



CONSTITUTION of Australasian College of Pharmacy Pty Ltd ACN 008 588 841

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DEFINITIONS, INTERPRETATION & REPLACEABLE RULES

1. Definitions

1.1 In this Constitution:

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

Auditor means the Company's auditor, if any.

Board means the Board of Directors of the Company.

Business Day has the same meaning as in the Corporations Act.

CEO means a person appointed as chief executive officer under clause 67.3.

Company means Australasian College of Pharmacy Pty Ltd ACN 008 588 841.

Constitution means the constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001 (Cth)* as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director includes any person occupying the position of director of the Company.

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

Dividend has the meaning given in the Corporations Act.

Pharmaceutical Industry means the discovery, manufacture and sale, whether retail or wholesale, of drugs, chemicals, appliances and pharmaceutical goods generally and shall include the profession of pharmacy, the practice of pharmacy and the education and training of persons for participation within the industry or profession and professional organisations associated with pharmacy or its support.

Register means the register of Shareholders of the Company.

Registered Subscriber means any person who has applied for registration and been accepted as a subscriber of services from the Company.

Representative means a person appointed by a Shareholder to act as its representative under clause 52.1 or under section 250D of the Corporations Act.

Seal means the Company's common seal (if any).

Secretary means a person appointed by the Directors to perform any of the duties of a secretary of the Company.

Shareholder means a person whose name is entered for the time being on the Register as the holder of one or more Shares.

Shares means shares of the Company.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

2.1 In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australasian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

2.2 Headings are for ease of reference only and do not affect interpretation.

3. **Replaceable rules**

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

PURPOSE

4. **Objects**

The Company's object is to pursue the following charitable purposes:

- (a) develop and deliver educational, training and research programs for pharmacy (including the theory and application of 'best practice' management and patient care/clinical studies) and for the pharmaceutical industry and to contribute to the advancement and promotion of the practice of pharmacy in Australia;
- (b) promote and recognise a high standard of excellence in the knowledge and practice of pharmacy, to define minimum standards of practice for members and to promote and advance the education and training of persons in all sectors of pharmacy and the pharmaceutical industry;
- (c) improve the knowledge and skills base of pharmacists, pharmacy assistants and pharmacy employees and staff;
- (d) develop and deliver Continuing Professional Education (CPE) and Continuing Professional Development (CPD) programs for pharmacists, pharmacy assistants and pharmacy employees and staff;
- (e) grant Post Nominals, Diplomas and Awards (consistent with any Accreditation held by the College) to persons achieving such standards of attainment as are recognised in those Accreditations or as otherwise determined by the Board from time to time;
- (f) conduct, promote and facilitate research into pharmacy practice;
- (g) develop and promote the practice of pharmacy by such other activities as the Board may from time to time determine;
- (h) liaise and cooperate with allied professional groups and pharmaceutical organisations, and to publicise the views, policies and aspirations of pharmacists;
- (i) provide education and training across accredited and non accredited courses within the health, allied health fields and community services sectors.

5. **Powers**

Subject to clause 6, the Company has the following powers, which may only be used to carry out its purposes set out in clause 4:

- (a) the powers of an individual, and
- (b) all the powers of a company under the Corporations Act.

6. **Not-for-profit**

6.1 The Company must not distribute any income or assets directly or indirectly to a Shareholder, except as provided in clauses 6.2 and 83.

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 Shareholder 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 Shareholder in carrying out the Company's charitable purposes.

SHARES

7. **Rights**

Subject to this Constitution and to the terms of issue of Shares, all Shares attract the following rights, privileges and conditions:

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company at one vote per Share; and
- (b) subject to clause 82 and 83, in a winding up, the right to participate in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on the Share.

8. **Issue of Shares and other securities**

8.1 Subject to this Constitution and the Corporations Act, the Directors may issue or dispose of Shares and other securities to persons:

- (a) on terms determined by the Directors;
- (b) at the issue price that the Directors determine; and
- (c) at the time that the Directors determine.

8.2 The Directors' power under clause 8.1 includes the power to:

- (a) grant options to have Shares or other securities issued; and
- (b) issue Shares or other securities with:
 - (i) any preferential, deferred or special rights, privileges or conditions;
 - (ii) any restrictions; or
- (c) issue preference shares or other securities that are liable to be redeemed.

9. **Buy-backs**

Subject to the Corporations Act, the Company may buy back Shares on terms and at times determined by the Directors in their discretion.

