

30 November 2016

**Constitution of
Murdoch Childrens Research Institute**

Contents

Constitution of Murdoch Childrens Research Institute

Introduction	6
1. Replaceable Rules excluded	6
2. Definitions and interpretation	6
2.2 Interpretation	7
3. Objects	7
4. Powers	8
5. Application of income and property	8
6. No distribution to members	8
7. Limited liability	8
8. Guarantee	8
Membership	8
9. Membership	9
10. Categories of membership	9
11. Application for ordinary membership	9
12. Form of application	9
13. Admission to membership	9
14. Notification by members	10
15. Register of members	10
Cessation of membership	10
16. Resignation	10
17. Cessation of membership	10
18. Disciplining members	11
19. Effect of cessation of membership	11
Appointment of directors	12
20. Number of directors	12
21. The Director	12
22. Office bearers	13
23. Insufficient directors	13
Alternate directors	13
24. Appointment	13
25. Rights and powers of alternate director	13
26. Suspension or revocation of appointment	13
27. Form of appointment, suspension or revocation	13
28. Termination of appointment	13
29. Power to act as alternate for more than 1 director	14
Powers of directors	14
30. Validation of acts of directors and secretaries	14
31. General business management	14

32.	Power to raise money	14
33.	Power to invest money.....	14
34.	Appointment of attorney.....	14
35.	Negotiable instruments	15
Directors' duties.....		15
36.	Duties of directors	15
Committees of directors and regional branches.....		16
37.	Committees of directors	16
Removal and resignation of directors		16
38.	Removal of directors.....	16
39.	Resignation of director	16
40.	Vacation of office of director.....	16
Directors' interests.....		17
41.	Prohibition on being present or voting.....	17
42.	Director to disclose interests	17
43.	Effect of interest in contract.....	18
44.	Other interests	18
45.	Extension of meaning of "Company"	18
46.	Other directorships and shareholdings.....	18
Remuneration of directors		19
47.	No directors' remuneration.....	19
48.	Directors' expenses	19
49.	Financial benefit	19
Secretary.....		19
50.	Terms of office of secretary	19
Indemnity and insurance.....		19
51.	Indemnity.....	19
52.	Insurance.....	21
53.	Director voting on contract of insurance	21
54.	Liability	21
55.	Meaning of "officer"	21
Inspection of records		21
56.	Rights of inspection	21
57.	Confidential information	22
Directors' meetings.....		22
58.	Circulating resolutions.....	22
59.	Meetings of directors	22
60.	Calling directors' meetings.....	22
61.	Notice of meeting.....	22
62.	Technology meeting of directors	22

63.	Chairing directors' meetings.....	23
64.	Quorum	23
65.	Passing of directors' resolutions	23
66.	Minutes.....	23
	Meetings of members.....	24
67.	Circulating resolutions.....	24
68.	Calling of general meeting	24
69.	Amount of notice of meeting	24
70.	Persons entitled to notice of general meeting.....	24
71.	How notice is given.....	25
72.	When notice is given.....	25
73.	Period of notice.....	26
74.	Contents of notice.....	26
75.	Notice of adjourned meeting	26
76.	Accidental omission to give notice	26
77.	Postponement of general meeting	26
78.	Technology.....	26
79.	Quorum	26
80.	Chair at general meetings.....	27
81.	Business at adjourned meetings	27
	Proxies and body corporate representatives	27
82.	Who can appoint a proxy	27
83.	Rights of proxies.....	27
84.	When proxy form must be sent to all members	28
85.	Appointing a proxy.....	28
86.	Form of proxy sent out by Company	29
	Murdoch Childrens Research Institute	29
87.	Receipt of proxy documents.....	29
88.	Validity of proxy vote.....	30
89.	Body corporate representative	30
90.	Attorney of member	31
	Voting at meetings of members	31
91.	How vote may be exercised.....	31
92.	Objections to right to vote	31
93.	How voting is carried out.....	31
94.	Matters on which a poll may be demanded	31
95.	When a poll is effectively demanded.....	31
96.	When and how polls must be taken	32
97.	Chair's casting vote	32
	Annual general meeting.....	32

98.	Business of an annual general meeting	32
99.	Resolutions proposed by members.....	32
Minutes		33
100.	Minutes to be kept.....	33
Gift Fund		33
101.	Gift Fund	33
102.	Results of research made available to interested parties	34
Accounts, audit and records		34
103.	Accounts	34
104.	Audit	35
Execution of documents		35
105.	Common seal.....	35
106.	Use of common seal	35
107.	Execution of documents without common seal	35
108.	Execution of document as a deed	35
109.	Execution – general	35
Inadvertent omissions		35
110.	Formalities omitted.....	35
Alterations.....		36
111.	Alterations.....	36
Winding up		36
112.	Winding up.....	36

