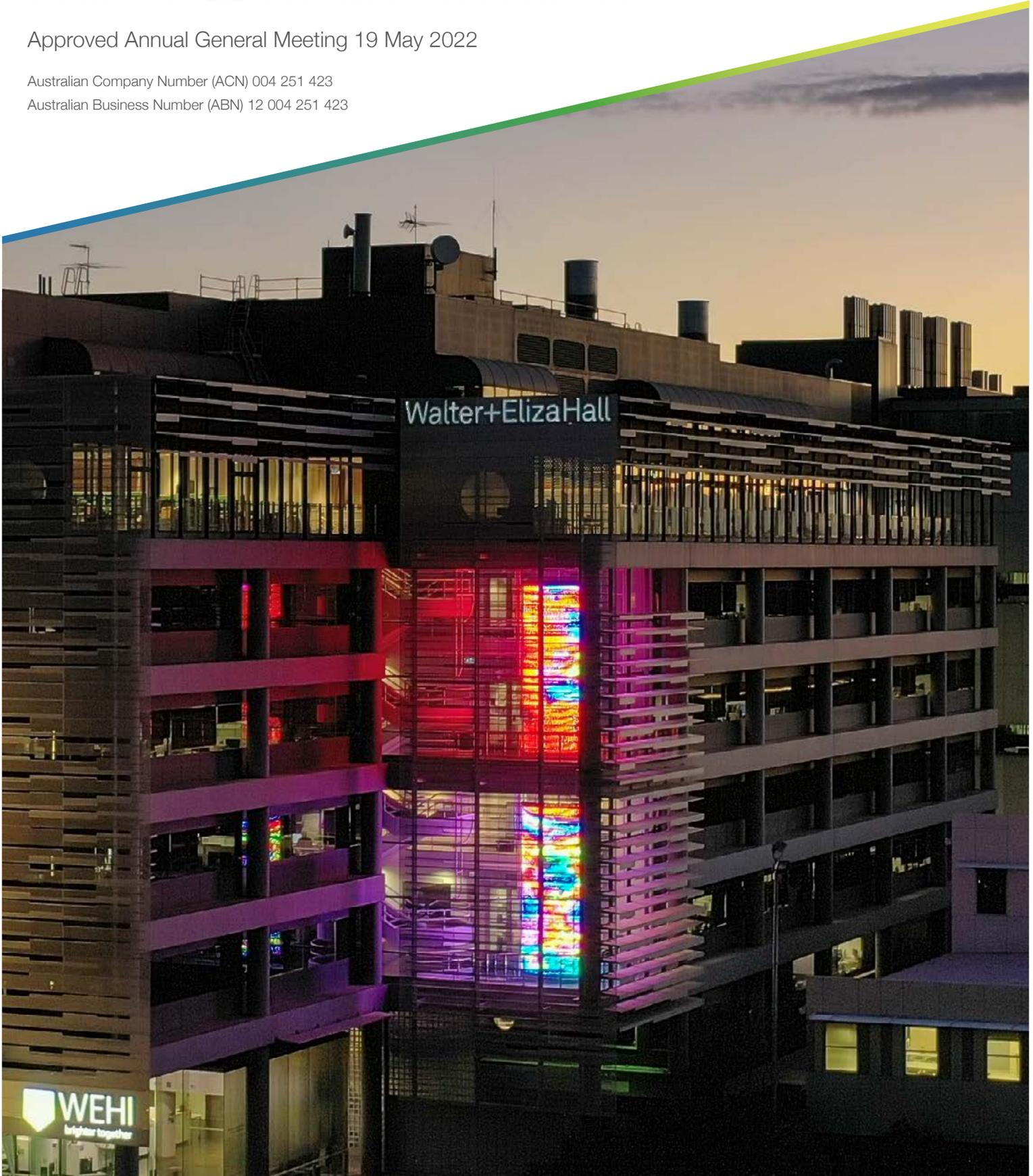

Constitution

The Walter and Eliza Hall Institute of Medical Research

Approved Annual General Meeting 19 May 2022

Australian Company Number (ACN) 004 251 423

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Constitution

Preliminary

1 Name

The name of the company is The Walter and Eliza Hall Institute of Medical Research (the **Institute**).

2 Type of company

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

3 Limited liability of Members

The liability of Members is limited to the amount of the guarantee in clause 4.

4 The guarantee

Each Member must contribute an amount not more than \$2 (the guarantee) to the property of the Institute if the Institute is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Institute incurred before the Member stopped being a Member; or
- (b) costs of winding up.

5 Definitions

In this constitution:

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

Annual General Meeting means the General Meeting held annually in accordance with clause 22.

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

Director of the Institute means the person appointed as such in accordance with clauses 57 and 58. The Director of the Institute does not have the same meaning as, and should not be confused with, a director of the Institute for the purposes of the Corporations Act.

General Meeting means a meeting of Members and includes the Annual General Meeting.

