



**WESTMEAD  
HOSPITAL  
FOUNDATION**

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# **Constitution**

**Westmead Hospital Foundation  
ACN 050 329 925**

A public company limited by guarantee

**22 May 2019**

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## Part A – Preliminary matters

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### 1 Defined terms and interpretation

The Dictionary and Interpretation provisions in Schedule 1:

- (a) define some of the terms used in this constitution;
- (b) set out the rules of interpretation which apply to this constitution; and
- (c) clarify the effect of the Corporations Act on this constitution.

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### 2 Name, nature of company and liability

- (a) The name of the company is Westmead Hospital Foundation or, if the name is lawfully changed in accordance with the Corporations Act and this constitution, that name.
- (b) The company is a public company limited by guarantee which is established to be, and to continue as, a charity.
- (c) The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$5 to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

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## Part B – Purpose

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### 3 Purpose and activities of the company

#### 3.1 Purpose

The purpose of the company is to advance the understanding, prevention and treatment of diseases in human beings through healthcare, with a focus on those receiving services, treatment or other care at Westmead Hospital (**Charitable Purpose**).

#### 3.2 Activities

The activities of the company must be conducted in the furtherance of its Charitable Purpose and may include:

- (a) coordinating, conducting or supporting fundraising efforts;
- (b) increasing the awareness of individuals, communities, business and government, including in relation to the healthcare and medical research objectives of Westmead Hospital;
- (c) supporting the financial, infrastructure and operational management of Westmead Hospital and other organisations and funds with purposes similar to the Charitable Purpose; and

- (d) any other activities ancillary to or necessary for the fulfilment of the Charitable Purpose.

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## Part C – Members and membership

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### 4 Membership

#### 4.1 Members of the company

- (a) The members of the company are those:
  - (i) noted as such in the company's register of members as at the date this constitution is adopted; and
  - (ii) applicants that have been admitted as members of the company in accordance with rule 4.2,  
  
and have not since ceased to be a member.
- (b) If an applicant is admitted as a member of the company, the secretary must ensure that:
  - (i) the applicant is given notice of admission as a member of the company; and
  - (ii) the name and details of the applicant are entered in the members' register in accordance with rule 4.5.
- (c) The secretary must ensure that each applicant not admitted as a member of the company is informed of this decision. The directors may, but are not required to, provide reasons for the decision not to admit an applicant into membership.

#### 4.2 Becoming a member

To become a member of the company an applicant must:

- (i) be 18 years of age or older;
- (ii) have a genuine commitment to and an understanding of the Charitable Purpose;
- (iii) be nominated for membership by an existing member;
- (iv) complete and lodge a membership application in such form as determined by the directors from time to time which, for the avoidance of doubt, may include applying using paper or electronic form;
- (v) ensure that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;
- (vi) pay any joining and annual fee that may be required under rule 4.6;
- (vii) be admitted into membership by an ordinary resolution of the directors (or their delegate) in such manner as they determine; and

- (viii) satisfy such other membership criteria as the directors may resolve from time to time, acting reasonably.
- (b) The directors may, at their complete discretion, choose to postpone the assessment of all (but not some) membership applications received during the period between the calling of a general meeting and the holding of the general meeting to which the notice relates, or any adjournments of that meeting (including by modifying any application delegations or processes).

#### **4.3 Member's rights**

In addition to the voting rights set out in rule 6.8, each member has the right to receive notices of and to attend and be heard at any general meeting of the company.

#### **4.4 Membership not transferable**

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

#### **4.5 Register of members**

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 4.5(a), the following must be entered in the register in respect of each member:
  - (i) the name and address of the member;
  - (ii) the date of admission to and cessation of membership; and
  - (iii) any other information required by the directors or the law from time to time.

#### **4.6 Membership fees**

- (a) Unless a different amount applies as determined under rule 4.6(d), the joining fee for membership of the company is \$0. The joining fee, if any, is payable at the same time as the application for membership is made. The joining fee will be reimbursed to the applicant if the application for membership is declined.
- (b) Unless a different amount applies as determined under rule 4.6(d), the annual membership fee for membership of the company is \$0. The first year's membership fee, if any, is payable at the same time as the application for membership is made and is required in addition to any joining fee. The first year's membership fee will be reimbursed to the applicant if the application for membership is declined.
- (c) Other than the initial membership fee that may be payable under rule 4.6(b), annual membership fees (if any) are to be paid at such times and in such manner as the directors determine from time to time.
- (d) The directors may at their complete discretion:
  - (i) determine that the joining fee and/or the annual membership fee be a different amount;
  - (ii) determine that the joining fee and/or membership fee payable by one or more members be payable at a different time or times, including by instalments; and

- (iii) determine, or waive all or some of, the fees payable by one or more members at any time.
- (e) A member that has not paid the required membership fee in accordance with this rule 4.6 may not exercise any of the rights associated with that member's membership, including the right to exercise any vote the member may have at a meeting of members.
- (f) The joining fee and annual membership fee that may be required under this rule 4.6 are exclusive of any GST that may be payable.
- (g) For the avoidance of doubt, where a membership fee is payable by instalments pursuant to rule 4.6(d)(ii), any reference in this constitution to a membership fee includes an instalment of a membership fee.

