

**CORPORATIONS ACT 2001  
PUBLIC COMPANY LIMITED BY GUARANTEE (NOT-FOR-PROFIT)**

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**Constitution of  
AUSTRALASIAN DIABETES IN PREGNANCY  
SOCIETY  
ACN 608 091 274**

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## **CONSTITUTION OF AUSTRALASIAN DIABETES IN PREGNANCY SOCIETY**

### **1. NAME OF THE COMPANY AND PRELIMINARY**

- (a) The name of the Company is AUSTRALASIAN DIABETES IN PREGNANCY SOCIETY.
- (b) The Replaceable Rules do not apply to the Company.
- (c) For so long as the Company is licensed to omit the word "Limited" from its name, at no time may it:
  - (i) breach a condition of its licence;
  - (ii) pursue objects or purposes that would have prevented it being granted the licence;
  - (iii) apply its profits or other income to promote objects or purposes that would have prevented it being granted the licence;
  - (iv) pay a dividend to its members; and
  - (v) modify its constitution to allow it to do anything set out in paragraphs (i) to (iv) above.

### **2. NATURE OF THE COMPANY**

- (a) The Company is a not for profit company limited by guarantee and the Company is prohibited from doing anything to change its not for profit status.
- (b) The liability of the Members is limited.
- (c) Every Member undertakes to contribute \$10 to the assets of the Company if it is wound up while they are a Member, or within one year afterwards.

### **3. OBJECTS**

#### **3.1 Objects of the Company**

- (a) The dominant purpose and principal activity of the Company is to promote the prevention or control of disease, namely diabetes mellitus as it relates to pregnancy in women.
- (b) The Company will further its dominant purpose by:
  - (i) developing or assisting in developing treatment for the use in the prevention or control of diabetes mellitus in pregnancy;
  - (ii) engaging and encouraging, promoting and facilitating research, or assisting in the research into the causes, prevention and treatment of diabetes mellitus in pregnancy;

- (iii) promoting among members of the medical profession, scientists and others the free exchange of knowledge with respect to diabetes mellitus related to pregnancy;
  - (iv) developing in association with other interested bodies, education methods designed to give those who have diabetes mellitus as it relates to pregnancy a better understanding of their condition;
  - (v) improving standards of diagnosis and management of diabetes mellitus before, during and following a pregnancy;
  - (vi) disseminating to the public accurate information about diabetes mellitus related to pregnancy and the risk factors associated therewith;
  - (vii) promoting research related to diabetes mellitus related to pregnancy by individuals, hospitals, clinics, universities and other institutions and organisations;
  - (viii) being responsible for statements relating to the professional and research aspects of diabetes mellitus related to pregnancy (both medical and scientific); and
  - (ix) taking such other measures and encourage such service as will enhance the welfare of individuals having diabetes mellitus as it relates to pregnancy.
- (c) If applicable, the objects of the Company must be consistent with its requirements to maintain its tax concession charity and deductible gift recipient status and the Company is prohibited from doing anything to jeopardise this status or including an object or purpose which is inconsistent with either of the following:
- (i) its not for profit status; or
  - (ii) its tax concession charity and deductible gift recipient status.
- (d) The Company must pursue charitable purposes only and must apply its income to promoting those purposes.

### **3.2 Prohibited Acts**

- (a) The Company does not have the power to:
- (i) issue shares of any kind; or
  - (ii) pay, transfer, apply, directly or indirectly, any portion of the income and property of the Company, by way of dividend, bonus or otherwise howsoever by way of profit, to or for the benefit of a Member.

- (b) The Company must not be operated for the purpose of the profit or gain of any Member.
- (c) Nothing in this Constitution authorises the Company to do an act that is prohibited by law of a State or a Territory of Australia or gives the Company a right that the law of a State or Territory of Australia denies to the Company.
- (d) Even though section 124(1) of the Act may prescribe additional purposes and powers, the Company may only act in furtherance of the purpose described in clause 3.1.

## **4. MEMBERSHIP**

### **4.1 Membership**

- (a) The number of Members for which the Company proposes to be registered is unlimited.
- (b) The Members of the Company at any point in time shall comprise:
  - (i) initially the Members listed in Schedule 1; and
  - (ii) such others as the Board admits to membership in accordance with this Constitution or under relevant by-laws or rules approved by the Board from time to time.

