

Constitution



The Cancer Council NSW

ABN 51 116 463 846

Registered as a Company Limited by Guarantee on 30 September 2005

Contents

1.	NATURE OF COMPANY AND LIABILITY	1
1.1	Nature of Company	1
1.2	Liability of Members and guarantee on winding up.....	1
2.	OBJECTS	1
3.	MEMBERSHIP	1
3.1	Membership	1
3.2	Members must have a connection with NSW	2
3.3	Institutional members	2
3.4	Classes of Membership.....	2
3.5	Members shall belong to one class	2
3.6	Voting entitlements of Members	2
3.7	Obligations of Members	2
3.8	Form of application	2
3.9	Directors to consider applications for membership	2
3.10	Rejected applications.....	2
3.11	Notification to successful applicant.....	2
3.12	Register of Members.....	2
3.13	Member to notify changes to secretary	2
4.	APPLICATION FEE AND ANNUAL SUBSCRIPTION	3
4.1	Application fee	3
4.2	Annual subscription.....	3
4.3	Time for payment of annual subscription.....	3
4.4	Waiver of fees	3
4.5	Unpaid annual subscriptions	3
5.	REMOVAL AND CESSATION OF MEMBERSHIP	3
5.1	Death, resignation and other events.....	3
5.2	Removal.....	4
6.	NO PROFITS FOR MEMBERS.....	4
6.1	Transfer of income or property	4
6.2	Grants to Members for advancing the purposes of the Company	4
6.3	Payments, services and information.....	4
6.4	Grants may be paid to members	5
6.5	Company may favour members	5
7.	MEETINGS OF MEMBERS	5
7.1	Calling meetings of members.....	5
7.2	Business of Meeting of Members	5
7.3	Members proposed resolutions not binding.....	5
7.4	Annual General Meeting	6
7.5	Notice of Meeting of Members	6
7.6	Form of notice of Meeting of Members	6
7.7	Accidental omission of notice not to affect validity.....	6
7.8	Meetings of Members by technology.....	6
7.9	Quorum at Meetings of Members	6
7.10	Number for quorum at Meetings of Members	7
7.11	Effect of quorum not present.....	7
7.12	Notice of adjourned meeting to be given where directors adjourn	Error!
	Bookmark not defined.	
7.13	Quorum at adjourned Meetings of Members	7

7.14	Appointment of chairperson	7
7.15	Election of chair if chairperson of Directors not present.....	7
7.16	Election of chair if no directors present	7
7.17	Chairperson's powers	7
7.18	Power to expel member from meeting.....	7
7.19	Adjournment of meetings	8
7.20	Business at adjourned meeting	8
7.21	Notice of meeting adjourned by members	8
7.22	No notice needed if less than 30 days adjournment	8
7.23	Voting procedures.....	8
7.24	Voting rights.....	9
7.25	Special resolutions.....	9
8.	PROXIES AND REPRESENTATIVES	9
8.1	Proxies and representatives of Members	9
8.2	Power of person attending as attorney or representative	9
8.3	Appointment of proxies	9
8.4	Form of proxy.....	9
8.5	Authority of proxies	10
8.6	General power of proxy.....	10
8.7	Verification of proxies and representatives.....	10
8.8	Time for receipt	10
8.9	Proxy for adjourned meeting	10
8.10	Validity of proxies.....	11
8.11	Revocation of appointment of proxy	11
8.12	Member's attendance does not revoke appointment	11
9.	APPOINTMENT AND RETIREMENT OF DIRECTORS	11
9.1	Number of Directors.....	11
9.2	Change in number of Directors	11
9.3	Composition of board.....	11
9.4	Qualifications of Directors	11
9.5	Membership qualification	12
9.6	Qualifications for Appointed Directors	12
9.7	Term of appointment of Directors	12
9.8	Retirement	12
9.9	Nomination and election of Directors	12
9.10	Replacement of Appointed Directors at expiration of their term.....	13
9.11	Appointment of directors to ensure minimum number	13
9.12	Term for directors appointed to ensure minimum number	13
9.13	Casual vacancies.....	13
9.14	Removal from office	13
9.15	Vacation of office	13
9.16	Directors' interests	13
10.	DIRECTORS' REMUNERATION	14
10.1	Payment for expenses	14
10.2	Directors fees.....	14
10.3	Payment for services.....	14
10.4	Form of payment of additional sum	14
10.5	Register of payments to Directors	15
11.	POWERS OF DIRECTORS	15
12.	PROCEEDINGS OF DIRECTORS.....	15
12.1	Convening of Directors' meetings.....	15
12.2	Notice of Directors' meetings	15
12.3	Directors may consent to short notice	15