#### 4.7 Membership renewal

The directors may, at their discretion, send a notice to one or more members requiring that member to confirm or to renew membership of the company and/or to confirm or update that member's details (**Membership Renewal Notice**).

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## 5 Ceasing to be a member

### 5.1 General overview

- (a) There are a number of reasons why a member's membership will stop. For instance, if a member:
  - (i) resigns from membership (see rule 5.2);
  - (ii) automatically stops being a member (see rule 5.3); or
  - (iii) is expelled from membership (see rule 5.4).
- (b) The directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they so determine from time to time provided they are consistent with the requirements set out in this rule 5.
- (c) Where a member ceases to be a member in accordance with the law or this constitution, that member's name must be removed from the register of members.
- (d) Upon the removal of a member's name from the register of members:
  - (i) the member will forfeit all rights and privileges attached to membership and all rights which that member may have against the company arising out of the membership; and
  - (ii) the company will have no liability to such member in respect of that member's removal from the register of members.
- (e) Any member that ceases to be a member remains liable for:
  - (i) any moneys which may be owing by that member to the company; and

- (ii) in the case of the company being wound up, within one year of the date of cessation of membership, the relevant contribution under rule 2(c).

## **5.2 Resignation from membership**

A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

## **5.3 Automatic stopping of membership**

A member's membership will automatically stop if the member:

- (a) dies;
- (b) fails to pay any required membership fee in accordance with rule 4.6 within one month after the date on which that membership fee becomes due or such later time as the directors may determine;
- (c) fails to return a Membership Renewal Notice in accordance with rule 4.7 within one month after the return due date specified in that notice or such later time as determined by the directors; or
- (d) no longer complies with the membership eligibility requirements described at rule 4.2.

## **5.4 Disciplining, suspension and expulsion of members**

- (a) This rule 5.4 describes what needs to happen when considering whether or not to discipline a member. In summary, the process involves:
  - (i) putting the member in question on notice and giving the opportunity to provide information; and
  - (ii) passing a directors' resolution to warn, suspend, expel or otherwise discipline that member.
- (b) Provided the steps set out in this rule 5.4 are followed, the directors may resolve to warn, suspend, expel or otherwise discipline a member if that member:
  - (i) has refused or neglected to comply with the provisions of this constitution; or
  - (ii) has acted in a way that, in the opinion of the directors, is, or could be, prejudicial to the interests or reputation of the company,

### **(Member Disciplinary Resolution).**

- (c) A Member Disciplinary Resolution must only be considered and determined at a meeting of directors and must not be determined under rule 8.16. A Member Disciplinary Resolution to expel a member must be determined by a Directors' Special Resolution. In all other cases a Member Disciplinary Resolution is to be passed by a majority of directors present at the meeting in accordance with rule 8.15.
- (d) The directors must give the member in question at least 14 days' notice of the date that the directors will consider the Member Disciplinary Resolution. This notice must be in writing and inform the member:

- (i) that the directors are to consider warning, suspending, expelling or otherwise disciplining the member;
  - (ii) of the reasons why the directors are considering taking the determined action;
  - (iii) of the right for the member to give the directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action;
  - (iv) of the date, place and time of the meeting at which the resolution is to be considered; and
  - (v) of the right for the member to attend the meeting at which the resolution is to be considered but not to be present during any director deliberations or the putting of or voting on the resolution unless the directors resolve otherwise.
- (e) Where a director is also a member subject to a Member Disciplinary Resolution, the director is not entitled to vote on the relevant Member Disciplinary Resolution.
  - (f) Directors must notify the relevant member in writing about the directors' decision within 10 days after the date a Member Disciplinary Resolution is passed.
  - (g) The directors' decision in relation to the Member Disciplinary Resolution is final and, provided notice is given in accordance with rule 5.4(f), takes effect as at the date the Member Disciplinary Resolution is passed.
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## 6 General meetings

### 6.1 Introduction

- (a) For as long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, and for as long as the law permits or requires, the directors:
  - (i) may determine whether or not to hold meetings of members including annual general meetings unless the Corporations Act otherwise requires a meeting of members for a particular resolution to be passed;
  - (ii) must ensure that the Australian Charities and Not-for-profits Commission Governance Standards, in particular Governance Standard 2 relating to accountability to members, are complied with; and
  - (iii) must ensure that if the company does hold a meeting of members, it does so in accordance with this constitution and the Corporations Act despite the fact that the provisions of the Corporations Act dealing with members' meetings may not be directly applicable to the company.
- (b) If there is any inconsistency between the Corporations Act and this constitution with respect to the calling and holding of members' meetings then, to the extent permitted by law, the provisions of this constitution will prevail.

