of the notice; and
 - 27.4.2 on the day after the day on which it was posted or given to the courier for delivery.
- 27.5 A notice sent by facsimile transmission or electronic notification is taken to be delivered
- 27.5.1 if delivered personally or left at the person's address, upon delivery;
 - 27.5.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
 - 27.5.3 if delivered by facsimile, subject to clause 27.5.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
 - 27.5.4 if delivered by electronic mail, subject to clause 27.5.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
 - 27.5.5 if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

28. Distribution of property on winding-up

- 28.1 If the Company is wound up and the assets of the Company are more than sufficient:
- 28.1.1 to pay all of the debts and liabilities of the Company; and
 - 28.1.2 the costs, charges and expenses of the winding up,
- the surplus assets must not be distributed to a Member or former Member unless that Member or former Member is a charity described in clause 28.2.
- 28.2 Instead, the surplus assets must be distributed to one or more funds, authorities or institutions:

- 28.2.1 with charitable purpose(s) similar to, or inclusive of, the Objects; and
 - 28.2.2 which prohibits the distribution of its assets to its members to at least the same extent as this Constitution.
- 28.3 If the Company is endorsed as a deductible gift recipient under subdivision 30BA of the ITAA at the time it is wound up, then in addition to the requirements under clause 28.2, the charity or charities to which the surplus assets are distributed must also be endorsed as a deductible gift recipient at the time the distribution is made.
- 28.4 The charity or charities to be given the surplus assets must be determined:
- 28.4.1 by a special resolution of the Members at or before the time of winding up; or
 - 28.4.2 if no such special resolution is passed, by a Judge of the Supreme Court or such other court of competent jurisdiction.