**Constitution
of
Murdoch Childrens Research Institute**

Introduction

1. Replaceable Rules excluded

1.1 The replaceable Rules contained in the Act do not apply to the Company.

2. Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **ACNC Law** means a provision of the Australian Charities and Not-for-profits Commission Act 2012, or regulations made under that Act, that applies to the Company;
- (2) **Act** means the Corporations Act 2001 and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (3) **Audit, Finance and Risk Committee** means the committee of that name from time to time;
- (4) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (5) **Chairman** means the chairman of the board appointed pursuant to Rule 22.1(1) of this Constitution;
- (6) **Company** means Murdoch Childrens Research Institute ACN 006 566 972;
- (7) **corporate member** means a member which is a body corporate;
- (8) **Deputy Chairman** means the deputy chairman of the board appointed pursuant to Rule 22.1(2) of this Constitution;
- (9) **directors** means the directors for the time being of the Company or the directors assembled as a board;
- (10) **The Director** means the executive officer of the Company holding the title of "The Director" of the Company;
- (11) **Gift Fund** means the fund established pursuant to Rule 101 of this Constitution;
- (12) **ITAA** means the *Income Tax Assessment Act 1997 (Cth)*;
- (13) **Objects** has the meaning specified in Rule 3 of this constitution;
- (14) **persons** means both natural and legal persons and includes bodies corporate;
- (15) **secretary** means the secretary referred to in Rule 22 and any other person appointed to perform the duties of a secretary of the Company; and
- (16) **writing** and **written** includes printing, typing, lithography and other modes of reproducing words in a visible form.

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
 - (a) an expression has in this constitution the same meaning as in the Act and the ACNC Law as the case may be; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act or the ACNC Law, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act or the ACNC Law as the case may be.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.
- (5) Notes do not form part of this constitution but may be taken into account for the purposes of interpreting this constitution.

3. Objects

3.1 The objects for which the Company is established are:

- (1) to undertake and promote research into the incidence and causes of birth defects and bodily afflictions and diseases of all kinds and in particular of infants and adolescents ;
- (2) to seek and discover methods of preventing, reducing or curing birth defects and bodily afflictions and diseases of all kinds and in particular of infants and adolescents;
- (3) to undertake and promote medical and scientific research of all kinds and education in the methods and techniques of that research and the use and application of the results of that research;
- (4) to provide premises, laboratories, equipment and apparatus for the purpose of undertaking research;
- (5) to promulgate, commercialise and otherwise and make use of the results of that research;
- (6) to permit other persons to use any information or discovery resulting from that research;
- (7) subject to the Act to do all such other things and exercise all such powers, rights and privileges as a natural person may do or exercise.

3.2 The Company must apply its income and capital in accordance with its objects.

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

4. Powers

- 4.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 4.2 Despite Rule 4.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in Rule 3.
- 4.3 The company must not exercise any power in contravention of the Act or the ACNC Law.

5. Application of income and property

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in Rule 3.

6. No distribution to members

- 6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company.
- 6.2 Rule 6.1 does not prevent:
 - (1) the payment in good faith of remuneration to any officer, servant or member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (2) the payment of interest at a rate not exceeding 1% above the penalty interest rate fixed by the Attorney-General from time to time pursuant to section 2 of the *Penalty Interest Rate Act 1983* (Vic) per annum on money borrowed from any member of the Company;
 - (3) the payment of reasonable and proper rent by the Company to a member of the Company for premises leased by the member to the Company; or
 - (4) the reimbursement of expenses incurred by any member on behalf of the Company.

7. Limited liability

- 7.1 The liability of the members is limited.

8. Guarantee

- 8.1 Every member of the Company undertakes to contribute an amount not exceeding \$10 to the property of the Company in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required for payment:
 - (1) of the debts and liabilities of the Company (contracted before the member ceases to be a member);
 - (2) of the costs, charges and expenses of winding up; and
 - (3) for the adjustment of the rights of the contributories among themselves.

9. Membership

9.1 The members of the Company are:

- (1) the persons listed on the register of members of the Company on the date of the adoption of this constitution by the members of the Company; and
- (2) any other persons the directors admit to membership in accordance with this constitution.

10. Categories of membership

10.1 The only category of membership is ordinary membership.

10.2 Additional categories of membership, if recommended by the directors, may be created from time to time by the members in general meeting.

11. Application for ordinary membership

11.1 The following persons shall be eligible for membership:

- (1) members for the time being of the Board of Royal Children's Hospital provided that no person shall be admitted as a member if as a result there would be more than 12 members of the Company who are members of the Committee of Management; and
- (2) persons who are for the time being employed, or otherwise engaged, to perform medical, nursing, scientific or other professional services by Royal Children's Hospital provided that no person shall be admitted as a member pursuant to this paragraph if as a result there would be more than 6 members who have been so admitted; and
- (3) persons who have been nominated in writing by the University of Melbourne provided that no person shall be admitted as a member pursuant to this paragraph if as result there would be more than 6 members who have been so admitted; and
- (4) any of the directors; and
- (5) any other persons the directors may from time to time consider would benefit the Company by becoming members.