12.4	Mode of meeting for Directors	15
12.5	Quorum at Directors' meetings.....	16
12.6	Voting at Directors' meetings	16
12.7	Appointment of chairperson of Directors	16
12.8	Directors to elect chair if chairperson not present.....	16
12.9	Chairperson's vote at Directors meetings.....	16
12.10	Circumstances where issue may be referred to members.....	16
12.11	Delegation of powers to committee	16
12.12	Powers that may not be delegated by directors.....	16
12.13	Power of committee	17
12.14	Committee bound to conform to board directions	17
12.15	Audit committee	17
12.16	Proceedings of committees	17
12.17	Validity of acts of Directors.....	17
12.18	Minutes	17
12.19	Form of minutes	17
12.20	Resolution in writing.....	17
12.21	Form of consent to resolution	17
12.22	Electronic documents.....	18
13.	SECRETARY	18
13.1	Appointment of secretary	18
13.2	Terms of appointment of secretary.....	18
14.	INDEMNITY AND INSURANCE	18
14.1	Indemnity	18
14.2	Insurance premiums.....	18
15.	SEALS AND EXECUTION OF DOCUMENTS.....	18
15.1	Custody of Seal.....	18
15.2	Execution of documents.....	18
15.3	Execution without seal	19
16.	GIFT FUND REQUIREMENTS	19
16.1	Company to maintain a Gift Fund.....	19
16.2	Limits on use of Gift Fund	19
16.3	Revocation of deductible gift recipient endorsement	19
16.4	Receipts.....	20
16.5	Definitions.....	20
17.	SURPLUS ASSETS ON WINDING UP OR DISSOLUTION.....	20
17.1	Organisations to whom assets may be transferred.....	20
17.2	Determining the identity of the organisation	20
18.	ACCOUNTS, AUDIT AND RECORDS	20
18.1	Accounts.....	20
18.2	Audit	21
18.3	Rights of Inspection	21
19.	NOTICES.....	21
19.1	Persons authorised to give notices.....	21
19.2	Form of signature on notice.....	21
19.3	Method of giving notices	21
19.4	Addresses for giving notices to Members.....	21
19.5	Member may specify facsimile or email address	21
19.6	Death or bankruptcy of member.....	22
19.7	Address for giving notices to the Company	22

19.8	Company may specify facsimile or email address	22
19.9	Time notice is given	22
19.10	Proof of giving notices.....	22
19.11	Persons entitled to notice of meeting	22
19.12	No other person entitled to notice	23
20.	DEFINITIONS AND INTERPRETATION	23
20.1	Definitions	23
20.2	Interpretation.....	23
20.3	References to the document	24
20.4	Replaceable rules	24
20.5	Application of Corporations Act	24
20.6	Exercise of powers.....	24

Corporations Act 2001

Public company limited by guarantee

The Cancer Council NSW

ACN 116 463 846

1. Nature of company and liability

1.1 Nature of Company

The Company is a public company limited by guarantee.

1.2 Liability of Members and guarantee on winding up

The liability of the Members is limited. Every Member undertakes to contribute \$2 to the assets of the Company if it is wound up while he or she is a Member, or within one year afterwards.

2. Objects

The Company has the following charitable objects:

- (a) to advocate for improvements in the prevention, treatment and care of persons with cancer;
 - (b) to advocate for public health initiatives to reduce the incidence of cancer in the community and to improve cancer survival;
 - (c) to support persons with cancer through the provision of information, support services (including accommodation and transport), funding for cancer support groups and other activities;
 - (d) to educate the community about cancer and cancer risks and to promote actions that reduce the future incidence of cancer;
 - (e) to support, assist and foster research and investigation into the causes, prevention, diagnosis and treatment of cancer;
 - (f) to co-operate with and assist other organisations in NSW involved in cancer control and prevention; and
 - (g) to engage in fundraising and philanthropy in support of the above objects and for the benefit of persons with cancer and their carers and to provide funding for cancer research.
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3. Membership

3.1 Membership

The Members of the Company are the initial Members as identified in the notice of registration lodged with the Australian Securities and Investments Commission and such other persons as the Company admits to membership in accordance with this constitution.

3.2 Members must have a connection with NSW

Each Member must be at least 18 years old and have their principal place of residence in the State of New South Wales.

3.3 Institutional members

An entity, other than an individual, who applies for membership must have an office or place of business in the State of New South Wales.

3.4 Classes of Membership

All members of the company will be Ordinary Members.

3.5 Members shall belong to one class

(Repealed).

3.6 Voting entitlements of Members

The Members shall be entitled to vote as set out in clause 7.23(a).

3.7 Obligations of Members

Subject to clause 4.4, all Members must pay the application fee determined in accordance with clause 4.1 when applying for membership and, in order to maintain membership, pay the annual subscription in accordance with clause 4.2.

3.8 Form of application

An application for membership may be in any form that the Directors decide.

3.9 Directors to consider applications for membership

The Directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant. The Directors do not have to give reasons for rejecting an application.

3.10 Rejected applications

If an application for membership is rejected, any application fee and the annual subscription must be refunded to the applicant.

3.11 Notification to successful applicant

If an applicant is accepted for membership the Secretary must notify the applicant of admission and the name and details of the applicant must be entered in the Register.