### 6.2 Calling of general meetings

A general meeting of members may be initiated by:

- (a) a resolution of the directors;

- (b) the members in accordance with the Corporations Act; or
- (c) the court in accordance with the Corporations Act.

### **6.3 Notice of general meetings**

- (a) If a general meeting of members (including any annual general meeting) is called under rule 6.2, and subject to the provisions of the Corporations Act dealing with consent to short notice, at least 21 days' notice of that meeting must be given to each person who is at the date of the notice:
  - (i) a member of the company eligible to receive notices of meetings;
  - (ii) a director of the company; or
  - (iii) the auditor of the company.
- (b) A notice of a general meeting must specify:
  - (i) the date, time and place of the meeting;
  - (ii) if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting;
  - (iii) the general nature of the business to be transacted at the meeting, including the text of any resolutions to be proposed at the meeting; and
  - (iv) any other matters required under the law.
- (c) Notwithstanding rule 6.3(b), where the company holds an annual general meeting the ordinary business of that meeting may include any of the following, even if not referred to in the notice of meeting:
  - (i) the consideration of the annual financial report, the directors' report and the auditor's report;
  - (ii) the election and appointment of directors; and
  - (iii) the appointment of the auditor and the fixing of the auditor's remuneration.
- (d) A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present whether or not the person is a member.

### **6.4 Quorum at general meetings**

- (a) No business may be transacted at any general meeting, except the election of a chair (if required) and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) The quorum for a general meeting of members is five members or a majority of current members (whichever number is the lowest) present in person or by proxy and entitled under these rules to vote at a general meeting, provided that of those members at least two are present in person (including via technological means in accordance with rule 6.10).

- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (i) where the meeting was convened by, or at the request of, a member or members, the meeting must be dissolved; or
  - (ii) where the meeting was convened by, or at the request of, the directors or the court:
    - (A) the meeting stands adjourned to the day, and at the time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place;
    - (B) at the adjourned meeting the quorum is two members present in person or by proxy and entitled under these rules to vote at a general meeting; and
    - (C) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.
- (d) In determining whether a quorum is present pursuant to rule 6.4(b) or 6.4(c)(ii)(B):
  - (i) if an individual is attending both as a member and as a proxy, the individual must only be counted once; and
  - (ii) if a member has appointed more than one proxy, only one proxy must be counted.

## **6.5 Chair of general meetings**

- (a) Subject to rule 6.5(b), the Chairperson must preside as chair at each general meeting of members.
- (b) If at a general meeting of members:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is absent from the meeting (or part of the meeting); or
  - (iii) the Chairperson is present but is prevented from acting or not willing to act as chair of the meeting or of part of the meeting,

the Deputy Chairperson (if there is one) must preside as chair of that meeting or part of it until such time as the Chairperson joins that meeting or can resume the role of chair.

- (c) Subject to rules 6.5(a) and 6.5(b), if at a general meeting of members:
  - (i) there is no Chairperson or Deputy Chairperson;
  - (ii) the Chairperson and Deputy Chairperson are absent from the meeting (or part of the meeting); or
  - (iii) the Chairperson and Deputy Chairperson are present but are prevented from acting or not willing to act as chair of the meeting or of part of the meeting,

the members present may elect a person present to be chair of that meeting or part of the meeting until such time as the Chairperson or Deputy Chairperson joins the general meeting or can resume the role of chair (as applicable).

## **6.6 Conduct of and participation in general meetings**

- (a) The chair of a general meeting of members is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
  - (i) proper and orderly debate or discussion; and
  - (ii) the proper and orderly casting or recording of votes.
- (b) The chair of a general meeting of members at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.
- (d) In addition to the rights provided for in rule 6.3(a)(iii) and 6.3(d), the auditor of the company (if any) is entitled to be heard at any general meeting which the auditor attends.
- (e) A meeting of members may be held in two or more places linked together by any technology provided it:
  - (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chair to determine whether the person participating in the meeting is in fact a member or attorney of a member;
  - (iii) enables the chair of the meeting to be aware of proceedings in each place; and
  - (iv) enables the members in each place to vote on a Show of Preference and on a poll.

