



# **Constitution of Patients Australia Limited ABN 25 146 474 688**

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A Public Company Limited by Guarantee – June 2025

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# Constitution of Patients Australia Limited ABN 25 146 474 688

## Preliminary

### 1. Name of the company

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The name of the Company is Patients Australia Limited.

### 2. Type of Company

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The Company is a not-for-profit public Company limited by guarantee, which is established to be, and to continue as, a charity.

### 3. Liability of Members limited to the guarantee

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3.1 Each Member must contribute an amount of \$20.00 to the property of the Company if the Company is wound up:

- (a) while the Member is a Member, or within 12 months after they stop being a Member; and
- (b) at the time of winding up, the debts and liabilities of the Company, including the costs of winding up, incurred before the Member stopped being a Member, exceed the Company's assets.

3.2 The liability of each Member is limited to the amount of the guarantee specified in this clause.

## Charitable purposes and powers

### 4. Objects

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4.1 The Company's objects are to pursue the following charitable purpose(s) within Australia:

- (a) advocate on behalf of patients with regards to issues relevant to health;
- (b) assist patients in being educated about the Australian healthcare system; and
- (c) support relevant research which may improve patients' lives in Australia.

## **5. Powers**

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- 5.1 Subject to clause 6, the Company has all the powers of a Company limited by guarantee under the Corporations Act which may only be used to carry out its Objects(s) set out in clause 4.

## **6. Not-for-profit**

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- 6.1 The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 6.2 and 71.
- 6.2 Clause 6.1 does not stop the Company from doing the following things, provided they are done in good faith:
- (a) paying a Member, for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
  - (b) making a payment to a Member in carrying out the Company's charitable purpose(s).

## **7. Amending the Constitution**

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- 7.1 Subject to clause 7.3, the Members may amend this Constitution by passing a Special Resolution.
- 7.2 Any amendment to this Constitution will take effect from the date of the Special Resolution, or from any later date specified in the resolution.
- 7.3 The Members must not pass a Special Resolution that amends this Constitution if passing it would mean the Company would no longer be a charity.

# Members

## **8. Membership and Register of Members**

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- 8.1 The Members of the Company are those:
- (a) that the Directors allow to be a Member, in accordance with this Constitution; and
  - (b) have not since ceased to be a Member.
- 8.2 The Company must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:
- (a) for each current Member:

- (i) name;
  - (ii) address;
  - (iii) telephone number;
  - (iv) email address;
  - (v) the date of their last payment of the membership fee;
  - (vi) such other information as the Directors may require;
  - (vii) any alternative address nominated by the Member for the service of notices;  
and
  - (viii) the date the Member was entered on to the Register.
- (b) for each person who stopped being a Member in the last 7 years:
- (i) name;
  - (ii) address;
  - (iii) telephone number;
  - (iv) email address;
  - (v) the date of their last payment of the membership fee;
  - (vi) such other information as the Directors may require;
  - (vii) any alternative address nominated by the Member for the service of notices;  
and
  - (viii) the dates the membership started and ended.

8.3 The Company must allow Members to inspect the Register of Members.

8.4 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

## **9. Who can be a Member**

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9.1 A person:

- (a) who supports the purposes of the Company;
- (b) is at least 18 years old at the date of application; and
- (c) has their principal place of residence in Australia,

is eligible to apply to be a Member of the Company under clause 10.

9.2 In this clause, 'person' means an individual.

## **10. How to apply to become a Member**

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- 10.1 A person (as defined in clause 9.2) may apply to become a Member of the Company by completing the application form and sending the form to the Secretary. The application form must be signed by the applicant and include the following:
- (a) confirmation of the applicant's support for the purpose(s) of the Company; and
  - (b) agreement to comply with the Company's Constitution, including paying the guarantee under clause 3; and
  - (c) the relevant membership joining fee, determined by the Directors.