3.12 Register of Members

A register of the Members of the Company must be kept in accordance with the Corporations Act.

3.13 Member to notify changes to secretary

Each Member must notify the Secretary in writing (including by email) of any change in that person's name, address, telephone number, facsimile number or email address within one month after the change.

4. Application fee and annual subscription

4.1 Application fee

The application fee payable by each applicant for membership is such sum as the Directors prescribe from time to time.

4.2 Annual subscription

The annual subscription payable by a Member is such sum as the Directors prescribe from time to time in respect of each class of membership.

4.3 Time for payment of annual subscription

Subject to clause 4.4, all annual subscriptions are due and payable in advance on 31 March in each year.

4.4 Waiver of fees

For any Member, the Directors may waive either or both of:

- (a) the application fee determined in accordance with clause 4.1; and
- (b) the annual subscription determined in accordance with clause 4.2.

4.5 Unpaid annual subscriptions

Subject to clause 4.4, a Member ceases to be entitled to any of the rights or privileges of membership if the annual subscription of a Member is not paid by 31 May in the relevant year. A notice of the default will be sent to the Member by the Company Secretary. If not rectified by 30 June of the relevant year, the person ceases to be a member. The person may reapply.

5. Removal and cessation of membership

5.1 Death, resignation and other events

A person immediately ceases to be a Member if the person:

- (a) dies;
- (b) resigns as a Member by giving written notice to the Company;
- (c) becomes, in the opinion of an appropriately-qualified medical practitioner, of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) in the case of a Member who is a body corporate, is deregistered or otherwise dissolved;
- (f) is removed as a Member under rule 5.2;
- (g) ceases to be a Member under rule 4.5;
- (h) ceases to satisfy the conditions of membership; or

- (i) becomes, if the Directors so decide in their absolute discretion, an untraceable Member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

5.2 Removal

- (a) The Directors may by resolution revoke a person's membership and remove the Member from the Company's Members register if, in their absolute discretion, the Directors decide it is not in the interests of the Company for the person to remain a Member.
- (b) If the Directors intend to consider a resolution under rule 5.2(a), at least one week before the meeting at which the resolution is to be considered, they must give the Member written notice:
 - (i) stating the date, place and time of the meeting;
 - (ii) setting out the intended resolution and the grounds on which it is based; and
 - (iii) informing the Member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

6. No profits for members

6.1 Transfer of income or property

No income or property of the Company may be distributed to any Member.

6.2 Grants to Members for advancing the purposes of the Company

Nothing in this clause 6 prevents the payment in good faith of a grant to a Member for the purposes of advancing the objects of the Company, provided that:

- (a) the grant is approved by the Board;
- (b) the terms of the grant require that the funds may only be used for a purpose consistent with advancing the objects of the Company; and
- (c) the grant is listed in the annual report and financial statements of the Company.

6.3 Payments, services and information

Nothing in this clause 6 prevents the payment in good faith of any of the following:

- (a) remuneration to any officers or employees of the Company for services actually rendered to the Company;
- (b) an amount to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
- (c) reasonable and proper interest on money borrowed from any Member; and
- (d) reasonable and proper rent for premises let by any Member to the Company.

6.4 Grants may be paid to members

Nothing in this clause 6 prevents the distribution of grant monies to Members where the grant is expressly on the basis that the monies be used for the benefit of persons including Members.

6.5 Company may favour members

Nothing in this clause 6 prevents the Company from providing services or information to the Members on terms which are different from the terms on which services or information are provided to persons who are not Members.

7. Meetings of Members

7.1 Calling meetings of members

- (a) A Meeting of Members may only be called:
 - (i) by a Directors' resolution; or
 - (ii) as provided or required under any applicable law or under any policy adopted by the Directors.
- (b) To the extent permitted by law, the Directors may change the venue for, postpone or cancel a Meeting of Members if:
 - (i) they reasonably consider that the meeting has become unnecessary;
 - (ii) the venue would be unreasonable or impractical; or
 - (iii) a change is necessary in the interests of conducting the meeting efficiently.

7.2 Business of Meeting of Members

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

- (a) consideration of the annual financial report, Directors report and auditor's report;
- (b) election of Directors;
- (c) appointment of the auditor and auditor's remuneration;
- (d) amendment of the Company's name and/or constitution;
- (e) business proposed by the Directors; and
- (f) resolutions proposed by the Members.

7.3 Members proposed resolutions not binding

Resolutions proposed by the Members under clause 7.2(f) shall be noted by the Directors but shall not be binding on the Directors.

7.4 Annual General Meeting

The Company must hold its Annual General Meeting (being a Meeting of Members) in accordance with the Corporations Act.

7.5 Notice of Meeting of Members

- (a) Written notice of a Meeting of Members must be given to each person who is, at the date of the notice, a member, director or, if applicable, the auditor of the Company. The notice must specify the place, the day and the hour of meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.
- (b) A person's attendance at a Meeting of Members waives any objection that person may have to:
 - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
 - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of meeting, unless the person objects to considering the matter when it is presented.