## **6.7 Decisions at general meetings**

- (a) Except in the case of any resolution which under this constitution or as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting (including being present by technological means) and who are entitled to vote. Such decision is then for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members the chair may exercise a second or casting vote in addition to any vote the chair may have as a member of the company.

- (c) Unless a poll is demanded, a resolution put to the vote of a general meeting of members must be decided on a show of preference of members, with each member present indicating a preference by a means appropriate to that member and that is readily interpreted and understood by the chair (**Show of Preference**).
- (d) A member may only exercise one vote on a Show of Preference regardless of whether that member also holds one or more proxies.
- (e) A poll may be demanded before a vote being decided by a Show of Preference is taken or before or immediately after the declaration of the result of the Show of Preference:
  - (i) by the chair of the meeting;
  - (ii) by at least five members present and entitled to vote on the relevant resolution; or
  - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (f) Unless a poll is demanded, a declaration by the chair on the result of a vote on a Show of Preference is decisive of the outcome of that resolution. Such declaration does not need to refer to the number or proportion of votes for or against the resolution.
- (g) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be recorded as a resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the appointment of a chair of the meeting.
- (i) The demand for a poll may be withdrawn.

## 6.8 Voting rights

- (a) Each member has the right to exercise one vote:
  - (i) on a Show of Preference at a meeting of members;
  - (ii) on a poll at a meeting of members; and
  - (iii) when voting upon a resolution to be determined without a meeting under rule 6.11.
- (b) An objection to the qualification of a person to vote at a general meeting:
  - (i) must be raised before or immediately after the result of the resolution for which the vote objected to is given or tendered; and
  - (ii) must be referred to the chair of the meeting, whose decision is final.
- (c) A vote not disallowed by the chair of a meeting under rule 6.8(b) is valid for all purposes.

## 6.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - (i) in person;
  - (ii) by proxy in a form as the directors may prescribe or accept; or
  - (iii) by attorney in a form as the directors may prescribe or accept.
- (b) A proxy or attorney may, subject to rule 4.2, be a member of the company but does not need to be.
- (c) The chair of a meeting may require any person purporting to act as a proxy or attorney to establish to the satisfaction of the chair that the person has been validly appointed as a proxy or attorney and is the person named in the relevant instrument of appointment, failing which the chair may exclude that person from attending or voting at the meeting.
- (d) If the company receives a proxy form without the name of the proxy filled in, then the proxy will be:
  - (i) the person specified by the company in the proxy form; or
  - (ii) if no person is specified by the company in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:
  - (i) at the registered office of the company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
  - (ii) at least two business days before the time scheduled for the commencement of the meeting.
- (f) Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy or attorney votes, a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
  - (i) the member dies;
  - (ii) the member revokes the proxy's or attorney's appointment; or
  - (iii) the member revokes the authority under which a third party appointed the proxy or attorney.
- (g) Unless otherwise permitted by the chair, the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that relevant member is present at the meeting.

## 6.10 Meetings conducted using technological means

- (a) Subject to the Corporations Act and this constitution, the contemporaneous linking together by a form of technology of a number of members sufficient to constitute a quorum constitutes a general meeting.

- (b) Where a general meeting is held at two or more venues using any form of technology:
  - (i) a member participating in the meeting is taken to be present in person at the meeting;
  - (ii) the provisions of this constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to general meetings held using that technology;
  - (iii) the meeting is taken to be held at the place determined by the chair provided that at least one of the members present at the meeting was at the place for the duration of the general meeting; and
  - (iv) the conduct of the meeting must comply with any policies and procedures relating to the meetings conducted using technological means as determined by the directors from time to time.
- (c) If the technology used in rule 6.10(b) encounters a technical difficulty, whether before or during the general meeting, which results in a member not being able to participate in the meeting, the chair may, subject to the Corporations Act and rule 6.4:
  - (i) allow the meeting to continue, provided a quorum remains present; or
  - (ii) adjourn the meeting either for a reasonable period of time as may be required to fix the technology or to such other date, time and location as the chair of the meeting considers appropriate.
- (d) For the avoidance of doubt, where the chair has allowed the general meeting to continue in accordance with rule 6.10(c)(i), any resolution passed at that meeting is valid.
- (e) Subject to the Corporations Act and this constitution, the directors may make policies and procedures relating to the passing of member resolutions as determined by the directors from time to time

### **6.11 Decisions without meetings**

Unless the Corporations Act requires the holding of a meeting, members may pass resolutions and otherwise make decisions outside of a members' meeting in any manner (including through the use of technology) provided:

- (a) all members entitled to vote on the resolutions are sent a copy of the resolutions and are given a reasonable time to respond considering the urgency and nature of the matters under consideration;
- (b) any such resolution is passed by at least a majority of all current members (unless a higher number or threshold is required under this constitution or by law); and
- (c) such manner complies with:
  - (i) the law; and
  - (ii) any policies and procedures relating to the passing of member resolutions as determined by the directors from time to time.