### **4.2 Categories Of Membership**

- (a) Subject to clause 4.2(b), the categories of Members include:
  - (i) Ordinary Members;
  - (ii) Corresponding Members;
  - (iii) Sustaining Members;
  - (iv) Honorary Life Members;
  - (v) Retired Members; and
  - (vi) Honorary Members
- (b) Additional categories of members, if recommended by the Board, may be created from time to time by the members in General Meeting.
- (c) The respective rights of the various categories of Member are described in this Constitution.

#### **4.3 Ordinary Members**

- (a) Any person who:
  - (i) is a medical graduate, health professional or scientist interested in diabetes mellitus related to pregnancy; or
  - (ii) has a primary role in professional diabetes in pregnancy care,may apply for ordinary membership of the Company.
- (b) An Ordinary Member has the right to:
  - (i) receive notices of and to attend General Meetings;
  - (ii) be heard at any General Meeting; and
  - (iii) to vote at any General Meeting.

#### **4.4 Corresponding Members**

- (a) Any person who:
  - (i) is a medical graduate, , health professional or scientist eligible to be an ordinary member; and
  - (ii) resides overseas for a period exceeding twelve (12) months,may apply for corresponding membership of the Company.
- (b) A Corresponding Member:
  - (i) has the right to receive notices of and to attend and be heard at any General Meeting; but
  - (ii) has no right to vote at any General Meeting.

#### **4.5 Sustaining Members**

- (a) Any organisation, firm or company which is interested in supporting the Company may apply for membership as a sustaining member of the Company.
- (b) A Sustaining Member:
  - (i) has the right to receive notices of and to nominate a Representative pursuant to clause 10 to attend and be heard at any General Meeting; but
  - (ii) has no right to vote at any General Meeting.
- (c) Each Sustaining Member must promptly notify the Company at its registered office in writing of any change in the person nominated as its Representative in accordance with clause 10.

#### **4.6 Honorary Life Members**

- (a) An Ordinary Member or Corresponding Member may be nominated by a proposer and seconder (both of whom must be Financial Members) for admission as an Honorary Life Member of the Company.
- (b) Nominations must be delivered to the Company at its registered office for consideration by the Board and must be supported by a curriculum vitae which evidences the member's pre-eminence in professional, scientific or societal aspects of diabetes related to pregnancy.
- (c) The nomination will be considered by the Board (members of the Board having a conflict of interest in the nomination are to declare that conflict and abstain from voting) and if, in the opinion of Board the nominee is distinguished by their contribution to the knowledge of diabetes related to pregnancy or to the welfare of people with this condition and is worthy of the distinction, the member will be conferred with honorary life membership.
- (d) Honorary Life Members have the right to:
  - (i) receive notices of and to attend General Meetings;
  - (ii) be heard at any General Meeting; and
  - (iii) to vote at any General Meeting.

#### **4.7 Retired Members**

- (a) Any Member who is retired from full-time employment may be admitted as a Retired Member.
- (b) Retired Members:
  - (i) have the right to receive notices of and to attend General Meetings;
  - (ii) have the right to be heard at any General Meeting; but
  - (iii) have no right to vote at any General Meeting.

#### **4.8 Honorary Members**

- (a) Any person who is held in high esteem by the Society may be nominated by the Chair or a proposer and seconder (both of whom must be Financial Members) for admission as an Honorary Member of the Company.
- (b) Nominations must be delivered to the Company at its registered office for consideration by the Board.
- (c) The nomination will be considered by the Board (members of the Board having a conflict of interest in the nomination are to declare that conflict and abstain from

voting) and if, in the opinion of Board the nominee is considered worthy, the person will be conferred with honorary membership.

- (d) Honorary Members:
  - (i) have the right to receive notices of and to attend General Meetings;
  - (ii) have the right to be heard at any General Meeting; but
  - (iii) have no right to vote at any General Meeting.

#### **4.9 Becoming a Member**

The following provisions apply to applications for admission as a Member:

- (a) Membership is open to organisations and individuals who are supportive of the objects of the Company and who are accepted to membership by the Board following the application procedure set out in this Constitution.
- (b) An application for Membership must be made and submitted to the Secretary in the form approved by the Board from time to time, including by electronic means. Upon submitting the application, the applicant must pay the relevant entrance fee (see clause 5) which will be held by the Company pending determination of the application.
- (c) In respect of each application for Membership duly made in accordance with this Constitution:
  - (i) the Secretary shall provide the application to the Board at the next meeting after receipt of the application;
  - (ii) the Board shall consider the application promptly and may, after considering it, determine in the Board's sole and absolute discretion to accept or reject the application;
  - (iii) if the application is accepted, the applicant shall be admitted as a Member and shall be notified in accordance with clause 4.10; and
  - (iv) if the application is rejected, all amounts paid by the applicant on account of the application shall be refunded in full.
- (d) The Board is not required to give reasons for rejecting an application for Membership.