7.6 Form of notice of Meeting of Members

A notice of a Meeting of Members may be given by any form of communication permitted by the Corporations Act.

7.7 Accidental omission of notice not to affect validity

The accidental omission to give notice of any Meeting of Members or proxy form to, or the non-receipt of a notice or proxy form by, a Member entitled to receive notice does not invalidate a resolution passed at the Meeting of Members.

7.8 Meetings of Members by technology

- (a) The simultaneous linking together by telephone or other electronic means of a sufficient number of the members in person to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this constitution relating to meetings of the members apply, as far as they can, with any necessary changes, to meetings of the members by telephone or other electronic means.
- (c) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

7.9 Quorum at Meetings of Members

Business may not be transacted at a Meeting of Members unless a quorum of Members is present at the time when the meeting proceeds to business.

7.10 Number for quorum at Meetings of Members

Except as otherwise set out in this document, [4] Members who are entitled to vote, present in person or by representative, is a quorum.

7.11 Effect of quorum not present

If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:

- (a) if the meeting was convened by or on the requisition of Members, it must be dissolved.
- (b) otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.

7.12 Quorum at adjourned Meetings of Members

At the adjourned meeting held under clause 7.11(b), if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

7.13 Appointment of chairperson

If the Directors have elected one of their number as chairperson of their meetings, that person is entitled to preside as chairperson at every Meeting of Members.

7.14 Election of chair if chairperson of Directors not present

The Directors present at a Meeting of Members must elect one of their number to chair the meeting if either of the following applies:

- (a) a Director has not been elected as the chairperson of Directors meetings.
- (b) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.

7.15 Election of chair if no directors present

The Members present at a Meeting of Members must elect one of their number to chair the meeting if there are no Directors present within 15 minutes after the time appointed for the holding of the meeting or all Directors present decline to take the chair.

7.16 Chairperson's powers

Subject to the terms of this document dealing with adjournment of meetings, the ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the Meeting of Members is final and no motion of dissent from a ruling of the chairperson may be accepted.

7.17 Power to expel member from meeting

The chairperson, in their discretion may expel any Member or Director from a Meeting of Members if the chairperson reasonably considers that the Member or Director's conduct is inappropriate behaviour. Without limiting the foregoing, any of the following conduct may be considered inappropriate in a Meeting of Members:

- (a) the use of offensive or abusive language which is directed to any person, object or thing; and

- (b) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance.

7.18 Adjournment of meetings

The chairperson may, and must if so directed by the meeting, adjourn the meeting to another time and to another place.

7.19 Business at adjourned meeting

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

7.20 Notice of meeting adjourned by members

When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

7.21 No notice needed if less than 30 days adjournment

Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

7.22 Voting procedures

- (a) Except where by law a resolution requires a special majority, questions arising at a Meeting of Members must be decided by a majority of votes cast by the Members present at the meeting. Such a decision is for all purposes a decision of the Members.
- (b) Where the votes on a proposed resolution are equal, the Chair of a Meeting of Members is entitled to a second or casting vote.
- (c) A resolution put to the vote of a Meeting of Members must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
 - (i) the chairperson of the meeting; or
 - (ii) at least 2 Members present and with the right to vote on the resolution.
- (d) A demand for a poll does not prevent a Meeting of Members continuing to transact any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a Meeting of Members that a resolution has on a show of hands been carried, carried unanimously, carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the company's proceedings, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a Meeting of Members, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a Meeting of Members on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.

- (h) The demand for a poll may be withdrawn.
- (i) If the Company has only one Member, the company may pass a resolution by the Member recording it and signing the record.

7.23 Voting rights

- (a) At a Meeting of Members each Member present has one vote.
- (b) A proxy, attorney or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a Member in his or her own right.
- (c) An objection to the qualification of a person to vote at a Meeting of Members must be raised before or at the meeting at which the vote objected to is given or tendered and referred to the chairperson of the meeting, whose decision is final.
- (d) A vote not disallowed by the chairperson of a meeting under clause 7.23(c) is valid for all purposes.

7.24 Special resolutions

A special resolution proposing an amendment of the Company's constitution, change of name of the Company and/or voluntary winding up of the Company must be approved by the Directors before its submission to the Members for approval.

8. Proxies and representatives

8.1 Proxies and representatives of Members

- (a) At meetings of Members each Member entitled to vote may vote in person or by proxy or by attorney, or in the case of a member which is a corporation, by representative.
- (b) A proxy, attorney or representative may be appointed for all Meetings of Members, or for any number of Meetings of Members, or for a particular Meeting of Members.

8.2 Power of person attending as attorney or representative

Subject to the terms of their appointment, a person attending as a the attorney of a Member or representing a corporation which is a Member has all the powers of a Member.

8.3 Appointment of proxies

A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be a Member and that person may hold more than one proxy.

8.4 Form of proxy

A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed by the Member making the appointment.

8.5 Authority of proxies

A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.