10. **Commission and brokerage**

Any brokerage or commission which may be paid by the Company may be made in cash, by the issue of Shares, by the grant of options over Shares, or by a combination of any of those methods, or otherwise.

11. **Trusts**

11.1 Except as required by law or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.

12. **Joint holders**

If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with benefits of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.

13. **Right to certificate**

13.1 Subject to the conditions of issue of any Shares or any class of Shares:

- (a) every Shareholder is entitled free of charge to one certificate for all Shares registered in its name; and
- (b) a Shareholder may request several certificates in reasonable denominations for different portions of its holding.

13.2 Subject to the conditions of issue of any Shares or any class of Shares, joint holders are entitled to a single certificate in their joint names in respect of each portion of their holding. The certificate will be sent to the joint holder whose name appears first in the Register.

13.3 The Company must issue a replacement certificate for Shares in accordance with the Corporations Act if:

- (a) the holder of the Shares is entitled to a certificate for those Shares;
- (b) satisfactory evidence has been received by the Company that the certificate for Shares previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
- (c) the Shareholder has undertaken in writing to the Company to return the certificate to the Company if it is found or received by the Shareholder.

13.4 Every certificate for Shares must be issued and despatched in accordance with the Corporations Act.

14. **Replacement of certificate**

The Directors may order worn out or defaced certificates to be cancelled and replaced by new certificates.

15. **Variation of class rights**

15.1 The rights attached to any Shares in a class of Shares may, unless their terms of issue state otherwise, be varied or cancelled by a special resolution of the Company and:

- (a) with the written consent of the holders of 75% of the Shares of the class; or
 - (b) with the sanction of a special resolution and passed at a separate meeting of the holders of Shares of the class.
- 15.2 The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:
- (a) a quorum is two persons holding or representing by proxy, attorney or Representative at least one-third of the Shares of the class or, if there is one holder of Shares in a class, that holder or a person representing by proxy, attorney or Representative that holder; and
 - (b) any holder of Shares of the class, present in person or by proxy, attorney or Representative may demand a poll.
- 15.3 The rights conferred on the holders of Shares of any class will not be taken to be varied by:
- (a) the issue of more Shares; or
 - (b) the conversion of securities to new securities,
- which rank equally with or in priority to those Shares, unless expressly provided by their respective terms of issue or the Corporations Act.

CALLS

16. Calls

- 16.1 Subject to the Corporations Act and the terms on which partly paid Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.
- 16.2 A call is made when the resolution of the Directors authorising it is passed.
- 16.3 The Directors may require a call to be paid by instalments.
- 16.4 The Directors may revoke or postpone a call before its due date for payment.
- 16.5 At least 10 business days before the due date for payment of a call the Company must send to Shareholders on whom the call is made a notice specifying:
- (a) the amount of the call;
 - (b) the due date for payment; and
 - (c) the place for payment.
- 16.6 A Shareholder to whom notice of a call is given in accordance with this clause 16 must pay to the Company the amount called in accordance with the notice.
- 16.7 Failure to send a notice of a call to any Shareholder or the non-receipt of a notice by any Shareholder does not invalidate the call.
- 16.8 Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

17. Instalments

Where:

- (a) the Directors require a call to be paid by instalments; or

- (b) an amount becomes payable by the terms of issue of Shares, or at a time or in circumstances specified in the terms of issue,

then:

- (c) every instalment or the amount payable under the terms of issue of Shares is payable as if it were a call made by the Directors and as if they had given notice of it; and
- (d) the consequences of late payment or non-payment of an instalment or the amount payable under the terms of issue of Shares are the same as the consequences of late payment or non-payment of a call.

18. **Interest and expenses on calls**

If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay:

- (a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
- (b) all expenses incurred by the Company as a consequence of the non-payment, but the Directors may waive payment of the interest and expenses in whole or in part.

19. **Recovery of amounts due**

On the hearing of any action for the recovery of money due for any call, proof that:

- (a) the name of the person sued was, when the call was made, entered in the Register as a holder or the holder of Shares in respect of which the call was made;
- (b) the resolution making the call is duly recorded in the Directors' minute book; and
- (c) notice of the call was given to the person sued,

will be conclusive evidence of the debt.

20. **Differentiation**

The Directors may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

21. **Payment of calls in advance**

21.1 The Directors may accept from a Shareholder the whole or part of the amount unpaid on a Share before the amount accepted has been called.

21.2 Payment of an amount in advance of a call does not entitle the paying Shareholder to any benefit or advantage to which the Shareholder would not have been entitled if it had paid the amount when it became due.