Honorary Governor means any person appointed as such in accordance with clause 43(f).

Institute means the company referred to in clause 1.

Member means the members of the Institute as recorded in the Institute's register of members.

Member Present means, in connection with a General Meeting, a Member present in person, by representative or by proxy at the venue or venues for the meeting.

President means the person appointed as such in accordance with clause 39.

Registered Charity means a charity that is registered under the ACNC Act.

Royal Melbourne Hospital means Melbourne Health ABN 73 802 706 972 trading as Royal Melbourne Hospital

Special Resolution means a resolution:

- (a) of which notice has been given under clause 23(e)(iii); and
- (b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution.

Surplus Assets means any assets of the Institute that remain after paying all debts and other liabilities of the Institute, including the costs of winding up.

Trustee means the trustees for the time being of The Walter & Eliza Hall Trust ABN 65 908 166 965.

University means University of Melbourne ABN 84 002 705 224.

Vice President means the person appointed as such in accordance with clause 39.

6 Reading this constitution with the Corporations Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the Institute.
- (b) For as long as the Institute is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- (c) If the Institute 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.
- (d) 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.

7 Interpretation

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;
- (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);
- (c) where a given number of days' notice or notice extending over any other period is required to be given the day of service shall (unless it is otherwise provided) be counted in such number of days or other period;
- (d) any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this document;
- (e) the singular includes the plural and vice versa and a reference to a gender includes all other genders;
- (f) a person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and government agency;

- (g) a reference to:
 - (i) a person includes that person's successors, permitted substitutes and permitted assigns;
 - (ii) a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this document;
 - (iii) this document or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;
 - (iv) dollars or \$ is to Australian dollars;
 - (v) time is to the time in Melbourne; and
 - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form.
- (h) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning; and
- (i) where an act would be required to be done (including the payment of any money), or a time limit or period would expire, on a day that is not a business day, the act must be done or the limit or period will expire, on the following business day.

Charitable purposes and powers

8 Objects

The objects for which the Institute is established are:

- (a) To seek to discover the nature origins and causes of disease and bodily afflictions by the application of any or all of those branches of science which are relevant to this purpose and to make the best use of knowledge so gained for the improvement of means for the prevention or treatment of disease both in humans and animals.
- (b) To conduct research by all such means as may be thought to be advisable and to set up, equip and maintain on land belonging to the Institute or on land belonging to others and either alone or jointly with any corporation institution or person such laboratories, offices or other buildings and such apparatus as shall from time to time be considered to be necessary or convenient.
- (c) If it shall be thought desirable by the directors in its absolute discretion and subject to such by-laws as shall from time to time be made by the directors to teach and instruct all persons desirous of acquiring knowledge in the subjects which may be under investigation by the Institute.
- (d) To make known when and as the Institute shall deem advisable any information or advice concerning any matter relating to the purposes of the Institute and for that purpose to acquire set up maintain print publish and circulate magazines and journals circulars pamphlets or other literary or scientific works as the directors may deem to be in any way beneficial to the Institute or to the public.
- (e) To enter into and perform any agreements or any arrangements with any corporation institution or person or body of persons for any purpose connected with the objects of the Institute or which in the opinion of the directors for the time being shall be advantageous to such purposes.

- (f) To seek financial support for the Institute and at the directors' discretion to accept any gift endowment or bequest made to the Institute generally or for the purpose of any specific object and to accept and carry out any trusts directions and wishes attached to any such gift endowment or bequest.
- (g) To procure the Institute to be registered or recognised in any country or place outside the State of Victoria.
- (h) To ensure successful clinical application of discoveries made by the Institute by carrying on anywhere in the world and either alone or jointly any business or commercial venture relating to or incidental to the objects of the Institute and to continue the same from time to time.
- (i) From time to time to make rescind or alter such by-laws not being inconsistent with the Statutes or with this constitution for the time being in force for the regulation of any of the affairs of the Institute as may be deemed necessary or convenient.
- (j) To do all such other things as are incidental or conducive to the attainment of the above objects.

The intention is that the objects specified in each paragraph of this clause shall, except where otherwise expressed in such paragraphs be independent main objects and shall not be limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Institute.

9 Powers

Subject to clause 10, the Institute has the following powers, which may only be used to carry out its objects set out in clause 8:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

10 Not-for-profit

- (a) The Institute must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 10(b) and 70.
- (b) Clause 10(a) does not stop the Institute from doing the following things, provided they are done in good faith:
 - (i) 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 Institute than reasonable rates; or
 - (ii) making a payment to a Member for the sole purpose of carrying out the Institute's charitable objects.

11 Amending the constitution

- (a) Subject to clause 11(b), the Members may amend this constitution by passing a Special Resolution.
- (b) The Members must not pass a Special Resolution that amends this constitution if passing it causes the Institute to no longer be a charity.