8.6 General power of proxy

Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a Meeting of Members, except that the proxy is not entitled to vote on a show of hands, including without limitation, authority:

- (a) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or any applicable law or by this constitution;
- (b) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Corporations Act or any applicable law has been given;
- (c) to vote on any amendment moved by the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
- (d) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
- (e) to act generally at the meeting.

8.7 Verification of proxies and representatives

A proxy, attorney or representative may not vote at a Meeting of Members or adjourned meeting unless, before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents are deposited with the Company by the time set out in clause 8.8:

- (a) the document appointing the proxy, attorney or representative and;
- (b) the authority under which the appointment was signed or a certified copy of that authority.

8.8 Time for receipt

Those documents referred to in clause 8.7 must be either:

- (a) received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than 24 hours before the time for holding the meeting; or
- (b) produced to the chairperson of the meeting before the proxy, attorney or representative votes.

8.9 Proxy for adjourned meeting

If a Meeting of Members has been adjourned, an appointment and any authority received by the Company prior to the adjournment in accordance with clause 8.8, or at least 24 hours before the resumption of the meeting, are effective for the resumed part of the meeting.

8.10 Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this document.

8.11 Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed.

8.12 Member's attendance does not revoke appointment

The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the Meeting of Members but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

9. Appointment and retirement of Directors

9.1 Number of Directors

The number of Directors shall be not less than 7 and not more than 10.

9.2 Change in number of Directors

The Company may, by resolution, increase or reduce the maximum or minimum number of Directors and may also determine in what rotation the increased or reduced number is to go out of office.

9.3 Composition of board

Subject to clause 9.14, the Board shall be comprised of the following persons:

- (a) not more than 6 persons elected by the Members; and
- (b) not more than 4 additional persons appointed by the Board.

9.4 Qualifications of Directors

- (a) A person is not eligible to be nominated as a Director, or be a Director:
 - i. if that person has been disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible person under the ACNC Act
 - ii. unless that person has their principal place of residence in the State of New South Wales at the time of their appointment as a Director.
- (b) At least two of the Directors must have their principal place of residence outside of the Sydney Region.

9.5 No membership qualification

A person does not have to be a Member to be a Director.

9.6 Qualifications for Appointed Directors

A person appointed as a Director under clause 9.3(b) must be a person, who in the opinion of the Board, possesses substantial skills which will enhance the skills mix of the Board of the Company.

9.7 Employee may not be a director

An employee of the Company is not eligible for appointment as a Director.

9.8 Term of appointment of Directors

- (a) Each Director shall hold office:
- (i) in the case of a Director elected by Members under clause 9.3(a), for a term expiring at the end of the third annual general meeting following the meeting at which the Director was last elected or re-elected;
 - (ii) in the case of a Director appointed under clause 9.3(b), for the term specified in the appointment, which shall not exceed 3 years.

On the expiry of a director's term, the Director will be eligible for re-appointment or re-election, provided that no Director may hold office for more than 9 years (whether consecutive or otherwise).

- (b) This clause 9.8 may only be amended by a resolution of the Company approved by a resolution that has been passed by at least 90% of the votes cast by Members entitled to vote on the resolution.

9.9 Retirement

A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.

9.10 Nomination and election of Directors

The nomination and election of the Directors to fill positions under clause 9.3(a) shall take place at a Meeting of Members as follows:-

- (a) The Secretary shall call for nominations to fill positions as Directors forty (40) days before the next following Annual General Meeting;
- (b) Subject to clause 9.4(a), the Directors or any two Members may nominate any person to serve as a Director;
- (c) The nomination, which shall be in writing and signed by the nominee and his proposer and seconder, shall be lodged with the Secretary at least thirty-five (35) days before the next following Annual General Meeting;
- (d) Subject to clause 9.3(a), the Company may by resolution at a Meeting of Members fill an office vacated by a Director by electing or re-electing an eligible person to that office.

9.11 Replacement of Appointed Directors at expiration of their term

On conclusion of the term of an Appointed Director, the Directors may, subject to clause 9.8, re-appoint the Director or appoint a replacement Director at their discretion.

9.12 Appointment of directors to ensure minimum number

The Directors or the surviving Director may at any time appoint a person to be a Director for the purpose of ensuring that there is at least the minimum number of Directors as required by law and/or to ensure that a quorum exists for meetings of Directors.

9.13 Term for directors appointed to ensure minimum number

A Director appointed under clause 9.12 holds office only until any casual vacancies in the number of Directors are filled.

9.14 Casual vacancies

On vacation of office of a Director, the Directors may:

- (a) if the vacancy is a Director elected under clause 9.3(a), appoint a director to fill the vacancy for a term expiring at the end of the next Annual General Meeting; and
- (b) if the vacancy is a Director appointed under clause 9.3(b), appoint a replacement.

9.15 Removal from office

The Company may, by ordinary resolution at a Meeting of Members, remove a Director from office.