## **11. Directors decide whether to approve membership**

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- 11.1 The Directors must consider an application for membership within a reasonable time after the Secretary receives the application.
- 11.2 If the Directors approve an application for membership, the Secretary must as soon as possible:
- (a) enter the new Member on the Register of Members; and
  - (b) write to the new Member to tell them that their application was approved, and the date that their membership is effective (see clause 12).
- 11.3 If the Directors reject an application:
- (a) the Secretary must write to the applicant as soon as possible to tell them that their application has been rejected; and
  - (b) the Directors do not have to give reasons.
- 11.4 For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clauses 10.1. In that case, by applying to be a Member, the applicant agrees to those matters.

## **12. When a person becomes a Member**

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- 12.1 An applicant will become a Member when they are entered on the Register of Members.

## **13. Membership fees**

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- 13.1 Each Member must pay an annual membership fee, unless the Directors decide otherwise.

- 13.2 The Directors may vary these fees at any time by ordinary resolution.
- 13.3 All membership fees will be due and payable in advance on 1 July in each year.
- 13.4 Unless the Directors decide otherwise, the annual membership fee for each Member is \$60.00.
- 13.5 If anyone is admitted as a Member between 1 January and 30 June, the Board may reduce the annual subscription for that person to the extent it considers appropriate. A Member that has not paid the required membership fee in accordance with this clause may not exercise any of the rights associated with that Member's membership, including the right to exercise any vote the Member may have at a meeting of Members.
- 13.6 If a Member fails to pay their annual subscription within two months of the date on which it became payable, the Board may direct the Secretary to give a notice of default to that Member. If a default notice is served on the Member, they will cease to be entitled to any rights or privileges of membership as from the date of service of the notice until such time as all outstanding subscription fees have been paid.
- 13.7 If a Member is expelled, they remain liable for all obligations and liabilities of membership for a period of six months after the date of the Board resolution to expel them and must immediately pay any outstanding subscriptions or other monies they owe to the Company.

## **14. Transfer of Membership**

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- 14.1 Membership of the Company and the associated rights cannot be transferred or sold.

## **15. When a person stops being a Member**

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- 15.1 A person (as defined in clause 9.2) immediately stops being a Member, if they:
- (a) die;
  - (b) fails to pay any required membership fee in accordance with clause 13 within one month after the date on which that membership fee becomes due or such later time as the Directors may determine;
  - (c) are wound up or otherwise dissolved or deregistered (for an incorporated Member);
  - (d) resign, by writing to the Secretary;
  - (e) are expelled under clause 17; or
  - (f) have not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

## Dispute resolution and disciplinary procedures

### 16. Dispute resolution

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- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:
- (a) one or more Members;
  - (b) one or more Directors; or
  - (c) the Company.
- 16.2 A Member or Director must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it, or within a timeframe agreed by those involved.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days (or within a timeframe agreed by those involved):
- (a) tell the Directors about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved; or
  - (b) where those involved do not agree:
    - (i) for disputes between Members, a person chosen by the Directors; or
    - (ii) for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the Company has its registered office.
- 16.6 A mediator chosen by the Directors under clause 16.5(b):
- (a) may be a Member or former Member of the Company;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;

- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that the mediation is conducted in a manner free from bias; and
- (d) not make a decision on the dispute.

## **17. Disciplining Members**

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- 17.1 In accordance with this clause, the Directors may resolve to warn, suspend, or expel a Member from the Company if the Directors consider that:
- (a) the Member has breached this Constitution; or
  - (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 17.2 At least 14 days before the Board of Directors' meeting at which a resolution under clause 17.1 will be considered, the Secretary must notify the Member in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
  - (b) that this resolution will be considered at a Board of Directors' meeting and the date of that meeting;
  - (c) what the Member is said to have done or not done;
  - (d) the nature of the resolution that has been proposed; and
  - (e) that the Member may provide an explanation to the Directors, and details of how to do so.
- 17.3 Before the Directors pass any resolution under clause 17.1, the Member must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Board of Directors' meeting; and/or
  - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the Directors may:
- (a) take no further action;
  - (b) warn the Member;
  - (c) suspend the Member's rights as a Member for a period of no more than 12 months;
  - (d) expel the Member;
  - (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or