#### **4.10 Notifying Member of Admission**

Following admission of a new Member, the Secretary must promptly:

- (a) notify the Member in writing of the admission to membership by issuing a receipt for the entrance fee paid by the Member on account of the application for membership; and
- (b) cause the required details to be entered in the Register.

#### **4.11 Ongoing Member Obligations and Rights**

- (a) The Members of the Company agree to be bound by the provisions of this Constitution and relevant by-laws and rules approved by the Board from time to time.
- (b) For so long as a Member abides by the provisions of this Constitution, the Member shall enjoy the rights and privileges of membership under this Constitution and the Act.
- (c) The rights and privileges of every Member are personal to that Member and may not be transferable by any act of that Member or by operation of law.
- (d) Members shall indicate their membership of the Company only in such form and manner and subject to any conditions in any by-laws or rules approved by the Board from time to time.
- (e) Each Member shall notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership or class of membership.

#### **4.12 Register of Members**

- (a) A Register of the Members must be kept in accordance with the Act.
- (b) The following details must be entered and kept current in the Register in respect of each Member:
  - (i) the full name and contact details of the Member;
  - (ii) the date of admission to and cessation of membership; and
  - (iii) such other information as the Board requires from time to time.
- (c) Each Member is responsible to notify the Secretary in writing of any change in that person's name, address, telephone or facsimile number within one month after the change.

#### **4.13 Certificate of Membership**

- (a) The Board may in its discretion issue a certificate of membership to Members in such form and upon payment of such fees as it may prescribe from time to time.
- (b) Certificates of membership remain the property of the Company and must be promptly returned to the Company if requested by the Board or if the holder of the certificate ceases to be a Member.
- (c) The Board may approve from time to time the manner in which certificates of membership of the Company can and cannot be used.
- (d) Without limiting clause 4.13(c), Members with a certificate of membership must not use the certificate to make false or misleading representations about the Company and their membership thereof including representing that they are a Member when membership has ceased.

### **5. APPLICATION FEE**

#### **5.1 Amount and Payment of Fees**

- (a) The entrance or annual subscription fee, payable by applicants for Membership of the Company (if demanded), shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time.
- (b) All annual subscriptions are due and payable in advance on 1 January in each year or on such other date as may be set by the Board.
- (c) If a person is admitted to membership of the Company during the months of June to December inclusive the Board may reduce the annual subscription payable by the applicant in any manner it sees fit.

#### **5.2 Discretion regarding Fees**

The Board may in its discretion:

- (a) determine that no entrance or annual subscription fee is payable by a Member or Class of Members (in whole or in part) for any given year; and
- (b) extend the time for payment of any entrance fee or annual subscription fee by any Member or class of Members.

#### **5.3 Return of Fees**

No part of any entrance fee or annual subscription fee shall be refunded to a Member who ceases to be a Member pursuant to clauses 6.2 or 6.3.

#### **5.4 Honorary Life Members**

No annual subscription is payable by any Honorary Life Member.

## **5.5 Unpaid Fees**

If:

- (a) the annual subscription of a Member remains unpaid for two (2) months after it becomes payable; and
- (b) a notice of default is given to the member following a resolution of the Board to do so;

the Member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the Board sees fit.

## **6. REMOVAL AND CESSATION OF MEMBERSHIP**

### **6.1 Resignation**

A Member may resign from membership of the Company by giving written notice to the Secretary, and the resignation shall take effect from the date of receipt of the notice of resignation or such later date as may be stated in the notice.

### **6.2 Removal from Membership**

- (a) Subject to clause 6.2(b), a Member may be removed by special resolution of the Members at a General Meeting.
- (b) The following provisions must be fulfilled before a Member can be removed by a resolution of the Members under clause 6.2(a):
  - (i) A majority of the Directors must agree that the Member has failed to comply with a provision of this Constitution or is otherwise no longer considered suitable to be a Member. In this regard the Directors may consider any one or more of the following matters in relation to the Member:
    - (A) has engaged in conduct which in the opinion of the Board:
      - (I) is unbecoming of a Member;
      - (II) is prejudicial to or not in the best interests of the Company;  
or
      - (III) brings discredit on the Company;
    - (B) in the opinion of the Board, has engaged in derogatory or discriminatory conduct or harassment;
    - (C) has failed to observe a proper standard of professional care, skill or competence;