Members

12 Membership and register of members

- (a) The Members are:
 - (i) the University;
 - (ii) the Royal Melbourne Hospital; and
 - (iii) any other person that the directors allow to be a Member, in accordance with this constitution.
- (b) The Institute must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
 - (i) for each current Member:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member for the service of notices; and
 - (D) date the membership started.
 - (ii) for each person who stopped being a Member in the last 7 years:
 - (A) name;
 - (B) address;
 - (C) any alternative address nominated by the Member for the service of notices; and
 - (D) dates the membership started and ended.
- (c) The Institute must give current Members access to the register of members.
- (d) Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of Members.

13 Who can be a Member

- (a) A person who supports the purposes of the Institute is, at the invitation of the directors, eligible to apply to be a Member under clause 14.
- (b) In this clause, 'person' means an individual or incorporated body.

14 How to apply to become a Member

Applications for membership shall be made in such form as the directors may from time to time prescribe or in any particular case accept.

15 Directors decide whether to approve membership

- (a) After receiving an application for membership, the directors will decide, in their absolute discretion, whether to approve the application for membership.
- (b) If the directors approve an application, the secretary must as soon as possible:
 - (i) enter the new Member on the register of members; and
 - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 16).
- (c) If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

16 When a person becomes a Member

An applicant will become a Member when they are entered on the register of members.

17 When a person stops being a Member

A person immediately stops being a Member:

- (a) if they die;
- (b) if they are wound up or otherwise dissolved or deregistered (for an incorporated Member);
- (c) if they become bankrupt or suspend payment to or compound with their creditors (for a Member who is a natural person);
- (d) if the directors accept a written resignation that has been given to the secretary by the Member;
- (e) if they are expelled under clause 20; or
- (f) if they 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.

18 No vacancy created upon a person's membership ceasing

Upon any Member ceasing to be a Member no vacancy in the Members of the Institute shall be deemed to have been created.

Dispute resolution and disciplinary procedures

19 Dispute resolution

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a Member or director and:
 - (i) one or more Members;
 - (ii) one or more directors; or
 - (iii) the Institute.

- (b) Where the dispute resolution procedure in this clause applies, no party to the dispute may commence court action (other than in respect of urgent or interlocutory relief) until the dispute procedure in this clause is completed.
- (c) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 20 until the disciplinary procedure is completed.
- (d) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (e) If those involved in the dispute do not resolve it under clause 19(d), they must within 10 days:
 - (i) tell the directors about the dispute in writing;
 - (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (f) The mediator must:
 - (i) be chosen by agreement of those involved; or
 - (ii) where those involved do not agree:
 - (A) for disputes between Members, a person chosen by the directors; or
 - (B) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Institute has its registered office.
- (g) A mediator chosen by the directors under clause 19(f)(ii):
 - (i) may be a Member or former Member;
 - (ii) must not have a personal interest in the dispute; and
 - (iii) must not be biased, or someone who may reasonably be perceived to be biased, towards or against anyone involved in the dispute.
- (h) When conducting the mediation, the mediator must:
 - (i) allow those involved a reasonable chance to be heard;
 - (ii) allow those involved a reasonable chance to review any written statements;
 - (iii) ensure that those involved are given natural justice; and
 - (iv) not make a decision on the dispute.

20 Disciplining Members

- (a) In accordance with this clause, the directors may, by resolution passed by at least two-thirds of the whole number of directors, warn, suspend or expel a Member from the Institute if the directors consider that:

- (i) the Member has breached this constitution; or
 - (ii) the Member's behaviour is causing, has caused, or is likely to cause harm to the Institute.
- (b) At least 21 days before the directors' meeting at which a resolution under clause 20(a) will be considered, the secretary must notify the Member in writing:
- (i) that the directors are considering a resolution to warn, suspend or expel the Member;
 - (ii) that this resolution will be considered at a directors' meeting and the date of that meeting;
 - (iii) what the Member is said to have done or not done that has brought about the disciplinary action;
 - (iv) the nature of the resolution that has been proposed; and
 - (v) that the Member may provide an explanation to the directors, and details of how to do so.
- (c) Before the directors pass any resolution under clause 20(a), the Member must be given a chance to explain or defend themselves by:
- (i) sending the directors a written explanation before that directors' meeting; and/or
 - (ii) speaking at the meeting.
- (d) After considering any explanation under clause 20(c), the directors may, by resolution passed by at least two-thirds of the whole number of directors:
- (i) take no further action;
 - (ii) warn the Member;
 - (iii) suspend the Member's rights as a Member for a period of no more than 12 months;
 - (iv) expel the Member;
 - (v) 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
 - (vi) require the matter to be determined at a General Meeting.
- (e) The directors cannot fine a Member.
- (f) The secretary must give written notice to the Member of the decision under clause 20(d) as soon as possible.
- (g) Disciplinary procedures must be completed as soon as reasonably practical.
- (h) 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

21 General Meetings called by directors

The directors may call a General Meeting.