12. Form of application

12.1 An application for membership must be:

- (1) in writing in a form approved by the directors;
- (2) signed by the applicant;
- (3) signed by any other person whose signature is required by the form; and
- (4) accompanied by any other documents or evidence as to qualification.

12.2 If the applicant is a body corporate it must nominate 1 person (**nominated representative**) to represent it in the Company. The application form must:

- (1) state the name and address of the nominated representative; and
- (2) be signed by the nominated representative.

13. Admission to membership

13.1 The directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.

- 13.2 The directors need give no reason for the rejection of an application.
- 13.3 If an application for membership is rejected the secretary must notify the applicant in writing.
- 13.4 If an applicant is accepted for membership the secretary must:
- (1) notify the applicant in writing; and
 - (2) enter the name and details of the applicant in the register of members.
- 13.5 The applicant becomes a member upon the entry of the applicant's name and details in the register of members.

14. Notification by members

- 14.1 Each member must promptly notify the secretary in writing of any change in their qualification to be a member of the Company.
- 14.2 Each corporate member must promptly notify the secretary in writing of any change in the person nominated as its nominated representative under Rule 12.2.
- 14.3 A person nominated as a nominated representative must consent to the nomination in writing.

15. Register of members

- 15.1 A register of members of the Company must be kept in accordance with the Act.
- 15.2 The following must be entered in the register of members in respect of each member:
- (1) the full name of the member;
 - (2) the residential address, facsimile number and electronic mail address, if any, of the member;
 - (3) the date of admission to and cessation of membership;
 - (4) in the case of a corporate member, the full name, address, facsimile number and electronic mail address, if any, of its nominated representative; and
 - (5) such other information as the directors require.
- 15.3 Each member and nominated representative must notify the secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within 1 month after the change.

Cessation of membership

16. Resignation

- 16.1 A member may resign from membership of the Company by giving written notice to the secretary.
- 16.2 The resignation of a member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

17. Cessation of membership

- 17.1 A member who is an individual ceases to be a member:
- (1) on the death of the member; or
 - (2) if the member is expelled under Rule 18.

- 17.2 A corporate member ceases to be a member:
- (1) if it is wound up or is otherwise dissolved or deregistered; or
 - (2) if it is expelled under Rule 18.

18. Disciplining members

- 18.1 If any member:
- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
 - (2) is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Company;
- the directors may resolve to censure, fine, suspend or expel the member from the Company and, in the case of expulsion, to remove the member's name from the register of members.
- 18.2 At least 1 week before the meeting of the directors at which a resolution of the nature referred to in Rule 18.1 is passed the directors must give to the member notice of:
- (1) the meeting;
 - (2) what is alleged against the member; and
 - (3) the intended resolution.
- 18.3 At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.
- 18.4 A member may, by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the directors, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.
- 18.5 If at the meeting a resolution to the same effect as the resolution which was to be considered by the directors is passed by a majority of 2/3 of those present and voting (and the vote must be taken by secret ballot), the member concerned must be punished in the manner resolved and in the case of a resolution for expulsion the member is expelled and the member's name must be removed from the register of members.
- 18.6 If any member ceases to be a member under Rule 18.5, the directors may reinstate the member and restore the name of that member to the register of members upon and subject to any terms and conditions they see fit.

19. Effect of cessation of membership

- 19.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any sum not exceeding \$10 for which the member is liable under Rule 8 of this constitution.

Appointment of directors

20. Number of directors

20.1 The number of the directors must be not more than 16 and the directors may be nominated or appointed to hold office as follows:-

- (1) one a person acceptable to the Board who has been nominated by one or more descendants of Dame Elisabeth Murdoch and, if more than one nomination is received, the Chairman's selection from amongst the nominees;
- (2) up to two directors may be persons nominated by Royal Children's Hospital of whom one shall be the person for the time being holding office as Chief Executive Officer of the Royal Children's Hospital;
- (3) up to two directors may be persons nominated by the University of Melbourne;
- (4) ten directors may be persons, other than the persons nominated under this Rule, appointed by the directors; and
- (5) one director will be the person holding office as The Director of the Institute.

20.2 Directors are appointed by the directors. The directors will consider each nominee and may, in their absolute discretion, appoint each nominee a director or reject the nomination. The directors are not required to justify a rejection.

20.3 Any nominations pursuant to sub-paragraph (1), (2) or (3) of paragraph 20.1 of this Rule must be in writing under the seal of the appointor or otherwise executed on its behalf. If appointed, the nominee will become a director as from the first day of the month following their appointment by the directors and will hold office for three years and will be eligible for reappointment.

20.4 Any appointment pursuant to sub-paragraph (4) of paragraph 20.1 of this Rule must be effected by resolution of the directors. The appointee will become a director as from the first day of the month following their appointment by the directors and will hold office for three years and will be eligible for reappointment.

20.5 Any appointment pursuant to sub-paragraph (5) of paragraph 20.1 of this Rule must be effected by resolution of the directors and in accordance with Rule 21 of this constitution. The appointee will become a director as from the first day of the month following their appointment by the directors.