LIEN AND FORFEITURE

22. **Lien**

22.1 The Company has a first and paramount lien on every partly paid Share for all money:

- (a) due and unpaid to the Company at a fixed time, in respect of the Share;
- (b) presently payable by the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
- (c) which the Company is required by law to pay in respect of the Share.

- 22.2 Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.
- 22.3 The Directors may declare a Share to be wholly or partly exempt from a lien.
- 22.4 If any law for the time being of any country, state or place imposes or purports to impose an immediate or contingent liability on the Company to make any payment or authorises a taxing authority or Government official to require the Company to make payment in respect of Shares:
- (a) the Shareholder or, if the Shareholder is deceased, the Shareholder's legal personal representative, indemnifies the Company in respect of any such payment or liability; and
 - (b) subject to the Corporations Act, the Company:
 - (i) has a lien on the Shares, whether the Shares are held by the Shareholder solely or jointly with any other person or by that person's legal personal representative, in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the Shareholder; and
 - (ii) may set off amounts so paid by the Company against any amounts payable by the Company to the Shareholder; and
 - (iii) may recover as a debt due from the Shareholder or the Shareholder's legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in clause 22.4(b)(i).

23. **Lien sale**

If:

- (a) the Company has a lien on a Share for money presently payable; and
- (b) the Company has given the Shareholder or the Shareholder's executors or administrators (as the case may be) holding the Share written notice demanding payment of the money; and
- (c) the Shareholder fails to pay all of the money demanded,

then 14 or more days after giving the notice, the Directors may sell the Share in any manner determined by them.

24. **Forfeiture notice**

- 24.1 The Directors may at any time after a call or instalment becomes payable and remains unpaid by a Shareholder, serve a notice on the Shareholder requiring the Shareholder to pay all or any of the following:
- (a) the unpaid amount;
 - (b) any interest that has accrued; and
 - (c) all expenses incurred by the Company as a consequence of the non-payment.

- 24.2 The notice under clause 24.1 must:
- (a) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
 - (b) state that if a Shareholder does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

25. **Forfeiture**

- 25.1 If a Shareholder does not comply with a notice served under clause 24, then any or all of the Shares in respect of which the notice was given may be forfeited under a resolution of the Directors.
- 25.2 On forfeiture, Shares become the property of the Company and forfeited Shares may be sold, disposed of, or cancelled on terms determined by the Directors.
- 25.3 The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.
- 25.4 Promptly after a Share has been forfeited:
- (a) notice of the forfeiture must be given to the Shareholder in whose name the Share was registered immediately before its forfeiture; and
 - (b) the forfeiture and its date must be noted in the Register.
- 25.5 Omission or neglect to give notice of or to note the forfeiture as specified in clause 25.4 will not invalidate a forfeiture.

26. **Liability of former Shareholder**

- 26.1 The interest of a person who held Shares which are forfeited is extinguished but the former Shareholder remains liable to pay:
- (a) all money (including interest and expenses) that was payable by the Shareholder to the Company at the date of forfeiture in respect of the forfeited Shares; and
 - (b) interest from the date of forfeiture until payment at a rate determined by the Directors (not exceeding 20% per annum).
- 26.2 A former Shareholder's liability to the Company ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the former Shareholder in respect of the Shares.

27. **Disposal of Shares**

- 27.1 The Company may:
- (a) receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share, or a Share sold under a lien sale; and
 - (b) execute a transfer of the Share in favour of a person to whom the Share is sold or disposed of.
- 27.2 The purchaser of the Share:
- (a) is not bound to check the regularity of the sale or the application of the purchase price;
 - (b) obtains title to the Share despite any irregularity in the sale; and

- (c) will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase.
- 27.3 A statement signed by a Director and the Secretary that the Share has been regularly forfeited and sold or re-issued, or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.
- 27.4 The net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order:
- (a) in payment of the costs of the sale;
 - (b) in payment of all amounts secured by the lien or all money that was payable in respect of the forfeited Share; and
 - (c) in payment of any surplus to the former Shareholder whose Share was sold.

TRANSFER OF SHARES

28. Transfer

- 28.1 Subject to this Constitution, a Shareholder may transfer the Shares held by that Shareholder.
- 28.2 Shares may be transferred by:
- (a) a written transfer instrument in any usual or common form; or
 - (b) any other form approved by the Directors.
- 28.3 A written transfer instrument referred to in clause 28.2 must be executed by or on behalf of the transferor and the transferee.
- 28.4 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.