## 6.12 Resolutions of single member company

If the company has only one member, the company may pass a resolution by that member recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

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## Part D – Not-for-profit

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### 7 No profits for members

- (a) Subject to rule 7(b), the assets and income of the company must be applied solely in furtherance of the Charitable Purpose and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any member.
- (b) The company may, with the approval of the directors, make payment in good faith to a member of the company:
  - (i) by way of reasonable and proper payment for any goods supplied or services rendered to the company (including payment as a consultant or employee);
  - (ii) by way of interest on money lent to the company by that member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
  - (iii) by way of reasonable and proper rent for premises let by that member to the company;
  - (iv) by way of a grant (or similar contribution) awarded in furtherance of the Charitable Purpose;
  - (v) as a result of the member's participation in a social bond or similar program of the company; and
  - (vi) for authorised out-of-pocket expenses reasonably and properly incurred by that member in connection with the affairs of the company.
- (c) For the avoidance of doubt, nothing in this rule 7:
  - (i) prevents a member from receiving such services as may ordinarily be provided by the company in the course of undertaking its activities; or
  - (ii) prohibits a member from receiving a minor benefit that is directly related to membership of the company.

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## Part E – Directors and secretary

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### 8 Directors

#### 8.1 Number of directors

- (a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is ten.

- (b) The directors may change the maximum number of permitted director positions in the way required by the Corporations Act.
- (c) If at any time the number of directors falls below three, the remaining director or directors may act but only:
  - (i) in an emergency;
  - (ii) for the purpose of convening a general meeting of the company; or
  - (iii) for the purpose of increasing the number of directors to three.

## **8.2 Becoming a director**

Subject to rule 8.3, a person may become a director of the company upon:

- (a) appointment by WH (**WH Appointed Directors**);
- (b) appointment by WSLHD (**WSLHD Appointed Director**);
- (c) appointment by the directors (**Board Appointed Directors**); and
- (d) appointment by the directors to fill any vacancy in the number of directors however arising (**Casual Vacancy**).

## **8.3 Rules about the composition of directors**

Subject to rule 8.4:

- (a) one of the director positions is reserved for, and may only be filled by, a WH Appointed Director;
- (b) one of the director position is reserved for, and may only be filled by, a WSLHD Appointed Director; and
- (c) the remaining director positions are reserved for, and may only be filled by, Board Appointed Directors.

## **8.4 Qualifications and requirements of directors**

- (a) To be eligible for appointment as a Board Appointed Director under rule 8.2(a) a person must:
  - (i) be a member of the company or have submitted an application for membership of the company in accordance with rule 4.2, which has not yet been determined;
  - (ii) be 18 years of age or older;
  - (iii) be nominated in writing for election by at least one director in the way determined by the directors from time to time;
  - (iv) not be ineligible to be a director under the Corporations Act or the ACNC Act;
  - (v) have knowledge about and be committed to the Charitable Purpose; and

- (vi) meet any other criteria relating to the composition of the board and skills and qualifications of directors as may be determined by the directors from time to time.
- (b) To be eligible to fill a:
  - (i) WH Appointed Director position under rule 8.2(b);
  - (ii) WSLHD Appointed Director position under rule 8.2(c); or
  - (iii) to be appointed by the directors to fill a Casual Vacancy under rule 8.2(d),  
the person must:
    - (iv) comply with all the requirements of rule 8.4(a) other than the requirements in rules 8.4(a)(i) and 8.4(a)(iii); and
    - (v) in the case of a WH Appointed Director and a WSLHD Director, have their appointment approved by the current Board Appointed Directors.
- (c) Each appointment of a Board Appointed Director must be ratified by the members at the annual general meeting of the company next occurring after the appointment. Each Board Appointed Director whose appointment is not ratified will cease office as a director as at the conclusion of that meeting.