20.6 The Company in general meeting may by resolution increase or reduce the number of directors referred to in Rule 20.1 but the number may not be reduced below 3.

21. The Director

21.1 The directors may, from time to time, appoint The Director.

21.2 A person must not be appointed The Director unless recommended for appointment by a committee formed by the directors comprising persons having scientific qualifications as the directors may require and including one person nominated by the Royal Children's Hospital and one person nominated by the University of Melbourne.

21.3 The directors may confer upon The Director the powers exercisable under this constitution by the directors as it may think fit and upon the respective conditions as it may think expedient.

21.4 Notwithstanding Rule 21.2 above, The Director will remain subject to the control of the directors.

21.5 A person appointed pursuant to this Rule 21, subject to the provisions of any

contract between that person and the Company, be subject to the provisions of Rule 39 (Vacation of office) so far as applicable.

21.6 The directors may at any time terminate the appointment of The Director.

22. Office bearers

22.1 The directors may, from time to time, appoint from amongst their number:

- (1) the Chairman; and
- (2) the Deputy Chairman,

and determine the period for which each will hold office.

23. Insufficient directors

23.1 In the event of a vacancy in the office of a director, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

Alternate directors

24. Appointment

24.1 A director may appoint any person who is approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period.

24.2 An alternate director is not taken into account for the purpose of Rule 20.

25. Rights and powers of alternate director

25.1 An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.

25.2 When an alternate director exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

26. Suspension or revocation of appointment

26.1 A director may revoke or suspend the appointment of an alternate director appointed by him or her.

26.2 The directors may suspend or remove an alternate director by resolution after giving the appointor reasonable notice of their intention to do so.

27. Form of appointment, suspension or revocation

27.1 Every notice of appointment, revocation or suspension under Rules 24 or 26 must be in writing and a copy must be given to the Company. The notice may be given by facsimile.

28. Termination of appointment

28.1 The appointment of an alternate director automatically terminates:

- (1) if the appointor ceases to hold office as director;
- (2) on any event which causes a director to vacate the office of director; or
- (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

29. Power to act as alternate for more than 1 director

- 29.1 A director or any other person may act as alternate director to represent more than 1 director.

Powers of directors

30. Validation of acts of directors and secretaries

- 30.1 The acts of a director or secretary of the Company are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- 30.2 Where a person whose office as director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

31. General business management

- 31.1 The business of the Company is to be managed by or under the direction of the directors.
- 31.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 31.3 A Rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that Rule or resolution had not been made or passed.
- 31.4 The directors may pay all expenses incurred in promoting and forming the Company.

32. Power to raise money

- 32.1 The directors may raise money for and on behalf of the Company in a manner as it thinks fit including the solicitation of donations and may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

33. Power to invest money

- 33.1 The directors may invest any funds of the Company not forming part of the Gift Fund in a manner as they think fit and may realise any investments or change any investments as they think fit.
- 33.2 The directors may delegate their powers under Rule 33.1 to a committee appointed by the directors which committee includes at least two directors.

34. Appointment of attorney

- 34.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 34.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

35. Negotiable instruments

- 35.1 Any 2 directors, a director and secretary or a director and another person appointed by the directors for that purpose may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 35.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

36. Directors' duties Duties of directors

- 36.1 If the provisions of the Act with regard to directors' duties do not apply to the Company, the following provisions apply (but only as between the directors and the Company).

Note: Concurrent with the adoption of the ACNC Law, the Act was amended so that the statutory duties of directors, and the business judgment rule, no longer apply (see s 111L of the Corporations Act 2001). ACNC Governance Standard 5 requires, among other things, that the Company take reasonable steps to ensure that the directors are subject to, and comply with, duties corresponding to those under the Corporations Act 2001. The intent of clause 36 is to maintain the status quo as to the statutory duties of directors, and the business judgement rule, as each stood prior to the passing of s 111L).

- 36.2 Each director of the Company must:

- (1) exercise the director's powers and discharge the director's duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (2) act in good faith in the Company's best interests and further the purposes of the Company;
- (3) not misuse the director's position;
- (4) not misuse information obtained in the performance of the director's duties as a director of the Company;
- (5) ensure that the Company's financial affairs are managed in a responsible manner;

- 36.3 A director who makes a business judgement is taken to meet the requirements of clause 36.2(1), and their equivalent duties at common law and in equity, in respect of the judgment if they:

- (1) make the judgment in good faith for a proper purpose; and
- (2) do not have a material personal interest in the subject matter of the judgment; and
- (3) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (4) rationally believe that the judgment is in the best interests of the Company.

A director's belief that the judgment is in the best interests of the Company is a rational one unless the belief is one that no reasonable person in their position would hold.

For the purposes of this clause 36.3, **business judgment** means any decision to take or not take action in respect of a matter relevant to the business operations of the Company.