9.16 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this document, the office of Director becomes vacant if any of the following occurs:

- (a) if the Director becomes an insolvent under administration;
- (b) if the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) if the Director is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of six months and the Board resolves that the office of that Director be vacated; or
- (d) if the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act or if the Director is disqualified from being a responsible entity under the ACNC Act.

9.17 Directors' interests

- (a) A Director must disclose a perceived or actual material conflict of interest to the other Directors.

- (b) Unless the Directors otherwise decide and where permitted by law, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
 - (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter.
- (c) The Directors may make a policy or rules relating to disclosure of interests and subsequent requirements of the Directors. Any policy or rules will bind all directors but no act, transaction, agreement, instrument, resolution or other thing with a third party is invalid or voidable only because a Director fails to comply with the policy or rules.
- (d) Subject to clause 9.7, a Director is not disqualified from contracting or entering into an arrangement with the Company as vendor, purchaser or in another capacity, merely because the Director holds office as a Director or because of the fiduciary obligations arising from that office.
- (e) A contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested is not invalid or voidable merely because the Director holds office as a Director or because of the fiduciary obligations arising from that office.
- (f) A Director who is interested in an arrangement involving the Company is not liable to account to the company for any profit realised under the arrangement merely because the Director holds office as a Director or because of the fiduciary obligations arising from that office, provided that the Director complies with applicable disclosure requirements under this constitution, any policy or rules adopted by the Directors, and under the Corporations Act and any other applicable law regarding that interest.

10. Directors' remuneration

10.1 Payment for expenses

The Directors may be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or Meetings of Members or otherwise in the execution of their duties as Directors.

10.2 Directors fees

Subject to clauses 10.3 and 10.4, the Directors are not entitled to any fees for their services as Directors.

10.3 Payment for services

A Director who is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond or outside of the Director's ordinary duties or is engaged to provide any other service, may be paid a fee for those services, exertions or work.

10.4 Form of payment of additional sum

The additional amount may be paid either by fixed sum or other fee determined by the Board and either in addition to or in substitution for the fees or expenses otherwise payable to the Director.

10.5 Register of payments to Directors

The Company must maintain a register of payments made to Directors. The register must be available for inspection by the Members during business hours.

11. Powers of directors

The Directors may exercise all those powers of the Company as are not, by the Corporations Act or by this document, required to be exercised by the Members in a Meeting of Members or otherwise.

12. Proceedings of directors

12.1 Convening of Directors' meetings

Any Director may at any time require the Secretary to convene a meeting of the Board.

12.2 Notice of Directors' meetings

- (a) Notice of each meeting of the Directors must be given to each Director (except a Director on leave of absence approved by the directors) at least two business days before the meeting or at another time determined by resolution of the Board.
- (b) The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a Director does not invalidate any thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) the Director has waived or waives notice of that meeting before or after the meeting;
 - (iii) the Director has notified or notifies the Company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means before or after the meeting; or
 - (iv) the Director attended the meeting.
- (c) Attendance by a person at a meeting of Directors waives any objection which that person may have to a failure to give notice of the meeting.

12.3 Directors may consent to short notice

Despite the requirement for notice under clause 12.2 all Directors entitled to receive notice may waive the required period of notice for a particular meeting.

12.4 Mode of meeting for Directors

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

12.5 Quorum at Directors' meetings

- (a) No business may be transacted at a meeting of Directors unless a quorum of Directors is present at the time the business is dealt with.
- (b) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is four or another higher number determined by the Directors.
- (c) If the number of directors in office at any time is not sufficient to constitute a quorum, or is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

12.6 Voting at Directors' meetings

Questions arising at a meeting of the Board must be decided by a majority of votes of Directors present and voting. A decision of the majority is for all purposes a decision of the Board.

12.7 Appointment of chairperson of Directors

The Directors may elect a Director to chair their meetings and determine the period for which the person elected is to hold office.

12.8 Directors to elect chair if chairperson not present

If a chairperson has not been elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present may choose one of their number to chair the meeting.

12.9 Chairperson's vote at Directors meetings

The chairperson has a second or casting vote at meetings of Directors.

12.10 Circumstances where issue may be referred to members

If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting then one or more of the Directors (including those who have the disqualifying interest in the matter) may call a meeting of the Members and that meeting may pass a resolution to deal with the matter.

12.11 Delegation of powers to committee

Subject to clause 12.12, the Board may delegate any of their powers to committees consisting of Directors or other persons.

12.12 Powers that may not be delegated by directors

The following powers and functions of the Board may not be delegated and must be exercised by the Board:

- (a) receipt and consideration of reports of the Audit Committee and the auditor;
- (b) establishment and membership of committees of the Board;
- (c) appointment of the Chief Executive and selection panels for appointment of the Chief Executive;

- (d) final approval of grants for research;
- (e) acquisition, sale, mortgaging or otherwise disposing or dealing with real property.

12.13 Power of committee

The exercise of a power by a committee in accordance with this document is to be treated as the exercise of that power by the Directors.