22 Annual General Meeting

- (a) A General Meeting, called the Annual General Meeting, must be held at least once in every calendar year.
 - (b) Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:
 - (i) any report of the board of directors;
 - (ii) a review of the Institute's activities;
 - (iii) a review of the Institute's finances;
 - (iv) any auditor's report;
 - (v) the appointment and payment of auditors, if any.
 - (c) Before or at the Annual General Meeting, the directors must give information to the Members on the Institute's activities and finances during the period since the last Annual General Meeting.
 - (d) The chairperson of the Annual General Meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Institute.
 - (e) For the purposes of securing the widest participation in the activities of the Institute and carrying out the objects of the Institute, the directors may from time to time invite persons who are not Members to attend any General Meeting of the Institute with the right to participate in discussions but without the right to vote.
-

23 Notice of General Meetings

- (a) Notice of a General Meeting must be given to:
 - (i) each Member entitled to vote at the General Meeting;
 - (ii) each director; and
 - (iii) the auditor (if any).
- (b) Notice of a General Meeting must be provided in writing at least 21 days before the General Meeting.
- (c) Notwithstanding clause 23(b) but subject to clause 23(d), notice of a General Meeting may be provided less than 21 days before the General Meeting if:
 - (i) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand; or
 - (ii) for any other General Meeting, Members with at least 95% of the votes that may be cast at the General Meeting agree beforehand.

- (d) Notice of a General Meeting cannot be provided less than 21 days before the General Meeting if a resolution will be moved at the General Meeting to:
 - (i) remove a director; or
 - (ii) remove an auditor.
 - (e) Notice of a General Meeting must include:
 - (i) the place, date and time for the General Meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) the general nature of the General Meeting's business;
 - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - (iv) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - (A) the proxy form must be delivered to the Institute at its registered address or the address (including an electronic address) specified in the notice of the General Meeting; and
 - (B) the proxy form must be delivered to the Institute at least 48 hours before the General Meeting.
 - (f) If a General Meeting is adjourned (put off) for one month or more, the Members must be given new notice of the resumed meeting.
-

24 Quorum at General Meetings

- (a) For a General Meeting to be held, at least 10 of the Members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting.
 - (b) No business may be conducted at a General Meeting if a quorum is not present.
 - (c) 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 General Meeting is adjourned to:
 - (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.
 - (d) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that General Meeting, the General Meeting is cancelled.
-

25 Auditor's right to attend General Meetings

- (a) The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

- (b) The Institute must give the auditor (if any) any communications relating to the General Meeting that a Member is entitled to receive in the same manner and at the same time that those communications are given to the Member.

26 Representatives of Members

- (a) An incorporated Member may appoint as a representative:
 - (i) one individual to represent the Member at General Meetings and to sign circular resolutions under clause 31; and
 - (ii) the same individual or another individual for the purpose of being appointed or elected as a director.
- (b) The appointment of a representative by a Member must:
 - (i) be in writing;
 - (ii) include the name of the representative;
 - (iii) be signed on behalf of the Member; and
 - (iv) be given to the Institute or, for representation at a meeting, be given to the chairperson before the General Meeting starts.
- (c) A representative has all the rights of a Member relevant to the purposes of the appointment as a representative.
- (d) The appointment may be standing (ongoing).

27 Using technology to hold General Meetings

- (a) The Institute may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person at the General Meeting.

28 Chairperson for General Meetings

- (a) The President is entitled to chair General Meetings or to delegate the role of chairperson for a General Meeting to a director present at that General Meeting.
- (b) In the President's absence from a General Meeting, the Vice President is entitled to chair that General Meeting or to delegate the role of chairperson for that General Meeting to a director present at that General Meeting.
- (c) The directors present at a General Meeting may choose a director to be the chairperson for that meeting if both the President and Vice President are absent for more than 30 minutes after the starting time set for the General Meeting.

29 Role of the chairperson

The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

30 Adjournment of General Meetings

- (a) The chairperson of a General Meeting may, with the consent of the Members present at the meeting, adjourn that General Meeting from time to time and from place to place.
- (b) Only unfinished business may be dealt with at a General Meeting resumed after an adjournment.

31 Circular resolutions of Members

- (a) Subject to clause 31(c), the directors may resolve to put a resolution to the Members to pass a resolution without a General Meeting being held (**a circular resolution**).
- (b) The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- (c) Circular resolutions cannot be used:
 - (i) for a resolution to remove an auditor, appoint a director or remove a director;
 - (ii) for passing a Special Resolution; or
 - (iii) where the Corporations Act or this constitution requires a meeting to be held.
- (d) A circular resolution is passed if all the Members entitled to vote on the resolution sign the circular resolution or agree to the circular resolution in the manner set out in clause 31(f).
- (e) A circular resolution may be signed in counterpart.
- (f) The Institute may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at General Meetings

32 How many votes a Member has

Each Member has one vote.