- (D) no longer meets the criteria for membership of the Company or class or category of membership of the Company;
  - (E) has failed to comply with a written direction issued by the Board in accordance with the Constitution of the Company regarding good conduct or administration of the Company;
  - (F) has been the subject of an adverse finding in relation to his or her conduct, competence or recognition by any body or authority (including any Department or Unit) having jurisdiction to do so;
  - (G) in any civil proceedings in a court in Australia or elsewhere, has been found to have acted dishonestly; or
  - (H) (being an individual) becomes bankrupt or assigns his or her estate or enter into a deed of arrangement for the benefit of his or her creditors;
- (ii) the Board must give at least two (2) months' written notice to the Member of the intention to terminate their membership and the grounds of the intended termination;
  - (iii) the Member must be invited, in the written notice, to provide to the Board any written representations which the Member wishes the meeting of Members to consider;
  - (iv) if the Member makes written representations, and requests that they be notified to the other Members, in sufficient time before the notices of meeting are sent to the Members, the Board must ensure that a copy of the representations is included in the notices calling the meeting;
  - (v) if copies of the representations have not been included in the notices of meeting, for any reason, the Member may require the representations to be read out at the meeting; and
  - (vi) whether or not representations have been circulated or read, the Member must be given a full and fair opportunity to address the meeting.

### **6.3 Other Grounds Cessation of Membership**

A Member ceases to be a Member:

- (a) on the dissolution of the Member;
- (b) on the insolvency of the Member;
- (c) if the Member, being a company, ceases carrying on a business;
- (d) if the Member becomes of unsound mind or becomes liable to be dealt with in any way under a law relating to mental health; or

- (e) if the Member dies.

#### **6.4 Effect of Cessation of Membership**

- (a) Any Member who has been removed as a Member under clause 6.2 is not entitled to enjoy any of the privileges of membership including receiving notice of, attendance and voting at, any meeting of Members.
- (b) Any Member whose membership has ceased for any reason continues to remain liable for:
  - (i) all money owing by the Member to the Company as at the date of cessation of membership; and
  - (ii) the Guarantee.
- (c) Whenever any person or company ceases to be a Member, the Board shall direct that his or her name or the company's name shall be removed from the Register of Members.

### **7. NO PROFITS FOR MEMBERS**

#### **7.1 Transfer of Income or Property**

Subject to clause 7.2, all of the assets and income of the Company shall be applied solely in the furtherance of the objects of the Company and no portion shall be distributed directly or indirectly to any Member.

#### **7.2 Payments, Services and Information**

Nothing in clause 7.1 prevents the payment, in good faith, of an amount, calculated on arm's length terms, in respect of:

- (a) remuneration payable to an employee of the Company, who is also a Member's Representative under clause 10, for services actually rendered to the Company;
- (b) goods or services actually supplied to the Company by a Member in the ordinary and usual course of the Member's business;
- (c) expenses incurred by a Director as specified in clause 13.1(b);
- (d) principal and interest at a rate not exceeding the rate for the time being charged by Australian banks for overdrawn accounts, upon money lent by any Member to the Company;
- (e) reasonable and proper rent for premises let by any Member to the Company;
- (f) reimbursement of reasonable travelling and other expenses incurred by a Member when engaged in the affairs or business of the Company as approved by the Board, the CEO or the Deputy CEO; or

- (g) reimbursement of reasonable travelling and other expenses incurred by grantees of a grant by the Company, as approved by the Board, the CEO or the Deputy CEO.

### **7.3 Previous Association**

- (a) The Company is the successor to the Australasian Diabetes In Pregnancy Society, Inc., an association incorporated pursuant to the *Associations Incorporation Act 1981 (Vic)*.
- (b) Without limiting the operation of clause 7.1, the Company shall undertake and finance activities and events of the type which at the date of incorporation of the Company were carried out by the Australasian Diabetes in Pregnancy Society Inc and the Board will make by-laws to govern such activities.

## **8. GENERAL MEETINGS**

### **8.1 Convening of Meetings**

The Chair or any Director may at any time request the Secretary to convene a General Meeting of the Members and the Secretary must comply with all such requests.

### **8.2 Notice of General Meeting**

Subject to the provisions of the Act:

- (a) At least twenty-one (21) days' notice of the holding of any General Meeting of the Company specifying the place, date and time of commencement of the meeting and in the case of special business the nature of the business to be transacted shall be given to Members.
- (b) Notice of a General Meeting must be given by the Company individually to each Member entitled to vote at the meeting and to each Director.
- (c) Notice of a General Meeting may be given electronically or by any other form of communication permitted by the Act or this Constitution including:
  - (i) by Electronic Communication;
  - (ii) published in the official newsletter or journal of the Company and posted as if it was a notice pursuant to clause 24; or
  - (iii) published on the Company's website provided that the Company notifies the Member:
    - (A) that the notice is available; and
    - (B) how the Member may access the notice.