29. Transfer procedure

- 29.1 Subject to clause 30, the Directors are not required to register a transfer of Shares unless:
- (a) the transfer is left at the Company's registered office;
 - (b) the transfer is accompanied by a certificate for the Shares dealt with in the transfer, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
 - (c) the Directors have been provided with any further information they reasonably require to establish the right of the person transferring the Shares to make a transfer.
- 29.2 Subject to the powers vested in the Directors by this Constitution, the Company must register all registrable transfer forms and issue certificates without charge, except where the issue of a certificate is to replace a lost or destroyed certificate.

30. Right to refuse registration

- 30.1 The Directors may only refuse to register any transfer of Shares or other securities:
- (a) where the registration of the transfer would result in a contravention or failure to observe the provisions of the law of the State or Territory or the Commonwealth;
 - (b) where the Company has a lien on the Shares;

- (c) where the transfer is of a partly paid security in respect of which a call has been made and is unpaid;
- (d) where more than three persons are to be registered as joint holders except in the case of executors or trustees of a deceased Shareholder; or
- (e) on which stamp duty or other taxes of a similar nature are payable but unpaid.

31. **Closure of Register**

The transfer books and the Register may be closed for up to 30 days in each year.

TRANSMISSION OF SHARES

32. **Title on death**

- 32.1 The legal personal representative of a deceased Shareholder who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Shareholder's Shares.
- 32.2 If a deceased Shareholder was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Shareholder's Shares.
- 32.3 The estate of the deceased Shareholder will not be released from any liability to the Company in respect of the Shares.
- 32.4 The Company may register a transfer to a transferee who dies before the transfer is registered.

33. **Transmission**

- 33.1 A person who becomes entitled to a Share in consequence of the death, lunacy or bankruptcy of a Shareholder may, subject to producing to the Directors evidence of its entitlement which is satisfactory to the Directors, elect to:
 - (a) be registered as the holder of the Share; or
 - (b) transfer the Share to some other person nominated by it.
- 33.2 If the person who has become entitled to a Share:
 - (a) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by it; or
 - (b) elects to transfer the Share, then the person must execute a transfer of the Share.
- 33.3 An election to be registered as a holder of a Share under clause 33.1(a) or a transfer of a Share from a Shareholder or deceased Shareholder under this clause 33 is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Shareholder or deceased Shareholder itself.
- 33.4 A person who:
 - (a) has become entitled to a Share by operation of law; and
 - (b) has produced evidence of its entitlement which is satisfactory to the Directors,
 is entitled to exercise all rights of the registered holder of the Share.
- 33.5 Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.

- 33.6 Any person who is registered under this clause must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

CHANGES TO SHARE CAPITAL

34. Dealing with share fractions

For the purpose of giving effect to a conversion of all or any of the Shares into a larger or smaller number of Shares, the Directors may settle any difficulty which arises with respect to fractions of Shares as they think expedient.

GENERAL MEETINGS

35. Calling general meeting

- 35.1 The CEO or any Director may, at any time, call a general meeting.
- 35.2 A Shareholder may only request the Directors to call and arrange to hold a general meeting in accordance with section 249D of the Corporations Act.
- 35.3 A Shareholder may not call or arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

36. Notice of general meeting

- 36.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Shareholders of any general meeting.
- 36.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) must state the general nature of the business to be transacted at the meeting;
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment;
 - (d) if a special resolution is to be proposed at the meeting, must specify an intention to propose the special resolution and state the resolution;
 - (e) must comply with any other requirements of the Corporations Act.
- 36.3 An annual general meeting will be held each year in October.
- 36.4 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 36.5 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 35.2). The Directors must give notice of the postponement or cancellation to all persons referred to in clause 80.1 entitled to receive notices from the Company.

- 36.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Shareholder or the non-receipt of a notice (or form) by any Shareholder does not invalidate the proceedings at or any resolution passed at the general meeting.

PROCEEDINGS AT GENERAL MEETINGS

37. Shareholder

In clauses 38, 39, 41 and 43, **Shareholder** includes a Shareholder present in person or by proxy, attorney or Representative.

38. Quorum

- 38.1 No business may be transacted at a general meeting unless a quorum of Shareholders is present when the meeting proceeds to business.
- 38.2 If there are 2 or more Shareholders, a quorum of Shareholders is two.
- 38.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting it will stand adjourned to the same time and place two Business Days later.
- 38.4 Provided at least one Business Day's notice has been given to all Shareholders, at an adjourned general meeting a quorum is any two Shareholders.