33 Challenge to Member's right to vote

- (a) A Member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- (b) If a challenge is made under clause 33(a), the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

34 How voting is carried out

- (a) Voting must be conducted and decided by:
 - (i) a show of hands;

- (ii) a vote in writing; or
 - (iii) another method chosen by the chairperson that is fair and reasonable in the circumstances.
 - (b) Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
 - (c) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
 - (d) 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.
-

35 When and how a vote in writing must be held

- (a) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
 - (i) at least five Members present;
 - (ii) Members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (iii) the chairperson.
 - (b) A vote in writing must be taken when and how the chairperson directs unless clause 35(c) applies.
 - (c) A vote in writing must be held immediately if it is demanded under clause 35(a):
 - (i) for the election of a chairperson under clause 28(c); or
 - (ii) to decide whether to adjourn the General Meeting.
 - (d) A demand for a vote in writing may be withdrawn.
-

36 Appointment of proxy

- (a) A Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- (b) No person who is not either a director or a Member and qualified to vote shall be appointed a proxy. For the avoidance of doubt, any corporation being a Member and entitled to vote may appoint any one of its directors or officers, though not a Member, to attend and vote in accordance with clause 26.
- (c) A proxy appointed to attend and vote for a Member has the same rights as the Member to:
 - (i) speak at the General Meeting;
 - (ii) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (iii) join in to demand a vote in writing under clause 35(a).

- (d) An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:
 - (i) the Member's name and address;
 - (ii) the Institute's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the General Meeting(s) at which the appointment may be used.
- (e) A proxy appointment may be standing (ongoing).
- (f) Proxy forms must be received by the Institute at the address (including an electronic address) stated in the notice under clause 23(e)(iv) or at the Institute's registered address at least 48 hours before a General Meeting.
- (g) A proxy does not have the authority to speak and vote for a Member at a General Meeting while the Member is at the meeting.
- (h) Unless the Institute receives written notice before the start or resumption of a General Meeting at which a proxy votes that a proxy is not valid by virtue of one of the reasons listed in subclauses (i) to (iv), a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
 - (i) dies;
 - (ii) is mentally incapacitated;
 - (iii) revokes the proxy's appointment; or
 - (iv) revokes the authority of a representative or agent who appointed the proxy.
- (i) A proxy appointment may specify the way the proxy must vote on a particular resolution.

37 Voting by proxy

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

Directors

38 Number and appointment of directors

- (a) The Institute must have at least 12 and no more than 18 directors.
- (b) The Institute's directors must include:

- (i) one director (being a nominee of the President of the Institute) appointed by the Trustee so long as the Trustee shall continue to contribute to the funds of the Institute an annual sum of not less than \$1,000 or such other sum as may be mutually agreed upon by the directors and the Trustee;
 - (ii) two directors appointed by the Royal Melbourne Hospital, one of whom shall be medically qualified and a senior staff member; and
 - (iii) two directors appointed by the University.
- (c) The directors may appoint by majority decision all of the directors, additional directors from among the Members.
- (d) A director appointed under this clause 38 is appointed until the close of the directors meeting which is first to occur 3 years after their appointment or re-appointment and shall be eligible for re-appointment on the same basis, subject to clause 41, at the end of each such period.
- (e) Every appointment made under clause 38(b) shall be in writing and shall be lodged with the Secretary of the Institute.
- (f) Any appointor under sub-clauses clause 38(b) may remove any director appointed by it and any vacancy (whether arising from the removal or retirement of any director) shall be filled by the appointor who appointed the director so ceasing to be a director. Any other vacancy shall be filled by the continuing directors.
- (g) In order for any appointment under this clause 38 to be valid, the person appointed as a director must:
 - (i) give the Institute their signed consent to act as a director; and
 - (ii) not be ineligible to be a director under the Corporations Act or the ACNC Act.
- (h) The continuing directors can continue to act, notwithstanding any vacancy in the membership of the Board, including a vacancy arising under clause 38(a)-(c), however If the number of directors is reduced to fewer than 12 or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to 12 (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

39 President and Vice President

- (a) There shall be a President and Vice-President of the Institute who shall be elected by the directors from amongst the directors and shall hold office until the close of the directors' meeting which is first to occur 1 year after their election or re-election following the next Annual General Meeting of the Institute and shall be eligible for re-election, subject to clause 39(b). Any person holding the office of President or Vice-President who ceases to be a director shall ipso facto vacate the Presidency or Vice-Presidency.
- (b) Notwithstanding the provisions of clause 39(a), the President or Vice-President may hold office for an additional period or periods not exceeding six years.

40 Honorary Treasurer

There may be an Honorary Treasurer who shall be appointed by the directors from amongst the directors. The directors shall have the power to remove such Honorary Treasurer and to appoint a successor. The directors may from time to time define the duties of any Honorary Treasurer.