- 36.4 In the exercise of the director's duties under this clause or at common law or in equity, the director may reasonably rely on information, including professional or expert advice, in good faith and after the director has made an independent assessment of the information, if that information has been given by:
- (1) an employee of the Company that the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
 - (2) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the individual's professional or expert competence; or
 - (3) another director in relation to matters within their authority or area of responsibility or
 - (4) an authorised committee of directors that does not include the director.

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

Committees of directors and regional branches

37. Committees of directors

- 37.1 The directors may delegate any of their powers to a committee of directors or other persons approved by the directors or both, such other persons which, for the avoidance of doubt, include the members of the Audit, Finance and Risk Committee.
- 37.2 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
- 37.3 The meetings and proceedings of any committee consisting of 2 or more directors are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

Removal and resignation of directors

38. Removal of directors

- 38.1 Subject to the Act the Company may by resolution remove a director from office.

39. Resignation of director

- 39.1 A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

40. Vacation of office of director

- 40.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:
- (1) ceases to hold an office by virtue of which he or she has been nominated or appointed as a director under Rule 20.1;
 - (2) becomes bankrupt or suspends payment or compounds with his or her creditors;
 - (3) 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;

- (4) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (5) becomes disqualified from being a director under the Act or any order made under the Act;
- (6) is removed from office in accordance with Rule 38; or
- (7) resigns from office in accordance with Rule 39.

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

Directors' interests

41. Prohibition on being present or voting

- 41.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:
- (1) must not be counted in a quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.
- 41.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the Act from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

42. Director to disclose interests

- 42.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.
- 42.2 A director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.
- 42.3 For the purposes of Rules 42.1 and 42.2 a director's interest or any conflict must be disregarded if it arises from or relates solely to:
- (1) a guarantee to be given by the director (or by persons including the director or by a body corporate of which the director is a member or officer) in respect of a loan to the Company; or
 - (2) the position of the director as a director of a related body corporate.
- 42.4 Subject to the ACNC Law, a director must disclose a perceived or actual material conflict of interest:
- (1) to the other directors; or
 - (2) if there is only one director or all the directors have a similar conflict – to the members of the Company; or
 - (3) in any other case – unless the Commissioner provides otherwise, to the Commission.

43. Effect of interest in contract

43.1 If a director has an interest in a contract or proposed contract with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Company:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
 - (a) the director may retain benefits under the contract even though the director has an interest in the contract;
 - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
 - (c) the director is not disqualified from the office of director.

43.2 For the purposes of Rule 43.1 **contract** includes an arrangement, dealing or other transaction.

44. Other interests

44.1 Without limiting Rule 42 or Rule 43 a director may to the extent permitted by the Act:

- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;
- (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

45. Extension of meaning of “Company”

45.1 For the purposes of Rules 42, 43 and 44 **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

46. Other directorships and shareholdings

46.1 A director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

46.2 Subject to the Act:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;
- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director as a director or other officer of the other company; and

- (4) a director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

Remuneration of directors

47. No directors' remuneration

- 47.1 Despite Rule 6.2 no director, except for The Director, may receive any remuneration for his or her services in his or her capacity as a director of the Company.
- 47.2 For the avoidance of doubt, The Director is entitled to receive remuneration for their services performed in their capacity as The Director of the Company, as approved in accordance with the provisions of this Constitution.

48. Directors' expenses

- 48.1 Despite Rule 47 the Company may pay the directors' travelling and other expenses that they properly incur:
- (1) in attending directors' meetings or any meetings of committees of directors;
 - (2) in attending any general meetings of the Company;
 - (3) in connection with the Company's business; and
 - (4) in connection with any action against the Company or any inquiry or investigation into the Company or its affairs.
- 48.2 The Chairman must approve all payments the Company makes to its directors (including, without limitation, the remuneration for services performed by The Director in their capacity as The Director of the Company).
- 48.3 Nothing in this Rule limits the rights of the directors under Rule 50.

49. Financial benefit

- 49.1 To the extent, if any, required by the Act, a director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.

Secretary

50. Terms of office of secretary

- 50.1 A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

Indemnity and insurance

51. Indemnity

- 51.1 To the extent permitted by the Act, the Company indemnifies:
- (1) every person who is or has been an officer of the Company; and
 - (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be).

- 51.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:
- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
 - (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under Rule 51.2(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 51.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of Rule 51.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
- 51.3 An officer must:
- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under Rule 51.1;
 - (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
 - (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
 - (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
 - (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and

- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

51.4 In Rule 51.3 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company;
or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in Rule 51.4(1) or 51.4(2) may be initiated.

52. Insurance

52.1 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 of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

52.2 In the case of a director, any premium paid under this Rule is not remuneration for the purpose of Rule 47.

53. Director voting on contract of insurance

53.1 Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

54. Liability

54.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

55. Meaning of "officer"

55.1 For the purposes of Rules 51, 52, 53 and 54, **officer** has the meaning given in section 9 of the Corporations Act 2001 (Cth) and includes any person appointed to a committee of the Company by the directors.

Inspection of records

56. Rights of inspection

56.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.

56.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolution of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.