## **8.5 Directors' term of office and term limits**

- (a) The term of office of a Board Appointed Director commences on the date that person is appointed as a director and continues for the period determined by the directors at the time of appointment – such period not to exceed three years.
- (b) The term of office of a WH Appointed Director commences on the date that person is appointed as a director and continues for:
  - (i) the period determined by WH at the time of appointment – such period not to exceed three years; or
  - (ii) such shorter period as WH determines, provided a senior representative of WH meets in advance with the Chairperson to discuss the shortening of that WH Appointed Director's term of office.
- (c) The term of office of a WSLHD Appointed Director commences on the date that person is appointed as a director and continues for:
  - (i) the period determined by WSLHD at the time of appointment – such period not to exceed three years; or
  - (ii) such shorter period as WSLHD determines, provided a senior representative of WSLHD meets in advance with the Chairperson to discuss the shortening of that WSLHD Appointed Director's term of office.
- (d) The term of office for a Casual Vacancy commences on the date that person is appointed as a director and continues until:
  - (i) the end of the next annual general meeting; or

- (ii) if the company does not hold an annual general meeting, until the next time an election of directors is held or 12 months (whichever is the shortest period of time).
- (e) Each director is to remain as a director until that person's term of office expires or until that person resigns or is otherwise removed as a director of the company in accordance with the law and this constitution.
- (f) No person is permitted to hold the office of a Board Appointed director for any more than six continuous years following the adoption of this constitution. However, in the case of a Board Appointed Director the directors may, by a Directors' Special Resolution, resolve to permit that person to sit for a further term of up to three years as specified in that resolution.

## **8.6 Ceasing to be a director**

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any director becomes vacant if the director:
  - (i) dies;
  - (ii) ceases to satisfy any of the eligibility criteria as set out in rule 8.4;
  - (iii) is, due to physical or mental impairment, unable to properly perform the duties of a director, as determined by a suitably qualified professional acting reasonably;
  - (iv) is required to cease holding the office of director under rule 8.4(c);
  - (v) is convicted of an indictable offence; or
  - (vi) fails to attend three or more directors' meetings in any 12 month period without leave of absence approved by the directors.
- (b) Nothing in rule 8.6(a) prevents a director from vacating office by providing written notice of resignation to the company.

## **8.7 Payments to directors**

- (a) Directors must not receive any payment for acting as a director but, subject to rule 8.7(b), each director is entitled to:
  - (i) be reimbursed for all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees; and
  - (ii) receive payment for any goods supplied or services rendered to the company (other than as a director), as long as the amount is proper and reasonable in the circumstances.
- (b) Notwithstanding anything else in this constitution, no payment of any kind can be made by the company to a director unless that payment is approved by:
  - (i) the directors; or

- (ii) such other person or persons to whom the directors may have delegated such authority in a way consistent with rule 8.17 or rule 8.18.

## **8.8 Interested directors**

- (a) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is voided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Each director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the directors.
- (c) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (d) If rule 8.8(c) operates to the effect that there are not enough directors to form a quorum for a directors' meeting, one or more directors (including those who have a material personal interest) may call a general meeting and the general meeting may pass a resolution to deal with the matter.
- (e) Subject to rule 8.8(f), a director who is in any way interested in a contract or arrangement (other than by having a material personal interest which is to be dealt with in accordance with rule 8.8(c)) may, despite that interest:
  - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement;
  - (ii) sign or countersign any document relating to that contract or arrangement; and
  - (iii) remain present in the meeting and vote in relation to that contract or arrangement or any matter arising out of those things.
- (f) Rule 8.8(d) does not apply if, and to the extent that, it would be contrary to law.

## **8.9 Powers and duties of directors**

- (a) The directors are responsible for the governance, business and affairs of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the members.
- (b) The directors must comply with their duties as directors under legislation and common law and, for as long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, with the duties described in Governance Standard 5 of the regulations made under the ACNC Act which are:
  - (i) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;

- (ii) to act in good faith in the best interests of the company and to further the Charitable Purpose;
- (iii) not to misuse their position as a director;
- (iv) not to misuse information that they gain in their role as a director;
- (v) to disclose any perceived or material conflicts of interest;
- (vi) to ensure that the financial affairs of the company are managed responsibly;  
and
- (vii) not to allow the company to operate while insolvent.

#### **8.10 Directors' meetings**

- (a) The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.
- (b) The directors should meet as often as required for the proper discharge of their directors' duties and in any event no less than four times per year.

#### **8.11 Convening of meetings of directors**

A meeting of directors may be convened by the Chairperson or any two of the directors.

#### **8.12 Notice of directors' meetings**

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
  - (i) be given in a way permitted by rule 14;
  - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting;
  - (iii) state the nature of the business to be transacted at the meeting; and
  - (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a directors' meeting is valid even in circumstances where a director did not receive notice of the meeting, but only if:
  - (i) the notice was not received because of accident or error;
  - (ii) before or after the meeting, that director notifies the company of a decision on the resolution; or
  - (iii) the director attended the meeting.

### 8.13 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of a majority of current directors.
- (c) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide and as notified to all directors in accordance with rule 8.12(a).