39. Chairperson

- 39.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting of Shareholders.
- 39.2 If:
- (a) there is no chairperson or deputy chairperson; or
 - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,
- the Directors present may elect a chairperson of the general meeting of Shareholders.
- 39.3 If no election is made under clause 39.2, then:
- (a) the Shareholders may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Shareholders may elect one of the Shareholders present as chairperson.

- 39.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

- 39.5 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give Shareholders a reasonable opportunity to make comments and ask questions.

40. Adjournment

- 40.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.

- 40.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 40.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 40.4 If a general meeting has been adjourned for more than 21 days, at least 3 days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned general meeting must be given to Shareholders.

41. **Decision on questions**

- 41.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 41.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 41.3 The chairperson does not have a casting vote in addition to the chairperson's votes as a Shareholder, proxy, attorney or Representative.
- 41.4 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 41.5 The demand for a poll may be withdrawn.

42. **Taking a poll**

- 42.1 A poll will be taken when and in the manner that the chairperson directs.
- 42.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 42.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 42.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 42.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 42.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

VOTES OF SHAREHOLDERS

43. **Entitlement to vote**

- 43.1 Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
- (a) every Shareholder may vote;
 - (b) subject to clause 48.4, on a show of hands every Shareholder has one vote; and
 - (c) on a poll every Shareholder has one vote for each fully paid Share.
- 43.2 If a Shareholder is of unsound mind or is person whose estate or property has had a personal representative, trustee, or other person appointed to administer it, the Shareholder's

personal representative, trustee or other person with the management of the Shareholder's estate or property may exercise any rights of the Shareholder in relation to a meeting of Shareholders as if the personal representative or trustee or other person was a Shareholder.

44. Unpaid calls

A Shareholder is not entitled to vote or to be counted in a quorum unless all calls and other sums payable by the Shareholder in respect of Shares have been paid.

45. Joint holders

45.1 If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

45.2 For the purposes of this clause 45, several executors or administrators of a deceased Shareholder in whose sole name any Shares are registered will be taken to be joint holders of those Shares.

46. Objections

46.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

46.2 An objection must be referred to the chairperson of the general meeting, whose decision made in good faith is final.

46.3 A vote which the chairperson does not disallow under an objection is valid for all purposes.

47. Votes by operation of law

A person who has satisfied the Directors not less than 24 hours before a general meeting that it is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to a general meeting, as if the person were the registered holder of the Share.

48. Votes by proxy

48.1 A Shareholder who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the meeting on that Shareholder's behalf.

48.2 A proxy need not be a Shareholder.

48.3 If a Shareholder appoints one proxy, that proxy may, subject to the Corporations Act, vote on a show of hands.

48.4 If a Shareholder appoints two proxies and the appointment does not specify the proportion or number of the Shareholder's votes each proxy may exercise, each proxy may exercise half the votes. However, neither proxy may vote on a show of hands.

48.5 A proxy may demand or join in demanding a poll.

48.6 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If an appointment directs the way the proxy is to vote on a particular resolution:

(a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;

(b) if the proxy has two or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;

(c) if the proxy is the chair - the proxy must vote on a poll, and must vote that way; and

- (d) 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.

49. **Document appointing proxy**

- 49.1 An appointment of a proxy is valid if it is signed by the Shareholder making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 49.2 The Company may send a proxy appointment form to Shareholders in a form which has been approved by the Directors or by the chairperson and the CEO.
- 49.3 A proxy's appointment is valid at an adjourned general meeting.
- 49.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 49.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
 - (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

50. **Lodgement of proxy**

- 50.1 Subject to clause 50.3, the appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- 50.2 If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).
- 50.3 The Company receives an appointment of a proxy or attorney or other authority under which it was signed when they are received at:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of general meeting.

51. **Validity**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless any written notification of the death, mental incapacity, revocation or transfer was received by the Company before the relevant general meeting or adjourned general meeting.

52. Representatives of corporations

52.1 Any Shareholder that is a corporation may appoint an individual as its representative as provided by the Corporations Act. If a Shareholder Corporation does so:

- (a) its representative may exercise at the relevant general meeting all the powers which the Shareholder corporation could exercise if it were a natural person; and
- (b) when its representative is present at a meeting, the Shareholder corporation is considered to be personally present at the meeting.

52.2 The chairperson of a general meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairperson of the general meeting his or her status as a Representative within a period prescribed by the chairperson of the general meeting.