- (d) Except for resolutions of Members under section 203D of the Act, the Company may call:
  - (i) a General Meeting on shorter notice if all Members entitled to attend and vote at the General Meeting agree beforehand; and
  - (ii) any other meeting of Members on shorter notice if all Members entitled to attend and vote at that meeting agree beforehand.
- (e) The Company must give the Auditor:
  - (i) notice of a General Meeting in the same way that a Member is entitled to receive notice; and
  - (ii) any other communication relating to the General Meeting that a Member is entitled to receive.
- (f) The accidental omission to give notice of any General Meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the General Meeting.

### **8.3 Cancellation of General Meetings**

- (a) The Directors may cancel a General Meeting, other than a General Meeting which they are required to convene and hold under the Act.
- (b) A meeting may only be cancelled in accordance with clause 8.3(a) if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in the notice of meeting.

### **8.4 Quorum at General Meetings**

- (a) A quorum for the purposes of a General Meeting of Members shall be at least 10% of the Financial Members (excluding Sustaining Members), whether present personally, by their Representative or by proxy and a quorum must be present at all times during a General Meeting.
- (b) In determining whether a quorum is present:
  - (i) individuals who attend as proxies or Representatives are to be counted;
  - (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted; and
  - (iii) if an individual is attending both as a Member and as a proxy or Representative, they are to be counted only once.

- (c) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the Chair:
  - (i) if the meeting was convened by or on the requisition of Members, it must be dissolved, or
  - (ii) in any other case it must stand adjourned to the same day in the next week at a time and place determined by the Board or to another day and at another time and place determined by the Board.
- (d) If a meeting has been adjourned to another time and place determined by the Board, then notwithstanding any other provision, no less than seven days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.
- (e) If, at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present at the meeting constitute a quorum.

#### **8.5 Appointment of Chair and Powers of Chair**

- (a) The president of the Board, if present, is entitled to preside as Chair at every General Meeting. In the absence of the Chair, the vice-president of the Board is entitled to preside as Chair.
- (b) If for any reason there is no Chair nor a deputy Chair, or neither of them is present within fifteen (15) minutes of the time nominated for the meeting to start, the Members who are present and entitled to vote at the meeting shall select one of their number to Chair the meeting until such time as the Chair or the Deputy Chair arrives, upon which they shall assume the Chair.
- (c) The Chair of a General Meeting may, in his/her discretion, expel any person from a General Meeting if the Chair reasonably considers that the person's conduct is inappropriate.
- (d) Subject to the other terms of this document, the ruling of the Chair on all matters relating to the order of business, procedure and conduct of the General Meeting is final and no motion of dissent from a ruling of the Chair may be accepted.

#### **8.6 Adjournment of Meetings**

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- (b) 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.
- (c) When a meeting is adjourned for thirty (30) days or more notice of the adjourned meeting must be given as in the case of an original meeting.

- (d) When a meeting is adjourned for less than thirty (30) days, it is not necessary to give a further notice of the adjourned meeting.

## **8.7 Voting on Show of Hands**

- (a) All resolutions put to the vote of a General Meeting of Members must be decided on a show of hands unless a poll is demanded in accordance with clause 8.8.
- (b) Subject to clauses 8.9 and 8.15, on a show of hands, every Ordinary Member and every Honorary Member present in person has one vote on a show of hands and on a poll.
- (c) On a show of hands, a declaration by the Chair that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **8.8 Demand for a poll**

- (a) At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded on any resolution (other than on the election of the chairman of a meeting or the adjournment of a meeting) by:
  - (i) at least five (5) members present entitled to vote on the resolution; or
  - (ii) members present (having the right to vote at the meeting) with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the chair.
- (b) A poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.

## **8.9 Objections to Voter Qualification**

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a voter must be referred to the Chair, whose decision is final.
- (c) A vote not disallowed according to an objection as provided in this document is valid for all purposes.

#### **8.10 Mode of Meeting for Members**

- (a) A General Meeting may be called using any technology consented to by all the Members. The consent may be a standing one. Upon joining this Company a Member consents to the use of any technology approved by the Board, unless the Member withdraws consent in writing. A Member may only withdraw their consent within a reasonable period before the meeting. The Members may otherwise regulate their meetings as they think fit.
- (b) A General Meeting may be held in two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

#### **8.11 Written Resolutions**

The Members may pass a resolution in writing without holding a meeting if the following conditions are met:

- (a) the resolution is set out in a document or documents indicating that all of the Members are in favour of it; and
- (b) all Members who are entitled to vote on the resolution (excluding Members who have been given leave of absence) sign the document or documents or identical copies of it or them.