- (f) require the matter to be determined at a General Meeting.
- 17.5 The Directors cannot fine a Member.
- 17.6 The Secretary must give written notice to the Member of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

## General Meetings of Members

### **18. Calling a General Meeting**

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- 18.1 The Directors may call a General Meeting, including an annual General Meeting.
- 18.2 If Members with at least 5% 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 for a proper purpose, the Directors 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.
- 18.3 The percentage of votes that Members have in clause 18.2 is to be worked out as at midnight before the Members request the meeting.
- 18.4 The Members who make the request for a General Meeting must:
  - (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the Company.
- 18.5 The Members making the request may sign the request by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means, which identifies the person and indicates the person's intention.
- 18.6 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.
- 18.7 If the Directors do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the Members who made the request may call and arrange to hold a General Meeting.
- 18.8 To call and hold a meeting under clause 18.7, 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 Company's Member Register, which the Company must provide to the Members making the request at no cost; and
- (c) hold the General Meeting within three months after the request was given to the Company.

18.9 The Company must pay the Members who request the General Meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

## **19. Business of a General Meeting**

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19.1 Subject to the Corporations Act, only the following types of business may be considered at a General Meeting:

- (a) consideration of the annual financial, Directors and auditor's reports (if required);
- (b) appointment and removal of Directors;
- (c) appointment of the auditor and the approval of auditor's remuneration;
- (d) amendment of the Company's name and/or this here Constitution; and
- (e) business proposed by the Directors.

## **20. Using technology to hold meetings**

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20.1 The Company may hold a General Meeting at two or more venues using any Virtual Meeting Platform or using a Virtual Meeting Platform only, where the platform gives Members a reasonable opportunity to participate, including to hear and be heard.

20.2 Anyone using this platform is taken to be present in person at the meeting.

20.3 If the General Meeting is held using a Virtual Meeting Platform only, then:

- (a) the place of the meeting is taken to be the registered office of the Company; and
- (b) the time of the meeting is taken to be the time at the registered office of the Company.

20.4 If the General Meeting is held at more than one physical venue (whether or not it is also held using a Virtual Meeting Platform), then:

- (a) the place of the meeting is taken to be the main physical venue of the meeting as set out in the notice of the meeting; and
- (b) the time of the meeting is taken to be the time at the main physical venue of the meeting as set out in the notice of the meeting.

## **21. Notice of General Meetings**

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- 21.1 Notice of a General Meeting must be given to:
- (a) each Member entitled to vote at the meeting;
  - (b) each Director; and
  - (c) the auditor (if any).
- 21.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a General Meeting may be provided less than 21 days before the meeting if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 21.4 Notice of a General 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.
- 21.5 Notice of a General Meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places or virtually, the Virtual Meeting Platform that will be used to facilitate this);
  - (b) a statement regarding the Member's right to request documents be sent in electronic or physical form;
  - (c) the general nature of the meeting's business;
  - (d) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
  - (e) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
    - (i) the proxy does not need to be a Member of the Company;
    - (ii) 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
    - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 21.6 If a General Meeting is adjourned for one month or more, the Members must be given new notice of the resumed meeting.

## **22. Quorum at General Meetings**

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- 22.1 For a General Meeting to be held, at least three Members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one Member).
- 22.2 No business may be conducted at a General Meeting if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the Chairperson specifies. If the Chairperson does not specify one 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.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **23. Right of non-members to attend meetings**

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- 23.1 The Chairperson of a General Meeting may invite any person to attend and address a meeting.
- 23.2 Any auditor and any Director of the Company is entitled to attend and address a General Meeting.
- 23.3 The Company must give the auditor (if any) any communications relating to the General Meeting that a Member of the Company is entitled to receive.