56.3 Directors have the rights of inspection and access provided by section 198F of the Act.

57. Confidential information

57.1 Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Directors' meetings

58. Circulating resolutions

58.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left a facsimile number at which he or she may be given notice) sign a document containing a statement that he or she is in favour of the resolution set out in the document.

58.2 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.

58.3 The resolution is passed when the last director signs.

58.4 A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this Rule 58 must be treated as a document in writing signed by that director.

59. Meetings of directors

59.1 The directors must meet a minimum of four (4) times during each calendar year.

59.2 The directors may otherwise regulate their meetings as they see fit.

60. Calling directors' meetings

60.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

61. Notice of meeting

61.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a facsimile number at which he or she may be given notice.

61.2 Any notice of a meeting of directors may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

62. Technology meeting of directors

62.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

62.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

- 62.3 The following provisions apply to a technology meeting:
- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
 - (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 62.4 If the secretary is not present at a technology meeting 1 of the directors present must take minutes of the meeting.
- 62.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 62.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

63. Chairing directors' meetings

- 63.1 The Chairman is the chair of all meetings of the directors.
- 63.2 At a meeting of directors if:
- (1) no Chairman has been elected as provided by Rule 22.1; or
 - (2) the Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act;
the Deputy Chairman is the chair of the meeting, but if:
 - (3) no Deputy Chairman has been elected as provided by Rule 22.1; or
 - (4) the Deputy Chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
the directors present must elect a director present to chair the meeting.

64. Quorum

- 64.1 The quorum for a directors' meeting is 3 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.
- 64.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the Act relating to directors' interests, entitled to vote).

65. Passing of directors' resolutions

- 65.1 A resolution of the directors must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 65.2 The Chairman has a casting vote if necessary in addition to any vote he or she has as a director. The Chairman has absolute discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 65.3 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

66. Minutes

- 66.1 The directors shall cause proper minutes to be made of:
- (1) the names of directors present at all meetings of the Company and of the directors and of committees of the directors; and

- (2) the proceedings of all meetings of the directors and of the directors and of committees of the Board.

the minutes will be entered in books kept for that purpose and will be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next meeting.

Meetings of members

67. Circulating resolutions

- 67.1 This Rule 67 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 67.2 The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 67.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- 67.4 The resolution is passed when the last member signs.
- 67.5 If the Company receives by facsimile transmission a copy of a document referred to in this Rule 66 it is entitled to assume that the copy is a true copy.

68. Calling of general meeting

- 68.1 A majority of directors may call a general meeting whenever they see fit.
- 68.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.
- 68.3 Except as provided in the Act, no member or members may call a general meeting. If the relevant provisions of the Act do not apply to the Company, the lesser of:
- (1) members with at least 20% of the votes that may be cast at a meeting of members; or
- (2) 15 members of the Company,]

may request the directors to call such a meeting and when so requested the directors must call such a meeting within the time and in accordance with the procedure that the Act would otherwise require.

Note: Concurrent with the adoption of the ACNC Law, the Corporations Act 2001 was amended so that the statutory right of members to requisition a meeting no longer applies. ACNC Governance Standard 2 requires, among other things, that the Company must take reasonable steps to ensure it is accountable to its members.

69. Amount of notice of meeting

- 69.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

70. Persons entitled to notice of general meeting

- 70.1 Written notice of a meeting of the Company's members must be given individually to:
- (1) each member entitled to vote at the meeting;

- (2) each director; and
 - (3) the Company's auditor.
- 70.2 No other person is entitled to receive notice of general meetings.

71. How notice is given

71.1 The Company may give the notice of meeting to a member:

- (1) personally;
- (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
- (3) by sending it to the facsimile number or electronic address (if any) nominated by the member;
- (4) by sending it by other electronic means (if any) nominated by the member; or
- (5) by notifying the member in accordance with Rule 71.2.

71.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):

- (3) that the notice of meeting is available; and
- (4) how the member may use the nominated access means to access the notice of meeting.

72. When notice is given

72.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.

72.2 Except as provided by Rule 72.3, a notice of meeting given to a member under Rule 71.1(3) is taken to be given on the business day after it is sent.

72.3 A notice of meeting given to a member under Rule 71.1(3) is not effective if:

- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
- (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
- (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.

72.4 A notice of meeting given to a member under Rule 71.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

72.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this Rule 72 is conclusive evidence of the matter.

73. Period of notice

73.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

74. Contents of notice

74.1 A notice of a general meeting must:

- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (4) be worded and presented in a clear, concise and effective manner; and
- (5) contain a statement setting out the following information:
 - (a) that the member has a right to appoint a proxy; and
 - (b) that the proxy need not be a member of the Company.

75. Notice of adjourned meeting

75.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

76. Accidental omission to give notice

76.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not invalidate the proceedings at or any resolution passed at the meeting.

77. Postponement of general meeting

77.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.