### 8.14 Chairperson and Deputy Chairperson

- (a) The directors may appoint a Board Appointed Director to the office of chairperson of directors (**Chairperson**) and may appoint a different Board Appointed Director to the office of deputy chairperson of directors (**Deputy Chairperson**) and, subject to 8.5, determine the period for which each director is to hold such office.
- (b) The directors may remove a director from the office of Chairperson and Deputy Chairperson at any time but doing so does not remove that person as a director.
- (c) A person may only fill the office of Chairperson or Deputy Chairperson for as long as that person is a director of the company.
- (d) Subject to rule 8.14(e), the Chairperson must preside as chair at each directors' meeting.
- (e) If at a meeting of directors:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is absent from the meeting (or part of the meeting); or
  - (iii) the Chairperson is present but is prevented from acting or not willing to act as chair of the meeting or of part of the meeting,

the Deputy Chairperson (if there is one) must preside as chair of the meeting or part of it until such time as the Chairperson joins the meeting or can resume the role of chair (as applicable).

- (f) Subject to rules 8.14(d) and 8.14(e), if at a meeting of directors:
  - (i) there is no Chairperson or Deputy Chairperson;
  - (ii) the Chairperson and Deputy Chairperson are absent from the meeting (or part of the meeting); or
  - (iii) the Chairperson and Deputy Chairperson are present but are prevented from acting or not willing to act as chair of the meeting or of part of the meeting,

the directors present may elect one of themselves to be chair of the meeting or part of the meeting until such time as the Chairperson or Deputy Chairperson joins the meeting or can resume the role of chair (as applicable).

#### **8.15 Decisions of directors**

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting are, unless a higher number or threshold is required under this constitution or by law, to be decided by a majority of votes cast by the directors present. Any decision of a kind made in accordance with this rule is for all purposes a determination of the directors.
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may exercise a second or casting vote in addition to any vote the chair may have as a director of the company.

#### **8.16 Decisions without meetings**

Directors may pass resolutions outside of a directors' meeting in any manner (including through the use of technology) provided:

- (a) all directors other than a director on an approved leave of absence are sent a copy of the resolutions and are given a reasonable time to respond considering the urgency and nature of the matters under consideration;
- (b) any such resolution is passed by at least a majority of all current directors (unless a higher threshold is required by law or this constitution); and
- (c) such manner complies with:
  - (i) the law; and
  - (ii) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

#### **8.17 Committees**

- (a) The directors may resolve to:
  - (i) establish one or more committees consisting of such persons as they determine;
  - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
  - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
  - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, terms of reference, guidelines or protocols.

- (c) The directors may continue to exercise all of their powers despite any delegation made under this rule.

#### **8.18 Delegation to individuals**

- (a) The directors may resolve to delegate any of their powers to such individual or individuals as they so determine including:
  - (i) to one or more directors;
  - (ii) to one or more members; or
  - (iii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.

#### **8.19 Validity of acts**

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalid just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

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## **9 Secretaries**

- (a) The directors must appoint at least one secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration as the directors determine.
- (c) A director may not be remunerated in that person's capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include:

- (i) ensuring that the necessary registers required by the law are established and properly maintained;
  - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
  - (iii) ensuring the organisation of, and attendance at, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a secretary is not invalid just because:
- (i) of a defect in the person's appointment as a secretary; or
  - (ii) the person is disqualified from being a secretary,
- if that circumstance was not known by the person or the directors when the act was done.

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## Part F – Winding up and loss of endorsement

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### 10 Winding up

- (a) Before the company is wound up, it must first wind up each of the deductible gift recipient endorsed funds it operates (if any), in accordance with each fund's winding up requirements.
- (b) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must only be given or distributed to one or more Eligible Recipients. For the avoidance of doubt, Surplus Assets must not be given or distributed to a member that is also an Eligible Recipient.
- (c) The decision as to which Eligible Recipient is (or which Eligible Recipients are) to be given the Surplus Assets under rule 10(b) is to be determined:
  - (i) by a resolution of the directors at or before the winding up or dissolution of the company; or
  - (ii) if no such resolution is passed, by the Supreme Court.

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### 11 Loss of deductible gift recipient endorsement

- (a) If the company is endorsed as a deductible gift recipient as a whole and this endorsement is revoked, then the company must ensure that the following assets remaining after the payment of all liabilities are distributed to one or more Eligible Recipients:
  - (i) deductible gifts of money or property received for the Charitable Purpose;
  - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Charitable Purpose; and

- (iii) money received by the company because of such deductible gifts and contributions.
- (b) The decision as to which Eligible Recipient is (or which Eligible Recipients are) to receive the funds distributed in accordance with rule 11(a) is to be determined by a resolution of the directors.