## **24. Chairperson for General Meetings**

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- 24.1 The Chairperson is entitled to chair General Meetings.
- 24.2 The Members present and entitled to vote at a General Meeting may choose a Director or Member to be the Chairperson for that meeting if:
- (a) there is no Chairperson; or
  - (b) the Chairperson is not present within 30 minutes after the starting time set for the meeting; or
  - (c) the Chairperson is present but says they do not wish to act as Chairperson of the meeting.

## **25. Role of the Chairperson**

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- 25.1 The Chairperson is responsible for the conduct of the General Meeting.
- 25.2 The Chairperson must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 25.3 The Chairperson of a General Meeting is entitled to a second or casting vote.
- 25.4 The Chairperson, in their discretion may expel any Member or Director from a General Meeting if the Chairperson reasonably considers that the Member or Director's conduct is inappropriate behaviour. Any of the following conduct may be considered inappropriate in a General Meeting:
- (a) the use of offensive or abusive language which is directed to any person, object or thing; and
  - (b) attendance at the meeting while under the influence of any kind of drug including alcohol.

## **26. Adjournment of meetings**

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- 26.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members present direct the Chairperson to adjourn it.
- 26.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

### **27. Members' resolutions and statements**

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- 27.1 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 for a proper purpose 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).
- 27.2 A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- 27.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.
- 27.4 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.

- 27.5 The percentage of votes that Members have (as described in clause 27.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 27.6 If the Company has been given notice of a Members' resolution for a proper purpose under clause 27.1(a), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 27.7 This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.

## **28. Company must give notice of proposed resolution or distribute statement**

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- 28.1 If the Company has been given a notice or request under clause 27:
- (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.
- 28.2 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 28.1(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.

## **29. Resolutions of Members without meetings**

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- 29.1 Subject to clause 29.3, the Directors may put a resolution to the Members to pass a resolution without a General Meeting being held.
- 29.2 The Directors must notify the auditor (if any) as soon as possible that a resolution has or will be put to Members and set out the wording of the resolution.

- 29.3 The Company cannot pass resolutions for the below without holding a meeting:
- (a) for a resolution to remove an auditor 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.
- 29.4 A resolution of the Members without a meeting is passed if all the Members entitled to vote on the resolution sign or agree to the resolution, in the manner set out in clause 29.5 or clause 29.6.
- 29.5 Members may sign:
- (a) a single document setting out the 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.
- 29.6 The Company may send a 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.

## Voting at General Meetings

### **30. How many votes a Member has**

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- 30.1 Only paid Members have voting rights with each Member having one vote.

### **31. Challenge to Member's right to vote**

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- 31.1 A Member or the Chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 31.2 If a challenge is made under clause 31.1, the Chairperson must decide whether or not the person may vote. The Chairperson's decision is final.

### **32. How voting is carried out**

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- 32.1 Voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the Chairperson that is fair and reasonable in the circumstances.

- 32.2 Before a vote is taken, the Chairperson must note whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 32.3 On a show of hands, the Chairperson's decision is conclusive evidence of the result of the vote.
- 32.4 The Chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **33. When and how a vote in writing must be held**

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- 33.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five Members present who are entitled to vote on the relevant resolution;
  - (b) Members present with at least 5% of the votes that may be passed on the relevant resolution (worked out as at the midnight before the vote in writing is demanded); or
  - (c) the Chairperson of the meeting.
- 33.2 A vote in writing must be taken when and how the Chairperson directs, unless clause 33.3 applies.
- 33.3 A vote in writing must be held immediately if it is demanded under clause 33.1:
- (a) for the election of a Chairperson under clause 24.2; or
  - (b) to decide whether to adjourn the meeting.
- 33.4 A demand for a vote in writing may be withdrawn.