77.2 Whenever any meeting is postponed (as distinct from being adjourned under Rule 79.3 or Rule 80.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

78. Technology

78.1 The Company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

79. Quorum

79.1 The quorum for a meeting of the Company's members is 5 persons entitled to vote and the quorum must be present at all times during the meeting.

79.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.

- 79.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 79.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

80. Chair at general meetings

- 80.1 The Chairman, if present, presides as chair at every general meeting.
- 80.2 Where a general meeting is held and:
- (1) there is no Chairman of the Company; or
 - (2) the Chairman is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the Deputy Chairman if present presides as chair of the meeting or, if the Deputy Chairman is not present or is unwilling to act, the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present may appoint any 1 of their number to be chair of the meeting.
- 80.3 The chair must adjourn a meeting of the Company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

81. Business at adjourned meetings

- 81.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Proxies and body corporate representatives

82. Who can appoint a proxy

- 82.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.

83. Rights of proxies

- 83.1 A proxy appointed to attend and vote for a member has the same rights as the member:
- (1) to speak at the meeting;
 - (2) to vote (but only to the extent allowed by the appointment); and
 - (3) to join in a demand for a poll.
- 83.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

- 83.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
- 83.4 A proxy may be revoked at any time by notice in writing to the Company.

84. When proxy form must be sent to all members

- 84.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

85. Appointing a proxy

- 85.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001*, and in Rules 85.2 and 85.3) by the member making the appointment and contains the following information:
- (1) the member's name and address;
 - (2) the Company's name;
 - (3) the proxy's name or the name of the office held by the proxy; and
 - (4) the meetings at which the appointment may be used. An appointment may be a standing one.
- 85.2 An electronically authenticated appointment of a proxy must in addition to Rule 88.1:
- (1) include a method of identifying the member; and
 - (2) include an indication of the member's approval of the information communicated.
- 85.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:
- (1) the member must be identified by personal details such as the member's name, personal address and date of birth; and
 - (2) the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).
- 85.4 An undated appointment is taken to have been dated on the day it is given to the Company.
- 85.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
 - (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and

- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this Rule 85.5 does not affect the way that the person can cast any votes the person holds as a member.

85.6 An appointment does not have to be witnessed.

85.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

86. Form of proxy sent out by Company

86.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:

- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular resolution; and
- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.

86.2 The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

86.3 Despite Rule 86.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

Murdoch Childrens Research Institute

ACN 006 566 972

I/We, _____ of _____, being a member/members of the abovenamed company, appoint _____ of _____ or, in his or her absence, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general/*general meeting of the company to be held on _____ and at any adjournment of that meeting.

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

Signed on _____ .

* Strike out whichever is not desired.

† To be inserted if desired.

87. Receipt of proxy documents

87.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (1) the proxy's appointment; and
- (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.

87.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

- 87.3 The Company receives an appointment or authority:
- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting; or
 - (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with Rules 85.2 and 85.3.

87.4 An appointment of a proxy is ineffective if:

- (1) the Company receives either or both the appointment or authority at a fax number or electronic address; and
- (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or
 - (b) the proxy produce the appointment and authority (if any) at the meeting; is not complied with.

88. Validity of proxy vote

88.1 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

88.2 A vote cast by a proxy is valid although, before the proxy votes:

- (1) the appointing member dies;
- (2) the member is mentally incapacitated;
- (3) the member revokes the proxy's appointment; or
- (4) the member revokes the authority under which the proxy was appointed by a 3rd party;

unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

89. Body corporate representative

89.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or
- (4) in the capacity of a member's proxy appointed under Rule 82.

The appointment may be a standing one.

89.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

89.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

89.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

90. Attorney of member

90.1 An attorney for a member may do whatever the member could do personally as a member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

Voting at meetings of members

91. How vote may be exercised

91.1 Subject to Rule 92, at any general meeting of members, each ordinary member and each honorary life member present has 1 vote on a show of hands and on a poll.

91.2 The vote may be exercised in person or by proxy, body corporate representative or attorney.

92. Objections to right to vote

92.1 A challenge to a right to vote at a meeting of members:

- (1) may only be made at the meeting; and
- (2) must be determined by the chair, whose decision is final.

92.2 A vote not disallowed following the challenge is valid for all purposes.

93. How voting is carried out

93.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.

93.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

93.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

94. Matters on which a poll may be demanded

94.1 A poll may be demanded on any resolution.

94.2 A demand for a poll may be withdrawn.

95. When a poll is effectively demanded

95.1 At a meeting of the Company's members, a poll may be demanded by:

- (1) at least 3 members entitled to vote on the resolution; or
- (2) the chair.

95.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

96. When and how polls must be taken

- 96.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 96.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 96.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 96.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

97. Chair's casting vote

- 97.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.
- 97.2 The chair has a discretion both as to use of the casting vote and as to the way in which it is used.

Annual general meeting

98. Business of an annual general meeting

- 98.1 The business of an annual general meeting may include the consideration of the annual financial report, directors' report and auditor's report, even if not referred to in the notice of meeting.
- 98.2 All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.
- 98.3 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.
- 98.4 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 98.5 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

99. Resolutions proposed by members

- 99.1 A member may not at any meeting move any resolution relating to special business unless:
 - (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months notice has elapsed since the notice was given; or
 - (2) the resolution has previously been approved by the directors.