12.14 Committee bound to conform to board directions

In the exercise of any powers delegated to it, a committee formed by the Board must conform to the directions of the Board.

12.15 Audit committee

The Board must establish and maintain an Audit Committee.

12.16 Proceedings of committees

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Board must be governed by the charter for the committee approved by the Board.

12.17 Validity of acts of Directors

All acts done by a meeting of the Board or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

12.18 Minutes

The Board must cause minutes of all proceedings of Meetings of Members, meetings of the Board, meetings of committees formed by the Board and resolutions passed by directors without a meeting, to be entered, within one month after the relevant meeting is held, in books kept for the purpose.

12.19 Form of minutes

The Directors must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed within a reasonable time by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

12.20 Resolution in writing

A resolution in writing signed or consented to by all Directors, excluding Directors who have been given leave of absence or who disqualify themselves from considering the resolution in question, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held, provided that the directors who sign or consent to the resolution would have constituted a quorum at a directors' meeting held to consider that resolution.

12.21 Form of consent to resolution

A director may consent to a resolution by:

- (a) signing the document containing the resolution (or a copy of that document);

- (b) giving to the Company at its registered office a written notice (including by fax or other electronic means) addressed to the Secretary or to the chairperson of Directors signifying consent to the resolution and either setting out its terms or otherwise clearly identifying them; or
- (c) telephoning the Secretary or the chairperson of Directors and signifying assent to the resolution and clearly identifying its terms.

12.22 Electronic documents

The document or documents may be generated by electronic means (including by facsimile and email) and a document bearing a facsimile of a signature or the registered email address of the Director is to be treated as signed by the Director.

13. Secretary

13.1 Appointment of secretary

The Directors may appoint one or more Secretaries and may at any time terminate the appointment or appointments. The Chief Executive (however this position is titled) of the Company may not be appointed as a Secretary of the Company.

13.2 Terms of appointment of secretary

The Directors may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this document, the Corporations Act or by any other statute to be carried out by the secretary of the Company.

14. Indemnity and insurance

14.1 Indemnity

Every officer and past officer of the Company may be indemnified by the Company, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in defending an action.

14.2 Insurance premiums

The Company may, to the fullest extent permitted by law, pay the premium on a contract insuring a person who is or has been an officer of the Company against liabilities described in clause 14.1.

15. Seals and execution of documents

15.1 Custody of Seal

If the Company has one, the Directors must provide for the safe custody of the Seal.

15.2 Execution of documents

The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by any of the following:

- (a) by two Directors;

- (b) by a Director and the Secretary; or
- (c) by a Director and some other person appointed by the Directors for the purpose.

15.3 Execution without seal

The Company may execute a document without the use of a seal if the document is signed by either of the following:

- (a) by two Directors; or
- (b) by a Director and a Secretary.

16. Gift Fund requirements

16.1 Company to maintain a Gift Fund

For so long as it seeks or has obtained endorsement as a DGR from the Australian Taxation Office, or the Company is named as a DGR in ITAA 97, the Company must maintain a management account (**Gift Fund**):

- (a) to identify and record Gifts and Deductible Contributions;
- (b) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
- (c) that does not record any other money or property.

16.2 Limits on use of Gift Fund

The company must use the Gift Fund only for its Principal Purpose.

16.3 Revocation of deductible gift recipient endorsement

- (a) Despite clause 17, upon:
 - (i) the winding up of the company; or
 - (ii) the company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97,

whichever is earlier, any surplus Gifts and Deductible Contributions and money received by the company because of those Gifts and Deductible Contributions must be transferred to an institution:

- (iii) which is charitable at law;
 - (iv) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in clause 6; and
 - (v) gifts which are deductible under Division 30 of ITAA 97 on the basis that the recipient of the gift is characterised as a health promotion charity as described in item 1.1.6 of the table in section 30-20.
- (b) The identity of the institution referred to in clause 16.3(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the members by ordinary resolution at or before the time of

winding up of the company and, if the members do not decide, by the Supreme Court of New South Wales.

16.4 Receipts

Receipts for Gifts or Deductible Contributions must state the information required in the applicable provisions of section 30-228 of the ITAA 97.

16.5 Definitions

In clauses 16 and 17 the following definitions apply:

Deductible Contribution means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the Principal Purpose of the Company.

DGR means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.

Gift means a gift to the Company as described in item 1 of the table in section 30-15 of the ITAA 97.

Gift Fund means a fund that is maintained for the Principal Purpose.

ITAA 97 means Income Tax Assessment Act 1997 (Cth).

Principal Purpose means the purposes of the Company as reflected in the objects of the Company specified in clause 2, or any of those purposes.

17. Surplus assets on winding up or dissolution

17.1 Organisations to whom assets may be transferred

Subject always to clause 16.3, upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities, will not be paid to or distributed among the Members, but will be given or transferred to some other institution or company which satisfies all of the following requirements:

- (a) It has objects similar to the objects of the Company;
- (b) It is a DGR; and
- (c) Its constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 6.