### **34. Appointment of proxy**

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- 34.1 A Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 34.2 A proxy does not need to be a Member.
- 34.3 A proxy appointed to attend and vote for a Member has the same rights as the Member to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 33.1.
- 34.4 An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:
- (a) the Member's name and address;

- (b) the Company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meeting(s) at which the appointment may be used.

34.5 A proxy appointment may be standing (ongoing).

34.6 Proxy forms must be received by the Company at the address stated in the notice under clause 21.5(e) or at the Company's registered address at least 48 hours before a meeting.

34.7 A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.

34.8 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of a representative or agent who appointed the proxy.

34.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## **35. Voting by proxy**

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35.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).

35.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
- (b) if the way they must vote is specified on the proxy form, must vote that way; and
- (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

### **36. Number of Directors**

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36.1 The Company must have at least three and no more than nine Directors.

- 36.2 The Company may, by resolution, increase the number of Directors and may also determine in what rotation the increased or reduced number is to enter or leave office.
- 36.3 If the number of Directors is reduced to fewer than three or is less than the number required for a quorum, the continuing Directors may act, but only:
- (a) in an emergency;
  - (b) for the purpose of increasing the number of Directors to three (or higher if required for a quorum); or
  - (c) to call a General Meeting.

### **37. Election and appointment of Directors**

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- 37.1 Subject to clause 41, the initial Directors are the people who have agreed to act as Directors and who are named as proposed Directors in the application for registration of the Company.
- 37.2 The Board of Directors may nominate and appoint Directors at any time. Such Directors shall serve until the next annual General Meeting when they will become subject to election by Members.
- 37.3 Each of the Directors must be appointed by a separate resolution, unless:
- (a) the Members present have first passed a resolution that the appointments may be voted on together; and
  - (b) no votes were cast against that resolution.

### **38. Qualification of Directors**

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- 38.1 A person is eligible for election as a Director of the Company, if that person:
- (a) are a Member of the Company;
  - (b) are 18 years of age or older;
  - (c) are nominated by two Members entitled to vote (unless the person was previously elected as a Director at a General Meeting and has been a Director since that meeting);
  - (d) give the Company their signed consent to act as a Director of the Company; and
  - (e) are not ineligible to be a Director under the Corporations Act or the ACNC Act.

### **39. Casual vacancy or additional Director**

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- 39.1 Subject to clause 36, the Directors may appoint a person as a Director to fill a casual vacancy or as an additional Director, if that person:

- (a) is a Member of the Company;
- (b) is 18 years of age or older;
- (c) gives the Company their signed consent to act as a Director of the Company; and
- (d) is not ineligible to be a Director under the Corporations Act or the ACNC Act.

#### **40. Election of Chairperson**

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- 40.1 The Directors must elect a Director as the Company's Chairperson.
- 40.2 For a Chairperson to be elected, they must receive at least 75% of the votes of the relevant Directors.

#### **41. Term and retirement of Directors**

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- 41.1 A Director's term of office starts at the end of the General Meeting at which they are elected (excluding any period of casual vacancy).
- 41.2 A Director is elected at a General Meeting for a term of three years. At the end of that three year term, the Director must retire but subject to clause 41.3 may be nominated for re-election for a second term of three years.
- 41.3 Directors cannot hold office for more than two consecutive terms (six years). After serving two consecutive terms, Directors cannot be nominated for re-election or appointed to any casual vacancy.
- 41.4 If a Director is not re-nominated after an initial term (three years) but decides to nominate again in the future, they are eligible to serve another full six-year term (two consecutive terms), provided the Director has taken a break of at least one year prior to seeking a renomination.
- 41.5 (Transitional Provision)
  - (a) This clause 41.5 applies to Directors at the date of adoption of this Constitution (**Incumbent Board**). The object of this clause 41.5 is to enable an orderly transition of the Incumbent Board following the adoption of a maximum term of service under clause 41.
  - (b) If a Director to whom this clause applies has six years or more of continuous service as a Director (excluding any periods of casual vacancy) at the time they/they seeks reappointment, then, notwithstanding such previous service, the Director must resign at the date of adoption of this Constitution.