52.3 The appointment of a Representative may set out restrictions on the Representative's powers.

WRITTEN RESOLUTIONS

53. Written resolutions

53.1 The Company may pass a resolution without a general meeting being held if all the Shareholders 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. The resolution is passed when the last Shareholder signs.

53.2 For the purposes of clause 53.1, separate copies of a document may be used for signing by Shareholders if the wording is identical in each copy.

53.3 If the Company has one Shareholder, the Company may pass a resolution by the Shareholder recording it and signing the record.

53.4 Any document referred to in this clause may be in the form of a facsimile transmission or other document produced by mechanical or electronic means and is deemed to be a document signed in writing by the Shareholder.

53.5 Any written resolution passed in accordance with this clause 53 satisfies any requirement in this Constitution or the Corporations Act (to the extent permitted by the Corporations Act) that the resolution be passed at a general meeting.

DIRECTORS

54. Number of Directors

54.1 As at the date on which this Constitution is adopted by the Company, the Company has eight Directors.

54.2 Unless the Company resolves otherwise, there will be:

- (a) a minimum of seven Directors; and
- (b) a maximum of nine Directors.

55. Eligibility

55.1 To be a Director, a person must;

- (a) be at least 18 years old; and
- (b) not be ineligible under the Corporations Act or the ACNC Act.

56. Board Composition

56.1 At all times, the Board will include the number of Independent Directors and Membership Representative Directors prescribed from time to time in the by-laws made pursuant to clause 71.

56.2 To be an Independent Director a person must:

- (a) have relevant experience and expertise as determined by the Board;
- (b) not have had in the last three (3) years, or intend to have, any material or significant business with the Company (or an associated entity) or material financial interest that could interfere with, or could reasonably be perceived to interfere with, the independent exercise of his or her judgment in relation to the Company (for the avoidance of doubt, this criterion does not disqualify an individual from being an Independent Director solely because they are or have been an employee of or a subscriber for services from the Company).

56.3 To be a Membership Representative Director, a person must:

- (a) be nominated and elected in accordance with by-laws made by the Company in accordance with clause 71;
- (b) satisfy each criterion for an Independent Director;
- (c) have relevant experience in the Pharmaceutical Industry as reasonably determined by the Company but which may include working as a pharmacist or pharmacy assistant in pharmacy practice, working in the Pharmaceutical Industry, in a governmental or other organisation dealing with pharmacy related issues or which provides services to the Pharmaceutical Industry; and
- (d) be a paid up Registered Subscriber.

57. Appointment and removal of Directors

Subject to the Corporations Act, this Constitution and any applicable by-laws made pursuant to clause 71, the Company may at any time by resolution passed in general meeting:

- (a) appoint any person to be a Director; or
- (b) remove any Director from office.

58. Term of office

- (a) A Director will hold office for a term commencing on the date of appointment (or re-appointment) until the close of the Annual General Meeting held in the third calendar year following the date of appointment (or re-appointment) or until he or she dies or until his or her office is vacated under clause 59.
- (b) A retiring Director is eligible for re-appointment save only that he or she must not serve more than three terms consecutively.

59. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is an Independent Director or Membership Representative Director and fails to satisfy any of the applicable criteria set out in clauses 55 and 56;
- (b) becomes ineligible to be a director of the Company under the Corporations Act or the ACNC Act;
- (c) dies or cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
- (d) resigns by notice in writing to the Company; or
- (e) is removed as Director by resolution of the Company.

REMUNERATION OF DIRECTORS

60. Remuneration, costs and expenses of Directors

If all of the Shareholders determine by unanimous vote, and subject always to clause 5, a Director may be paid directors' fees, and/or reimbursed for costs or expenses (including travel expenses) reasonably incurred.

61. Other payments to Directors

The Company may pay a premium in respect of a contract insuring a person who is or has been a Director against a liability incurred by the person as a Director, except in circumstances prohibited by the Corporations Act.

POWERS AND DUTIES OF DIRECTORS

62. Directors to manage Company

- 62.1 The Directors are responsible for managing and directing the activities of the Company to achieve the purposes set out in clause 4.
- 62.2 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution or the Corporations Act do not require to be exercised by the Company in general meeting.
- 62.3 Every Director and other agent or officer of the Company must:
 - (a) keep secret all aspects of all transactions of the Company, except:
 - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (ii) as required by law; and

- (iii) when requested to disclose information by the Directors, to the auditors of the Company or a general meeting of the Company; and
 - (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.
- 62.4 The Directors must decide on the responsible financial management of the Company including:
 - (a) any delegations of power under clause 67, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 62.5 The Directors must comply with their duties as directors under legislation and common law and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
 - (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
 - (b) to act in good faith in the best interests of the Company and to further the charitable purposes of the Company;
 - (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;
 - (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.