#### **8.12 Form of Resolution in Writing**

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.
- (b) If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.
- (c) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

#### **8.13 Annual General Meeting of Members**

- (a) The Company must hold an Annual General Meeting at least once in each calendar year and within five (5) months after the end of its Financial Year (at a place and time determined by the Board) to:
  - (i) to verify the minutes of the last General Meeting;
  - (ii) receive the financial reports, statements and accounts of the Company and reports of the Board and the Auditor for the preceding Financial Year;
  - (iii) confirm the election of Directors as required;

- (iv) appoint or confirm the appointment of the Auditor;
  - (v) fix the Auditor's remuneration;
  - (vi) consider any matter which may be submitted by a Member to the meeting in accordance with the Act or this Constitution;
  - (vii) transact any other business which:
    - (A) under this Constitution ought to be transacted at an AGM of the Company; or
    - (B) which the Board considers appropriate;
  - (viii) consider any special resolutions of which notice has been given in accordance with this Constitution and the Act; and
  - (ix) conduct any other business as required by the Act.
- (b) Subject to the Act and this Constitution, all other business transacted at an AGM and all business transacted at a General Meeting shall require an Ordinary Resolution to be carried.
  - (c) The AGM may only consider other business of which notice has been given in accordance with clause 8.2.

#### **8.14 Special General Meetings**

- (a) The Board must convene a special General Meeting if.
  - (i) members with at least 5% of the votes that may be cast on the resolution; or
  - (ii) at least one hundred (100) members who are entitled to vote at a General Meeting,

gives to the Company a notice of a proposed resolution which complies with the Act.
- (b) Special General Meetings may only consider business of which notice has been given in accordance with clause 8.14(a).
- (c) A court may order a meeting of Members to be called in accordance with the Act if it is impracticable to call the meeting in any other way.

#### **8.15 Voting Disqualification**

A Member is not entitled to vote at a meeting of Members if the annual subscription fee of the member is more than two (2) months in arrears at the date of the meeting or the postponed or adjourned meeting.

#### **8.16 Chair's casting vote**

- (a) In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote the chair may have in their capacity as a Member or proxy.
- (b) The Chair has discretion both as to use of the casting vote and as to the way in which it is used.

### **9. PROXIES**

#### **9.1 Proxies and Representatives of Members**

- (a) At meetings of Members, each Member entitled to vote may vote in person, by its Representative (see clause 10) or by proxy.
- (b) A person appointed as a proxy need not be a Member or a Representative of a Member.
- (c) A person attending as a proxy shall be deemed to have all the powers of the relevant Member, except where expressly stated to the contrary in this Constitution or the Act.

#### **9.2 Appointment of Proxies**

A Member may appoint another Member's Representative as their proxy to attend and vote in their place at a General Meeting.

#### **9.3 Form of proxy**

- (a) A document appointing a proxy may be in a form acceptable to the Company, including that set out in Schedule 4. It must be signed in one of the following ways:
  - (i) signed by the Member;
  - (ii) signed by the Member's authorised attorney; or
  - (iii) if the Member is a body corporate, under seal or signed by an authorised officer or attorney.
- (b) An instrument appointing a proxy shall be valid if it contains the following information:
  - (i) the members' name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the office held by the proxy; and
  - (iv) the meetings at which the proxy may be used.

- (c) An appointment of a proxy may be a standing proxy.
- (d) An undated proxy shall be taken to be dated on the day that it is received by the Company.
- (e) Any instrument of proxy in which the name of the appointee is not filled in shall be deemed to be given in favour of the chair of the meeting to which it relates.
- (f) If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

#### **9.4 Verification of Proxies**

- (a) Notwithstanding any other provision, a proxy shall be deemed to be invalid unless the following provisions are fulfilled:
  - (i) Each Member appointing a proxy must send or deliver to the Company, for receipt at least forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote (unless otherwise specified in the notice of the meeting to which the proxy relates), the following:
    - (A) the document appointing the proxy; and
    - (B) if the appointment is signed by the Member's attorney, the authority under which the appointment was signed or a certified copy of that authority.
  - (b) The required documents must be either sent or delivered to the Company's office address, fax number or electronic address, and marked to the attention of the relevant person, as specified for that purpose in the notice convening the meeting.