#### **42. When a Director stops being a Director**

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- 42.1 A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the Company;
- (b) die;
- (c) are removed as a Director by a resolution of the Members;
- (d) stop being a Member of the Company;
- (e) are a representative of a Member, and that Member stops being a Member;
- (f) are a representative of a Member, and the Member notifies the Company that the representative is no longer a representative;
- (g) are absent without the consent of the Directors from the meetings of the Directors held during a continuous period of six months and the Board resolves that the office of that Director to be vacated;
- (h) become insolvent under administration;
- (i) become 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; or
- (j) become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.

### **43. Retirement of Directors**

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- 43.1 Directors who are resigning or retiring at an annual General Meeting and who are not disqualified by law from being reappointed may act as a Director throughout that annual General Meeting.
- 43.2 A Director may retire from office by giving notice in writing to the Company of their intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.

## **Powers of Directors**

### **44. Powers of Directors**

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- 44.1 The Directors are responsible for managing and directing the activities of the Company to carry out the purpose(s) set out in clause 4.
- 44.2 The Directors may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by Members.
- 44.3 The Directors must decide on the responsible financial management of the Company including:

- (a) any suitable written delegations of power under clause 45; and
- (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

44.4 The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a Members' resolution at a General Meeting.

## **45. Delegation of Directors' powers**

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45.1 The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.

45.2 The Company must keep appropriate records of any delegations.

## **46. Payments to Directors**

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46.1 The Company must not pay Directors' fees.

46.2 The Company may:

- (a) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
- (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.

46.3 Any payment made under clause 46.2 must be approved by the Directors.

46.4 The Company must maintain a register of payments made to Directors.

## **47. Execution of documents**

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47.1 The Company may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the Company;
- (b) a Director and the Secretary; or
- (c) or some other person or combination of persons appointed by the Board for that purpose,

whether by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means, which identifies the person and indicates the person's intention.

## **48. Validity**

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- 48.1 An act done by a Director or by a meeting of the Directors or a committee attended by a Director is not invalid just because:
- (a) of a defect in the appointment of the Director;
  - (b) the person is disqualified from being a Director or has vacated office; or
  - (c) the person is not entitled to vote,
  - (d) if that circumstance was not known by the person or the Directors or committee, as the case may be, when the act was done.

## Duties of Directors

### **49. Duties of Directors**

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- 49.1 The Directors must comply with their duties:
- (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 of the Company;
  - (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 4;
  - (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 50;
  - (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.

### **50. Conflicts of interest**

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- 50.1 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 resolution to be passed under clause 57):
- (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.

- 50.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 50.3 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 resolution to be passed under clause 57) must not:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter,
- unless the Directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that Director to do so.
- 50.4 The Directors may make a policy or rules relating to disclosure of interests and subsequent requirements of the Directors.

## Directors' meetings

### **51. When the Directors meet**

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- 51.1 The Directors may decide how often, where and when they meet.

### **52. Calling Directors' meetings**

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- 52.1 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- 52.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.
- 52.3 The Chairperson, or at least two Directors, may at any time require the Secretary to convene a meeting of the Directors.

### **53. Chairperson for Directors' meetings**

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- 53.1 The Chairperson is entitled to chair Directors' meetings.
- 53.2 The Directors at a Directors' meeting may choose a Director to chair that meeting if the Chairperson is:
- (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as Chairperson of the meeting.

## **54. Quorum at Directors' meetings**

---

- 54.1 Unless the Directors determine otherwise, the quorum for a Directors' meeting is three Directors or another higher number determined by the Directors.
- 54.2 A quorum must be present for the whole Directors' meeting.

## **55. Using technology to hold Directors' meetings**

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- 55.1 The Directors may hold their meetings by using any Virtual Meeting Platform that is agreed to by all of the Directors.
- 55.2 The Directors' agreement may be a standing (ongoing) one.
- 55.3 A Director may only withdraw their consent within a reasonable period before the meeting.