PROCEEDINGS OF DIRECTORS

63. Directors' meetings

- 63.1 The Directors will meet no less than three (3) times per year.
- 63.2 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 63.3 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 63.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 63.5 A Director who participates in a meeting held in accordance with this clause is taken to be present and entitled to vote at the meeting.
- 63.6 A Director can only withdraw his or her consent to the means of communication between Directors for a Directors' meeting if the Director does so at least 48 hours before the meeting.
- 63.7 Clauses 63.3 to 63.6 apply to meetings of Directors' committees as if all committee members were Directors.
- 63.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 63.9 At a meeting of Directors, whilst the Company has eight or more Directors, a quorum is five.

63.10 If the Company resolves to reduce the minimum number of Directors to less than eight, it may also resolve to reduce the number of Directors required for a quorum.

63.11 Notice of a meeting of Directors may be given in writing, or the meeting may otherwise be called using any technology consented to by all the Directors.

64. Decision on questions

64.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 64, each Director has one vote.

64.2 The chairperson of a meeting has a casting vote in addition to his or her deliberative vote. If there is an equality of votes, but only in respect of a decision that does not require a Directors' Special Majority Approval.

65. Directors' interests

65.1 As required by the Corporations Act, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company.

65.2 A Director who has a material personal interest in a matter that is being considered at a Director's meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted to do so by the Corporations Act, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or a proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or a proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

66. Chairperson

66.1 The Directors must elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.

66.2 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 15 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

66.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

67. CEO, Dean of Studies, Academic Board and other committees

67.1 The Directors may delegate any of their powers to:

- (a) a committee of Directors;
- (b) a Director;
- (c) the CEO or any other employee of the Company; or
- (d) any other person(s).

- 67.2 The Directors will pass such resolutions as may be required to ensure that at all times, the Company has an appropriately constituted and qualified Audit and Risk Committee and Academic Board.
- 67.3 The Directors will appoint a CEO for such term, and upon such conditions as it thinks fit, and any CEO so appointed may be removed by the Board. The CEO must not be a Director and may attend all meetings of the Board and will be an ex officio member of all Committees and Advisory Boards.
- 67.4 The Directors will appoint a Dean of Studies for such term and upon such conditions as it sees fit and any Dean so appointed may be removed by the Board. The Dean may attend all meetings of the Board and will be an ex officio member of all Committees and Advisory Boards.
- 67.5 A committee or person to which any powers have been delegated must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 67.6 A committee or any person to which any powers have been delegated may be authorised to sub-delegate all or any of the powers for the time being vested in it.
- 67.7 The Directors may at any time revoke any delegation of power.
- 67.8 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

68. **Written resolutions**

- 68.1 The Directors may pass a resolution without a directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director entitled to vote on the resolution signs.
- 68.2 For the purposes of clause 68.1, 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.
- 68.3 If the Company has one Director, the Director may pass a resolution, or make a declaration by recording it and signing the record.
- 68.4 Any document referred to in this clause may be in the form of a facsimile transmission or other document produced by mechanical or electronic means and is deemed to be a document signed in writing by the Director.
- 68.5 This clause applies to meetings of Directors' committees as if all Shareholders of the committee were Directors.

69. **Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or Shareholder of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or any Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

70. **Minutes and Registers**

70.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 68;
- (d) all orders made by the Directors and Directors' committees; and
- (e) all disclosures of interests made under clause 65.

70.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body, and if so signed will as between the Directors be conclusive evidence of the matters stated in those minutes.

71. **By-laws**

71.1 The Directors may pass resolutions to make by-laws (binding policies and procedures) to give effect to this constitution.

71.2 Without limiting clause 71.1, the Directors will make by-laws regarding:

- (a) the appointment of Independent Directors and non-Independent Directors, including the timing of appointments, procedure and eligibility criteria; and
- (b) the minimum number of Independent Directors and Membership Representative Directors on the Board from time to time and the process for the nomination, election and appointment of Independent Directors and Membership Representative Directors.

71.3 Shareholders and Directors must comply with by-laws as if they were part of this constitution.

LOCAL MANAGEMENT

72. **Local management**

72.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

72.2 Without limiting clause 72.1 the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be Shareholders of those local boards or agencies; and
- (b) delegate to any person appointed under clause 72.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

72.3 The Directors may at any time revoke or vary any delegation under this clause 72.

73. **Appointment of attorneys and agents**

73.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;

- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,
determined by the Directors.