41 Term of office

- (a) A director's term of office starts on the day on which they are appointed and ends at the end of the Annual General Meeting at which they retire.
 - (b) Each director must retire at least once every three years.
 - (c) A director who retires under clause 41(b) may nominate for election or re-election, subject to clause 41(d).
 - (d) A director who has held office for a period of 12 years or more in aggregate may only be re-appointed or re-elected with the unanimous agreement of all other directors.
 - (e) A director appointed or elected under clause 41(d) must retire in one year but may nominate for re-appointment or re-election again under clause 41(d).
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42 When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the Institute;
- (b) die;
- (c) are removed as a director by their appointor in accordance with clause 38(f);
- (d) are appointed under clause 38(c) and stop being a Member;
- (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 Institute that the representative is no longer a representative;
- (g) are absent for three consecutive directors' meetings without approval from the directors (unless the directors otherwise resolve); or
- (h) become ineligible to be a director under the Corporations Act or the ACNC Act.

Powers of directors

43 Powers of directors

- (a) The directors are responsible for managing and directing the activities of the Institute to achieve the objects set out in clause 8.
- (b) The directors may use all the powers of the Institute except for powers that, under the Corporations Act or this constitution, may only be used by Members.
- (c) For the purposes of promoting the objects of the Institute as set forth in this constitution, subject to clause 10 and without prejudice to the general powers conferred by 43(b), the directors also have the following express powers:

- (i) to purchase, take on, lease or otherwise acquire any offices, buildings or other property for the business and purpose of the Institute and generally on behalf of the Institute to enter into such contracts, agreements and arrangements and make or take such purchases, leases, sales and dispositions for such consideration on such terms and in such manner as from time to time the directors think fit and proper for the purposes of the Institute;
- (ii) to appoint any person or persons whether incorporated or not to accept and hold in trust for the Institute any lands or rights in land government or other concessions or any exclusive or other beneficial rights or privileges or any funds and generally any or such of the property rights and funds of any description whatsoever of the Institute as the directors may deem desirable and they may cause all such deeds and things to be made and done as shall be lawful and requisite to vest the same in the persons so appointed;
- (iii) to appoint the officers whom the directors are empowered and required by these presents to appoint;
- (iv) to appoint, remove and suspend such staff of the Institute as the directors may from time to time consider to be requisite and to fix their remuneration and emoluments and determine their duties;
- (v) to establish such laboratories, offices and agencies and to make such regulations for their management and to close and discontinue the same as they may from time to time think fit and determine;
- (vi) to conduct or compromise or abandon any legal proceedings and to refer any disputes to arbitration or mediation and observe and perform the awards;
- (vii) to invest such part of the funds of the Institute as shall not be required to satisfy or provide for immediate demands upon such securities or investments as they may think advisable and from time to time to vary such securities and investments and convert the same as they may deem expedient;
- (viii) to pay the costs charges and expenses incidental to regulation of the Institute;
- (ix) to determine who shall be entitled to sign on behalf of the Institute bills, notes, receipts, acceptances, indorsements, cheques, releases, contracts and documents;
- (x) to execute in the name and on behalf of the Institute in favour of any director or other person who may incur or be about to incur any personal liability for the benefit of the Institute such mortgages of the property of the Institute (present and future) as they think fit and any such mortgage may contain a power of sale and such other powers covenants and provisions as shall be agreed on;
- (xi) from time to time make vary and repeal all such by-laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Institute;

- (xii) to establish and maintain or procure the establishment and maintenance of any contributory or non-contributory pension or superannuation funds or schemes and to make payments to such pension or superannuation funds or schemes;
 - (xiii) to enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts deeds and things in the name and on behalf of the Institute as they may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purpose of the Institute; and
 - (xiv) to establish, support, subsidise and subscribe to any charitable or benevolent institutions associations or funds connected with the purposes of the Institute or calculated to further the objects of to be for the benefit of or to advance the interests of the Institute.
- (d) The directors must decide on the responsible financial management of the Institute including:
- (i) any suitable written delegations of power under clause 44; and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (e) The directors cannot remove an auditor. Auditors may only be removed by a members' resolution at a General Meeting.
- (f) The directors have power to appoint any former director, or any former Director of the Institute or other former officer of the Institute, who, in the opinion of the directors, has rendered conspicuous and meritorious service to the Institute, to the office of an Honorary Governor of the Institute. An Honorary Governor shall not be a director but he or she shall be entitled to receive notices for and to attend and to take part in discussion at directors' and General Meetings of the Institute. An Honorary Governor shall cease to hold office as such if he or she resigns or if he or she is removed by resolution of the directors. There shall not be more than four Honorary Governors in office at any one time.

44 Delegation of directors' powers

- (a) The directors may delegate any of their powers and functions to a committee, a director, an employee of the Institute (such as a chief executive officer) or any other person, as they consider appropriate.
- (b) The delegation must be recorded in the Institute's minute book.

45 Payments to directors

- (a) The Institute must not pay fees to a director for acting as a director.
- (b) The Institute may:
 - (i) pay a director for work they do for the Institute, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (ii) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Institute.