## **56. Passing Directors' resolutions**

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- 56.1 A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

## **57. Resolutions of Directors without a meeting**

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- 57.1 The Directors may pass a resolution without a Directors' meeting being held.
- 57.2 A resolution without a meeting of the Directors is passed if 75% of the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 57.3 or clause 57.4.
- 57.3 Each Director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 57.4 The Company may send a resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 57.5 The resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 57.3 or clause 57.4.

## Secretary

### **58. Appointment and role of Secretary**

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- 58.1 The Company must have at least one Secretary, who may also be a Director.
- 58.2 A Secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed by the Directors.
- 58.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 58.4 The Secretary must ensure that the following are maintained:
- (a) a Register of the Company's Members; and
  - (b) the minutes and other records of General Meetings (including notices of meetings), Directors' meetings and resolutions.

## Minutes and records

### **59. Minutes and records**

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- 59.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of General Meetings;
  - (b) minutes of any other resolutions of Members;
  - (c) a copy of a notice of each General Meeting; and
  - (d) a copy of a Members' statement distributed to Members under clause 28.
- 59.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees); and
  - (b) minutes of any other resolutions of Directors.
- 59.3 To allow Members to inspect the Company's records:
- (a) the Company must give a Member access to the records set out in clause 59.1; and
  - (b) the Directors may authorise a Member to inspect other records of the Company, including records under clause 59.2 and clause 60.1.

- 59.4 The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by:
- (a) the Chairperson of the meeting; or
  - (b) the Chairperson of the next meeting.
- 59.5 The Directors must ensure that minutes of the passing of a resolution passed without a meeting (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.

## **60. Financial and related records**

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- 60.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 60.2 The Company must also keep written records that correctly record its operations.
- 60.3 The Company must retain its records for at least 7 years.
- 60.4 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

## **Notice**

### **61. What is notice**

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- 61.1 Anything written to or from the Company under any clause in this Constitution is written notice and is subject to clauses 62 to 64, unless specified otherwise.
- 61.2 Clauses 62 to 64 do not apply to a notice of proxy under clause 34.6.

### **62. Notice to the Company**

---

- 62.1 Written notice or any communication under this Constitution may be given to the Company, the Directors or the Secretary by:
- (a) delivering it to the Company's registered office;
  - (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;

- (c) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address; or
- (d) sending it to the fax number notified by the Company to the Members as the Company's fax number.

### **63. Notice to Members**

---

63.1 Written notice or any communication under this Constitution may be given to a Member:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the Member in the Register of Members or an alternative address (if any) nominated by the Member for service of notices;
- (c) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
- (d) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any); or
- (e) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

63.2 If a Member elects to receive documents in physical form or electronic form, the Company must take reasonable steps to send documents in a manner that complies with the election.

63.3 If the Company does not have an address for the Member, the Company is not required to give notice in person.

### **64. When notice is taken to be given**

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64.1 A notice:

- (a) delivered in person, or left at the recipient's address: is taken to be given on the day it is delivered;
- (b) sent by post: is taken to be given on the third Business Day after it is posted to the address notified by the recipient and payment of postage costs;
- (c) sent by email, fax or other electronic method: is taken to be given when it is sent, unless the sender receives an automated message that the notice has not been delivered; and
- (d) given under clause 63.1(e): is taken to be given on the Business Day after the notification that the notice is available is sent.

64.2 If the delivery or receipt of a notice is on a day which is not a Business Day or is after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the following Business Day.

## Financial matters

### **65. Company's financial year**

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- 65.1 The Company's financial year is from 1 January to 31 December, unless the Directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### **66. Indemnity**

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- 66.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the extent permitted by law (including the Corporations Act), against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 66.2 In this clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- 66.3 The indemnity is a continuing obligation and is enforceable by an officer:
- (a) even though that person is no longer an officer of the Company, and
  - (b) is enforceable without that person having first to incur any expense or make any payment.