17.2 Determining the identity of the organisation

The identity of the institution or company referred to in clause 17.1 must be decided by the Directors or, if the Directors do not wish to decide, it is to be determined by the Members by ordinary resolution at or before the time of winding up or dissolution of the Company and, in default of any determination, by the Supreme Court of New South Wales.

18. Accounts, audit and records

18.1 Accounts

The Directors must cause proper accounting and other records to be kept in accordance with the Corporations Act. The Directors must distribute copies of every

profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act.

18.2 Audit

To the extent required by law, a registered company auditor must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with applicable laws and standards.

18.3 Rights of Inspection

Subject to the Corporations Act, the Board shall determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in a Meeting of Members.

19. Notices

19.1 Persons authorised to give notices

A notice by either the Company or a Member in connection with this document may be given on behalf of the Company or Member by a solicitor, director or company secretary of the Company or Member.

19.2 Form of signature on notice

The signature of a person on a notice given by the Company may be written, printed or stamped.

19.3 Method of giving notices

In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this document may be given to the addressee by any of the following means:

- (a) by delivering it to a street address of the addressee.
- (b) by sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee.
- (c) by sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

19.4 Addresses for giving notices to Members

The street address or postal address of a Member is the street or postal address of the Member shown in the Register.

19.5 Member may specify facsimile or email address

The facsimile number or email address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or email address to which notices may be sent to the Member.

19.6 Death or bankruptcy of member

If a person is entitled to a membership in consequence of the death or bankruptcy of a Member, until that person gives notice to the Company of an address for the giving of notices, the address of that person is the address of the deceased or bankrupt Member.

19.7 Address for giving notices to the Company

The street and postal address of the Company is the Office.

19.8 Company may specify facsimile or email address

The facsimile number or e-mail address of the Company is the number which the Company may specify by written notice to the Members as the facsimile number or e-mail address to which notices may be sent to the Company.

19.9 Time notice is given

A notice including a notice of meeting given in accordance with this document is to be taken as given, served and received at the following times:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery.
- (b) if it is sent by post to the street or postal address of the addressee, on the 2nd (5th if outside Australia) business day after posting.
- (c) if sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

19.10 Proof of giving notices

The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of the relevant one of the following:

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee.
- (b) in the case of a notice given by e-mail by the Company, a print out of a verification notice, log entry or other confirmation by the electronic messaging system from which the notice was sent.
- (c) In the case of a notice given by e-mail to the Company, a print out of an acknowledgment of receipt of the e-mail.

19.11 Persons entitled to notice of meeting

Notice of every Meeting of Members must be given by a method authorised by this document to all of the following persons:

- (a) every Member;
- (b) every Director;
- (c) every person (if any) entitled to a membership in consequence of the death or bankruptcy of a Member who, but for the Member's death or bankruptcy, would be entitled to receive notice of the meeting; and
- (d) the auditor for the time being of the Company, if any.

19.12 No other person entitled to notice

No other person is entitled to receive notices of Meetings of Members.

20. Definitions and Interpretation

20.1 Definitions

In this document the following definitions apply:

ACNC Act means the *Australian Charities and Not for Profit Commission Act 2012* (Cth) and all regulations made under that Act.

Appointed Director means a director appointed by the Board under clause 9.3(b).

Board means the board of Directors of the Company.

Company means The Cancer Council NSW ACN 116 463 846.

Corporations Act means the Corporations Act 2001 (Cth).

Director means a person appointed or elected to perform the duties of a director of the Company. **Meeting of Members** means a general meeting of the Company.

Member means a person whose name is entered in the Register as a member of the Company.

Office means the registered office of the Company.

Ordinary Member means a person admitted by the Directors as an Ordinary Member of the Company.

Register means the register of Members kept by the Company under the Corporations Act 2001.

Seal means, if the Company has one, the common seal of the Company.

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

Sydney Region means the local government areas comprising the region defined as the Sydney Region by the NSW Department of Planning.

20.2 Interpretation

In this document, unless the context otherwise requires:

- (a) A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this document.
- (b) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- (c) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.

- (d) Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (e) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (f) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- (g) A reference to dollars or \$ means Australian dollars.
- (h) References to the word 'include' or 'including' are to be construed without limitation.
- (i) A reference to a time of day means that time of day in the place where the Office is located.
- (j) A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.
- (k) Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- (l) A term of this document which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

20.3 References to the document

A reference to this document, where amended, means this document as so amended.

20.4 Replaceable rules

Each of the provisions of the Corporations Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to the Company.

20.5 Application of Corporations Act

The Corporations Act applies in relation to this document as if it was an instrument made under the Corporations Act as in force on the day when this document became the constitution of the Company.

20.6 Exercise of powers

Except as specifically contemplated to the contrary in this document, the Company may, in any manner permitted by the Corporations Act exercise any power take any action or engage in any conduct or procedure which under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its document provided that the Company may only exercise those powers in pursuit of its objects as defined in clause 2.