#### **9.5 Revocation of Appointment of Proxy**

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite:

- (a) the death or unsoundness of mind of the appointor; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed,

except where the Secretary has been notified in writing of such event before the commencement of the meeting or adjourned meeting at which the proxy is used, in which case the proxy shall be deemed to be invalid.

## 10. MEMBERS' REPRESENTATIVES

- (a) A Sustaining Member shall appoint an individual (**Representative**) as a representative to exercise all or any of the powers of the Member under this Constitution or the Act or otherwise at law.
- (b) The appointment may be a standing one.
- (c) The appointment may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (d) A Sustaining Member may appoint more than one Representative but only one Representative may exercise the Sustaining Member's powers at any one time.
- (e) Unless otherwise specified in the appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting.
- (f) The nomination of a Representative must be in writing and provided to the Company Secretary.
- (g) A Representative will cease to hold their appointment:
  - (i) on the date of receipt by the Company Secretary of a written notice from the Sustaining Member that it has withdrawn its nomination of the Representative; or
  - (ii) on the date of receipt by the Company Secretary of a written notice from the Representative resigning, refusing or remitting nomination.

## 11. BOARD OF DIRECTORS

### 11.1 Number of Directors

- (a) The number of Directors of the Company (together called the **Board**), shall be not less than three (3) and not more than ten (10) , not more than three of whom are resident in the same State or territory and not more than two of the same Department or Unit.
- (b) The Initial Directors of the Company are the persons as nominated in Schedule 2.
- (c) The Company must have at least three (3) Directors, two (2) of whom ordinarily reside in Australia.
- (d) The Company may, by ordinary resolution of its Members, increase or decrease the minimum or maximum number of Directors (provided that the minimum must not fall below three as required by the Act) and may also determine in what rotation the Directors, appointed as the result of any such alteration, are to go out of office.

- (e) A minimum of two Directors will be fellows of the Royal Australasian College of Physicians (RACP) who have satisfactorily completed specialist training, or equivalent accepted training, and have a clinical interest in the management of diabetes in pregnancy.
- (f) A minimum of two Directors will be fellows of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG), or equivalent accepted training, with a clinical interest in the management of diabetes in pregnancy.
- (g) At least one Director will be a Midwife with a clinical interest in diabetes.
- (h) At least one Director will be a Dietitian with a clinical interest in diabetes.
- (i) At least one Director will be a Diabetes Educator/Clinical Nurse Specialist in diabetes.
- (j) At least one Director will be involved in basic or clinical research in the field of diabetes and pregnancy.
- (k) At least one Director will be a resident of New Zealand.

## **11.2 Eligibility for Election as Director**

- (a) The Company in General Meeting shall confirm the election of a Financial Member as a Director as announced by the Returning Officer at such General Meeting.
- (b) The Board shall elect from its Directors such office bearers as it considers necessary.
- (c) The Auditor is ineligible to be elected or appointed as a Director.
- (d) The election of Directors shall take place by ballot prior to each second AGM and shall be held in accordance with clause 11.6.

## **11.3 First Annual General Meeting**

- (a) At the first AGM of the Company, all the Initial Directors will be the persons named in Schedule 2.
- (b) The Initial Directors shall retire from office at a General Meeting to be held no later than six (6) months after the first AGM of the Company and shall be eligible to be elected as an Elected Director.

## **11.4 Rotation and Retirement of Elected Directors**

- (a) At every second AGM of the Company three (3) Elected Directors will retire from office.

- (b) Where three (3) Directors do not voluntarily retire, those three (3) Directors who have been Directors for the longest period of time will retire. If three (3) or more of the longest serving Directors have been in office for the same period of time, the person or persons to retire will, in default of agreement, be determined by lot.
- (c) The vacancies on the Board created by the retirement of Directors pursuant to clause 11.4(a) will be filled by persons elected by members with the right to vote, subject to the provisions of clause 11.1(a).
- (d) Retiring Directors are eligible for re-election provided that they have not served as a Director for six (6) consecutive years.

#### **11.5 Nomination for election**

- (a) Each candidate for election as a Director must be proposed by a member and be seconded by another member.
- (b) A nomination of a candidate for election must be completed and returned to the Company in the form and within the time periods prescribed by the Board.
- (c) Candidates for election must be a financial member for a minimum of 12 months prior to their nomination.