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## Part G – Administrative matters

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### 12 Minutes, records and negotiable instruments

#### 12.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members (including those made without meetings under rule 6.11);
- (b) meetings and resolutions of directors (including those made without meetings under rule 8.16); and
- (c) meetings and resolutions of committees.

#### 12.2 Inspection of records

- (a) Subject to the law and rule 12.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open for inspection.
- (b) A member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of directors' minutes and resolutions, the directors may, at their complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.
- (c) The company must establish and administer all registers required to be kept by law and each member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the member becoming aware that such change has occurred.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep all financial and other records required by law.

#### 12.3 Negotiable instruments

The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn,

accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.

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## 13 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
  - (b) This indemnity:
    - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule);
    - (ii) does not cover any loss or liability of an officer seeking to be indemnified under this rule if that loss or liability arises from that person's wilful misconduct or fraud; and
    - (iii) operates only to the extent that the loss or liability is not paid by insurance.
  - (c) To the extent permitted by law, the company must take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs.
  - (d) To the extent permitted by law, the company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the company on any terms and conditions that the directors think fit to give effect to the rights of that person under this rule 13. Any such agreement may also give the person rights to inspect and obtain copies of the books of the company for the purposes, and on such other terms and conditions, as the directors decide.
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## 14 Notices

### 14.1 Giving of notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) provided such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the directors from time to time.

### 14.2 Timing of services

- (a) Where a notice is served personally, service of the notice is taken to be effected when delivered.
- (b) Where a notice is sent by post, service of the notice is taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:

- (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Where a notice is sent by electronic means, including email or fax, service of the notice is taken to be effected:
- (i) when the sender receives an automated message confirming delivery; or
  - (ii) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the notice has not been delivered,
- whichever happens first.
- (d) If the delivery or receipt is on a day which is not a Business Day or is after 5.00pm on a Business Day it is deemed to be received at 9.00am on the following Business Day.
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## 15 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

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## Schedule 1 Dictionary

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### 1 Dictionary

In this constitution:

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

**Board Appointed Directors** has the meaning given at rule 8.2(c).

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the company's registered office is located.

**Casual Vacancy** has the meaning given at rule 8.2(d).

**Chairperson** has the meaning given in rule 8.14(a).

**Charitable Purpose** has the meaning given at rule 3.1.

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

**Deputy Chairperson** has the meaning given in rule 8.14(a).

**Directors' Special Resolution** means a resolution passed by at least 75% of current directors entitled to vote on the resolution.

**Eligible Recipient** means an organisation that:

- (a) has charitable objects or purposes similar to the Charitable Purpose;
- (b) has a governing document which requires its income and property to be applied in promoting its objects and agrees to use any distribution provided to it by the company to further such objects or purposes;
- (c) is registered as a charity with the Australian Charities and Not-for-profits Commission;
- (d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the company; and
- (e) if the company is endorsed as a deductible gift recipient for the purpose of any Australian federal tax law, is similarly endorsed as a deductible gift recipient.

**Member Disciplinary Resolution** has the meaning given at rule 5.4(b).

**Membership Renewal Notice** has the meaning given at rule 4.7.

**Show of Preference** has the meaning given at rule 6.7(c).

**Surplus Assets** has the meaning given at rule 10(b).

**WH** and **Westmead Hospital** mean Western Sydney Local Health District t/as Westmead Hospital (ABN 48 702 394 764).

**WH Appointed Director** has the meaning given at rule 8.2(a).

**WSLHD** means Western Sydney Local Health District (ABN 48 702 394 764).

**WSLHD Appointed Director** has the meaning given at rule 8.2(b)

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## 2 Interpretation

### 2.1 General

- (a) In this constitution the words 'constitution', 'director', 'secretary', 'member' and the like are, and should be interpreted to be, references to the constitution, director, secretary, member and the like (as the case may be) of the company named in rule 2(a).
- (b) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (c) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution.
- (d) Unless the contrary intention appears, in this constitution:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing a gender include every other gender;
  - (iii) words used to denote persons generally include any individual, company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
  - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) A requirement in this constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the directors.
- (f) In this constitution, where communication from a member to the company must be 'signed' by a member, in addition to any other methods permitted by law, the

member may sign in any manner that allows the directors to be satisfied, acting reasonably, that the communication is from the relevant member, including by using an electronic signature.

- (g) 'Writing' or 'written' includes modes of representing or reproducing words, figures, drawings or symbols in a visible or tactile form which renders the message retrievable by people who know the language in question.

## **2.2 Replaceable rules not to apply**

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.