Minutes

100. Minutes to be kept

- 100.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's members;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by members without a meeting; and
 - (4) resolutions passed by directors without a meeting.
- 100.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 100.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 100.4 Without limiting Rule 100.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors and alternate directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the nature of the technology; and
 - (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

Gift Fund

101. Gift Fund

- 101.1 The directors may establish a fund known as the Gift Fund. The directors may, from time to time, establish one or more sub-funds in their absolute discretion as and when required.
- 101.2 The directors or their appointed delegate have control of the Gift Fund. No moneys shall be paid out of the Gift Fund except with the approval of the directors or their appointed delegate.
- 101.3 The Company must:
- (1) maintain for the Objects the Gift Fund:
 - (a) to which all tax deductible gifts of money or property for the Objects are to be made;
 - (b) to which contributions in relation to a fund raising event held for the principal purpose of the Company are to be made; for the purposes of this clause 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997*;
 - (c) to which any money received by the Company because of those gifts or contributions is to be credited; and
 - (d) that does not receive any other money or property;

- (2) use the following only for the Objects:
 - (a) gifts and contributions made to the Gift Fund; and
 - (b) any money received because of those gifts or contributions;
- (3) at the first occurrence of:
 - (a) the winding up of the Gift Fund; or
 - (b) the Company ceasing to be endorsed as a deductible gift recipient under Subdivision BA of the *Income Tax Assessment Act 1997*;
 any surplus assets of the Gift Fund must be transferred to:
 - (c) the Royal Children's Hospital; or
 - (d) funds charitable at law which comply with the requirements of item 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997*;
 as the Company decides.

101.4 The Company must maintain a separate bank account (or, if required from time to time, accounts) for the Gift Fund and any substitutes.

101.5 Expenditure from the Gift Fund must be approved by the directors including the provision of any necessary facilities, equipment or apparatus, administrative expenses related to the research and all other activities, materials and services which in the opinion of the directors or their appointed delegate are ancillary or related to the research.

101.6 Any sums for the time being standing to the credit of the Gift Fund and for the time being not required to be expended may be invested in the name of the Company in the manner as the directors may direct. Any investments may be realised or changed as the directors may from time to time determine.

101.7 Subject always to the provisions of the ACNC Law and the directors' obligations at law, the directors may, in their absolute discretion, delegate their powers under this Rule 101 to:

- (1) The Director; or
- (2) to a committee appointed by the directors, which committee may, but need not, comprise or include directors.

For the avoidance of doubt, any power of delegation exercised under this Rule 101.7 must be made, or withdrawn, by the directors in writing.

102. Results of research made available to interested parties

102.1 The results of all concluded research undertaken by the Company, the costs of which have been wholly or partly borne out of the Gift Fund of the Company established under this constitution shall be available to all persons having a proper interest the results and whenever appropriate endeavours shall be made to publish the results in scientific journals or other suitable publications.

Accounts, audit and records

103. Accounts

103.1 The directors must cause proper accounting and other records to be kept in accordance with the Act or the ACNC Law as the case may be.

103.2 The directors must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act or the ACNC Law as the case may be.

104. Audit

- 104.1 A registered company auditor must be appointed.
- 104.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Execution of documents

105. Common seal

- 105.1 The Company may, but need not, have a common seal.

106. Use of common seal

- 106.1 If the Company has a common seal the directors must provide for its safe custody.
- 106.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- 106.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 directors of the Company; or
 - (2) a director and a company secretary of the Company.

107. Execution of documents without common seal

- 107.1 The Company may execute a document without using a common seal if the document is signed by:
- (1) 2 directors of the Company; or
 - (2) a director and a company secretary of the Company.

108. Execution of document as a deed

- 108.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Rule 107 or Rule 108.

109. Execution – general

- 109.1 The same person may not sign in the dual capacities of director and secretary.
- 109.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- 109.3 Rules 107 and 108 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Inadvertent omissions

110. Formalities omitted

- 110.1 If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any

member financially. The decision of the directors is final and binding on all members.

Alterations

111. Alterations

111.1 If the Company is approved as a deductible gift recipient by the Australian Taxation Office, the Australian Taxation Office must be notified in writing of any alterations to this constitution.

Winding up

112. Winding up

112.1 If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the members of the Company but must be given or transferred to the Royal Children's Hospital or some other institution or institutions determined by the members of the Company at or before the time of dissolution which:

- (1) has similar objects to the Company and which is approved by the Commissioner of Taxation as a charitable fund or institution for the purposes of any Commonwealth taxation act; and
- (2) has been endorsed by the Commissioner of Taxation as one to which income tax deductible gifts can be made.

112.2 If the members do not make the necessary determination under Rule 112.1, the Company may apply to the Supreme Court to determine the institution or institutions.