- (c) Any payment made under clause 45(b) must be approved by the directors.
- (d) The Institute may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

46 Execution of documents

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

- (a) two directors; or
- (b) a director and the secretary.

Duties of directors

47 Duties of directors

The directors must comply with their duties as directors under law, including with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director;
- (b) to act in good faith in the best interests of the Institute and to further the charitable objects of the Institute set out in clause 8;
- (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 48;
- (f) to ensure that the financial affairs of the Institute are managed responsibly; and
- (g) not to allow the Institute to operate while it is insolvent.

48 Conflicts of interest

- (a) A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
 - (i) to the other directors; or
 - (ii) 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.
- (b) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- (c) Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 48(d):
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter.

- (d) A director may still be present and vote if:
- (i) their interest arises because they are a Member, and the other Members have the same interest;
 - (ii) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director (see clause 67);
 - (iii) their interest relates to a payment by the Institute under clause 66 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (iv) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
 - (v) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Institute; and
 - (B) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

49 When the directors meet

The directors may decide how often, where and when they meet.

50 Calling directors' meetings

- (a) The President may call a directors' meeting by giving reasonable notice to all of the other directors.
 - (b) The President may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.
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51 Chairperson for directors' meetings

- (a) The President is entitled to chair directors' meetings or to delegate the role of chairperson for a directors' meeting to a director or Member Present at that directors' meeting.
- (b) In the President's absence from a directors' meeting, the Vice President is entitled to chair that General Meeting or to delegate the role of chairperson for that directors' meeting to a director or Member Present at that directors' meeting.
- (c) The directors at a directors' meeting may choose a director to be the chairperson for that meeting if both the President and Vice President are absent for more than 30 minutes after the starting time set for the directors' meeting.

52 Quorum at directors' meetings

- (a) Unless the directors determine otherwise, the quorum for a directors' meeting is 6 or more of directors.
 - (b) A quorum must be present for the whole directors' meeting.
-

53 Using technology to hold directors' meetings

- (a) The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
 - (b) The directors' agreement may be a standing (ongoing) one.
 - (c) A director may only withdraw their consent within a reasonable period before the directors' meeting.
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54 Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution. In the case of an equality of votes, the chairperson shall have a second or casting vote.

55 Circular resolutions of directors

- (a) The directors may pass a circular resolution without a directors' meeting being held.
- (b) A circular resolution is passed if all the directors entitled to vote on the resolution sign the resolution or otherwise agree to the resolution in the manner set out in clause 55(d).
- (c) A circular resolution may be signed in counterpart.
- (d) The Institute may send a circular 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.
- (e) A circular resolution is passed when the last director signs the resolution or otherwise agrees to the resolution in the manner set out in clause 55(d).

Secretary

56 Appointment and role of secretary

- (a) The Institute must have at least one secretary, who may also be a director.
- (b) A secretary must be appointed by the directors (after giving the Institute their signed consent to act as secretary of the Institute) and may be removed by the directors.
- (c) The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- (d) The role of the secretary includes:
 - (i) maintaining a register of the Institute's Members; and

- (ii) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and circular resolutions.

Director of the Institute

57 Director of the Institute

- (a) The directors shall appoint a Director of the Institute.
- (b) The appointment of a Director of the Institute shall be on such terms and conditions as the directors shall think fit and the directors may define their several duties and may provide for such working arrangements with the Royal Melbourne Hospital and the University as they shall from time to time decide and may settle the part which such Director of the Institute shall bear in relation to such arrangements.
- (c) Subject to any other determination made by the directors, the Director of the Institute may delegate to any other officer approved by the directors such duties powers and functions as the Director of the Institute thinks fit and may cancel any such delegation.

58 Procedure for appointment of Director of the Institute

- (a) The directors shall comply with the following requirements prior to appointing a new Director of the Institute:
 - (i) inform the Royal Melbourne Hospital and the University that the Institute wishes to appoint a new Director of the Institute and provide details of the qualifications, selection criteria and details of the responsibilities of the position;
 - (ii) appoint a selection committee (the **Committee**), comprising at least one person representing the Royal Melbourne Hospital and at least one person representing the University.
- (b) The Committee shall:
 - (i) confer with the University and take all reasonable steps to ensure that the person to be appointed Director of the Institute shall be acceptable to the University to hold the Research Chair of Medical Biology in accordance with the Statutes of the University of Melbourne;
 - (ii) request the University to set up a Professorial Selection Committee to consider the suitability of the candidate for appointment as a Professor. If the candidate is in all the circumstances and in all respects suitable to be appointed as a Professor then, upon appointment as Director of the Institute, the candidate will be appointed by the University to the Research Chair of Medical Biology.
- (c) Before appointing a Director of the Institute, the directors shall notify the Royal Melbourne Hospital, the University and the National Health and Medical Research Council of its intention to appoint such person and shall fully consider any objection which they or any of them may offer: but the directors alone have the final responsibility for making the appointment.