73.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any Shareholder of any local board established under this Constitution;
- (b) any company;
- (c) the Shareholders, directors, nominees or managers of any company or firm; or
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

73.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

73.4 An attorney or agent appointed under this clause 73 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

SECRETARY

74. Secretary

74.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.

74.2 The Secretary (if any) is entitled to attend and be heard on any matter at all Directors' and general meetings.

74.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

SEALS

75. Common Seal

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
- (c) subject to clause 75(d), every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; and
- (d) if the Company has only one Director who is also the only secretary of the Company, or if there is no secretary, every document to which the Seal is affixed must be signed by the Director but need not be countersigned.

76. Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face; and
- (b) must only be used with the authority of the Directors or a Directors' committee.

77. Share Seal

77.1 If the Company has a Seal the Company may have a Share seal which may be affixed to Share certificates.

77.2 The Share Seal (if any):

- (a) must be a facsimile of the Seal with 'Share Seal' or 'Certificate Seal' on its face; and
- (b) may only be used with the authority of the Director or a Director's committee.

INSPECTION OF RECORDS

78. Times for inspection

On reasonable notice to the CEO and at reasonable times, each Shareholder is entitled to full access to the financial records and other documents of the Company for the purpose of auditing and valuing the Company, making copies and any other reasonable purpose.

DIVIDENDS AND RESERVES

Not used.

NOTICES

79. Service of notices

79.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:

- (a) serving it on the person;
- (b) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person; or
- (c) if the notice is to a Shareholder and the Shareholder's address is not recorded in the Register, posting it on a notice board at the Company's registered office.

79.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the day after the day on which it was posted.

79.3 A notice sent by facsimile transmission or electronic notification is taken to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (b) on the day after its despatch.

79.4 A notice posted on a notice board at the Company's registered office is taken to be served 24 hours after it is posted on the board.

- 79.5 A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.
- 79.6 Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this clause on the person from whom it derives its title.
- 79.7 A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:
- (a) in the case of a Shareholder whose address recorded in the Register is not in Australia, by airmail post; and
 - (b) in any other case, by ordinary post,
- and is at the risk of the addressee as soon as it is given or posted.
- 79.8 A Shareholder whose address recorded in the Register is not in Australia may specify in writing an address in Australia for the purposes of clause 79.
- 79.9 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 79.10 Subject to the Corporations Act, the signature to a written notice given by the Company may be written or printed.
- 79.11 All notices sent by post outside Australia must be sent by prepaid airmail post.

80. **Persons entitled to notice**

- 80.1 Notice of every annual general meeting, general meeting, extraordinary general meeting, Board meeting and election must be given to:
- (a) every Shareholder;
 - (b) every Director;
 - (c) the CEO; and
 - (d) any Auditor.
- 80.2 No other person is entitled to receive notice of any meeting.

AUDIT AND ACCOUNTS

81. **Company to keep accounts**

The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act and the ACNC Act.

WINDING UP

82. **Surplus assets not to be distributed to Shareholder(s)**

If the Company is wound up, any surplus assets must not be distributed to a Shareholder or a former Shareholder of the Company, unless that Shareholder or former Shareholder is a charity described in clause 83.

83. **Distribution of surplus assets**

- 83.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purposes similar to, or inclusive of, the purposes in clause 4, and
 - (b) which also prohibit the distribution of any surplus assets to its shareholders or members to at least the same extent as the Company.
- 83.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of the Company at or before the time of winding up. If the Shareholders do not make this decision, the Company may apply to the Supreme Court to make this decision.

PAYMENTS BY THE COMPANY

84. **Indemnity**

- 84.1 Subject to and so far as permitted by the Corporations Act:
- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company against a Liability incurred as such an officer to a person (other than the Company or a related body corporate), unless the Liability arises out of conduct involving lack of good faith; and
 - (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer in defending an action for a Liability incurred as such an officer or in resisting or responding to actions taken by a government agency or liquidator.

In this clause 84.1, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator

- 84.2 Subject to the Corporations Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person where it is in the interests of the Company to do so.
- 84.3 The indemnity in favour of officers under clause 84.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer at the time the claim is made.
- 84.4 Subject to the Corporations Act, without limiting a person's rights under this clause 84, the Company may enter into an agreement with a person who is or has been an officer of the Company, to give effect to the rights of the person under this clause 84 on any terms and conditions that the board thinks fit.