### **67. Insurance**

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- 67.1 To the extent permitted by law (including the Corporations Act), and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

### **68. Directors' access to documents**

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- 68.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 68.2 The Directors may resolve to give a Director or former Director access to other records, including documents provided for or available to the Directors.

## Deductible Gift Recipient (DGR) requirements

### **69. Revocation of DGR status**

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- 69.1 If the Company is endorsed as a deductible gift recipient and this endorsement is revoked, then the Company must ensure the following assets remaining after the payment of all liabilities are distributed to one or more Eligible Recipients:
- (a) deductible gifts of money or property received for the Principal Purpose;
  - (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Principal Purpose; and
  - (c) money received by the Company because of such deductible gifts and contributions.
- 69.2 The decision about which Eligible Recipient is (or which Eligible Recipients are) to receive the funds distributed in accordance with clause 69.1 is to be determined by a resolution of the directors.

## Winding up

### **70. Winding up voluntarily**

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- 70.1 If permitted by law, the Company may be wound up voluntarily by Special Resolution.

### **71. Surplus Assets not to be distributed to Members**

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- 71.1 Before the Company is wound up, it must first wind up each of the deductible gift recipient endorsed funds it operates (if any), in accordance with each fund's winding up requirements.
- 71.2 Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets remain after the Company is wound up, such Surplus Assets must be distributed to one or more Eligible Recipients.
- 71.3 The decision as to the Eligible Recipient to be given the Surplus Assets must be made by a Special Resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 72. Definitions

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72.1 In this Constitution:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
- (b) **ASIC** means the Australian Securities and Investments Commission.
- (c) **Board** means the Board of Directors of the Company.
- (d) **Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the Company's registered office is located.
- (e) **Chairperson** means a person elected by the Directors to be the Company's Chairperson under clause 40.
- (f) **Company** means Patients Australia Limited ACN 146 474 688.
- (g) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (h) **Constitution** means this Constitution.
- (i) **Director** means a person appointed to perform the duties of a director of the Company.
- (j) **Directors** means the Board of Directors of the Company.
- (k) **Eligible Recipient** means an organisation which:
  - (i) has charitable objects or purposes similar to the Principal Purpose;
  - (ii) has a governing document which requires its income and property to be applied in promoting its objects and agrees to use any distribution provided to it by the Company to further such objects or purposes;
  - (iii) is registered as a charity with the Australian Charities and Not-for-profits Commission;
  - (iv) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the Company; and
  - (v) if the Company is endorsed as a deductible gift recipient for the purpose of any Australian federal tax law, is similarly endorsed as a deductible gift recipient.

- (l) **General Meeting** means a meeting of Members.
- (m) **Member** means a person whose name is entered in the Register as a member of the Company.
- (n) **Principal Purpose** means the purposes of the Company as reflected in the objects of the Company specified in clause 4, or any of those objects.
- (o) **Registered charity** means a charity that is registered under the ACNC Act.
- (p) **Register** means the register of Members kept by the Company under the Corporations Act.
- (q) **Secretary** means a person appointed to perform the duties of a secretary of the Company.
- (r) **Special Resolution** means a resolution:
  - (i) of which notice has been given under clause 21.5(d); and
  - (ii) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.
- (s) **Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.
- (t) **Virtual Meeting Platform** means any technology that allows Members to participate in a meeting, including by asking questions orally and in writing, without being physically present at the meeting.

## **73. Interpretation**

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73.1 In this Constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

## **74. Inconsistencies between Corporations Act and this Constitution**

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74.1 The replaceable rules set out in the Corporations Act do not apply to the Company.

74.2 While the Company is a Registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts, as they apply to a Registered charity.

74.3 If the Company is not a Registered charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.

74.4 A word or expression that is defined in the Corporations Act or used in that Act and covering the same subject, has the same meaning as in this Constitution.