Minutes and records

59 Minutes and records

- (a) The Institute must, within one month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of General Meetings;
 - (ii) minutes of circular resolutions of Members;
 - (iii) a copy of a notice of each General Meeting.
- (b) The Institute must, within one month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
 - (ii) minutes of circular resolutions of directors.
- (c) To allow Members to inspect the Institute's records:
 - (i) the Institute must give a Member access to the records set out in clause 59(a); and
 - (ii) the directors may authorise a Member to inspect other records of the Institute, including records referred to in clause 59(b) and clause 60(a).
- (d) The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
 - (i) the chairperson of the meeting; or
 - (ii) the chairperson of the next meeting.
- (e) The directors must ensure that minutes of the passing of a circular resolution are signed by a director within a reasonable time after the resolution is passed.

60 Financial and related records

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

By-laws

61 By-laws

- (a) The directors may pass a resolution to make by-laws to give effect to this constitution.

- (b) Members and directors must comply with by-laws as if they were part of this constitution.

Notice

62 What is notice

- (a) Anything written to or from the Institute under any clause in this constitution is written notice and is subject to clauses 63 to 65, unless specified otherwise.
 - (b) Clauses 63 to 65 do not apply to a notice of proxy under clause 36(f).
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63 Notice to the Institute

Written notice or any communication under this constitution may be given to the Institute, the directors or the secretary by:

- (a) delivering it to the Institute's registered office;
 - (b) posting it to the Institute's registered office or to another address chosen by the Institute for notice to be provided; or
 - (c) sending it to an email address or other electronic address notified by the Institute to the Members as the Institute's email address or other electronic address.
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64 Notice to Members

- (a) Written notice or any communication under this constitution may be given to a Member:
 - (i) in person;
 - (ii) 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;
 - (iii) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any); or
 - (iv) 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).
 - (b) If the Institute does not have an address for the Member, a notice posted up in the office of the Institute will be deemed to have been given to them at the expiration of twenty-four hours after it is so posted up.
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65 When notice is taken to be given

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 day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 64(a)(iv) is taken to be given on the business day after the notification that the notice is available is sent.

Indemnity, insurance and access

66 Indemnity and responsibility

- (a) The Institute indemnifies each officer of the Institute out of the assets of the Institute, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Institute.
- (b) In this clause, 'officer' means a director, secretary or the Director of the Institute, and includes any such person after they have ceased to hold that office.
- (c) In this clause, 'to the relevant extent' means:
 - (i) to the extent that the Institute is not precluded by law (including the Corporations Act) from doing so; and
 - (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Institute.
- (e) No Member, trustee or officer of the Institute shall be liable for the acts, receipts, neglects or defaults of any other Member, trustee or officer or for joining in any receipt or other act for conformity or for any loss or expense happening to the Institute through the insufficiency or deficiency of any security in or upon which any of the moneys of the Institute shall be invested or for any loss or damage arising from the bankruptcy insolvency or tortious act of any person with whom any moneys securities or effects shall be deposited or for any loss or damage occasioned by any errors of judgment or oversight on their part or for any other loss damage or misfortune whatever which shall happen in the execution of the duties of their office or in relation thereto unless the same happen through their own deficiency or wilful neglect or default.

67 Insurance

- (a) To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the Institute may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Institute against any liability incurred by the person as an officer of the Institute.
- (b) In this clause, 'officer' means a director, secretary, the Director of the Institute and any other person whom the directors consider is performing a senior leadership or management role for the Institute and ought to be covered by insurance under this clause 67, and includes any such person after they have ceased to hold that office or role.

68 Directors' access to documents

- (a) A director has a right of access to the financial records of the Institute at all reasonable times.
- (b) If the directors agree, the Institute must give a director or former director access to:
 - (i) certain documents, including documents provided for or available to the directors; and
 - (ii) any other documents referred to in those documents.

Winding up

69 Surplus Assets not to be distributed to Members

If the Institute is wound up, any Surplus Assets must not be distributed to a Member or a former Member, unless that Member or former Member is a charity described in clause 70(a).

70 Distribution of Surplus Assets

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Institute is wound up must be distributed to one or more charities:
 - (i) with charitable object(s) similar to, or inclusive of, the object(s) in clause 8;
 - (ii) which also prohibit the distribution of any Surplus Assets to its Members to at least the same extent as the Institute; and
 - (iii) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- (b) The decision as to the charity or charities 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 Institute may apply to the Supreme Court of Victoria to make this decision.
- (c) If the Institute's deductible gift recipient endorsement is revoked (whether or not the Institute is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 70(a)(i), (ii) and (iii), as decided by the directors.
- (d) For the purpose of this clause:
 - (i) 'gift funds' means:
 - (A) gifts of money or property for the principal object of the Institute;
 - (B) contributions made in relation to a fund-raising event held for the principal object of the Institute; and
 - (C) money received by the Institute because of such gifts and contributions; and
 - (ii) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

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