#### **11.6 Election procedure for Directors**

- (a) The Board may, subject to compliance with the Act, prescribe electronic or web-based voting in lieu of or in addition to, voting by ballot paper, in which case, any reference to:
  - (i) an address may be a reference to an electronic or web address as appropriate; and
  - (ii) a voting paper may be a reference to an electronic voting paper.
- (b) In employing an electronic or web-based voting system, the Board must ensure a secure method of identifying a Member by reference to a personal identification code allocated to the Member or any other manner approved by the Board.
- (c) If the number of nominated Directors is less than nine (9) then the Board will circulate a request for new nominations to Board. If there remains less than nine (9) total nominees then the Board may co-opt new Directors from amongst the Company membership.

#### **11.7 Time appointment or retirement takes effect**

Subject to the election result being declared by the chairman of the AGM, the elected Directors will take office and the retiring Directors will retire at the conclusion of that meeting. Elected Directors may attend the Board meeting immediately prior to the AGM but may not vote at that Board meeting.

### **11.8 Appointment of co-opted Directors**

The Board may, in its discretion and from time to time, appoint or co-opt up to two (2) independent, non-executive directors with specific expertise to complement the expertise of the board from time to time. Such co-opted directors need not be Members.

### **11.9 Ballot for Election of Other Directors**

The election of the Elected Directors declared or confirmed at each second AGM shall take place in the following manner:

- (a) A ballot of the Members who are entitled to vote must be held prior to the AGM and if so, subject to this clause, the ballot shall be conducted in the manner determined from time to time by the Board.
- (b) All nominations for election as a Director must be in writing and signed by the Members and also signed by the nominee consenting to such nomination and shall be delivered to and lodged with the Secretary not less than forty-five (45) days prior to the date fixed for the holding of the relevant AGM.
- (c) Only persons who are eligible for election as a Director under this Constitution (see clause 11.2) may be nominated to stand for election.
- (d) The Board must ensure that the ballot is conducted in such a fashion as to enable all Members sufficient opportunity to consider all nominations.
- (e) The Board must ensure that a sufficient period is allowed to complete the ballot at least seven (7) days prior to the holding of the relevant AGM.
- (f) At the relevant AGM, the Chairman shall announce the results of the ballot at which time the successful candidates will be appointed Directors.

### **11.10 Filling Casual Vacancies of Directors**

- (a) The Board may at any time appoint a person who would be eligible to stand for election as a Director, to be a Director to fill a casual vacancy:
  - (i) created by the early retirement of Elected Director;
  - (ii) resulting from a vacant position for an Elected Director on the Board not having been filled at an AGM; or
  - (iii) in any other circumstances where the maximum number of Elected Directors on the Board will not be exceeded as a result of the appointment, as an addition to the existing Directors.
- (b) If a Director has been duly appointed to fill a casual vacancy:
  - (i) that Director shall, notwithstanding any other provision, be required to retire, but be eligible for election, at the next AGM following their appointment; and

- (ii) if a Director appointed to fill a casual vacancy has been elected at an AGM following their initial appointment, that Director shall be regarded thereafter as an Elected Director entitled to serve for [two] years from the AGM at which they were first put up for election.

#### **11.11 Retirement and Removal from Office**

- (a) 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 of giving the notice to the Company or, if another time is specified in the notice, at that time.
- (b) The Members may by ordinary resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement.
- (c) A person appointed to replace a Director under clause 11.11(b) removed from office must retire as a Director at the next AGM at which the Director they are replacing would have been required to retire if they had not been removed.

#### **11.12 Vacation of Office**

- (a) Without limiting any other provision, the office of a Director becomes vacant if required by the Act or if the Director:
  - (i) becomes an insolvent under administration;
  - (ii) 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;
  - (iii) is absent without the consent of the Directors from two (2) consecutive meetings of the Directors and the Board resolves that the office of that Director be vacated; or
  - (iv) becomes prohibited from being a Director by reason of an order made under the Act.
- (b) The Board may continue to act despite any vacancy in its membership.

### **12. CHAIR AND DEPUTY CHAIR**

#### **12.1 Chair and Deputy Chair**

- (a) At the meeting of the Board before every second AGM, the Board shall elect from amongst the then current Directors:
  - (i) a Chair; and
  - (ii) a Deputy Chair.
- (b) A Director shall not serve more than four consecutive years as Chair.

- (c) The Chair or, in his/her absence, the Deputy Chair, shall preside as Chair at every meeting of the Board.
- (d) If for any reason there is not then a Chair nor a Deputy Chair, or neither of them is present within 15 minutes of the time nominated for the Board meeting to start, the Directors who are present and entitled to vote at the meeting shall select one of their number to Chair the meeting.

### **13. DIRECTORS' REMUNERATION**

#### **13.1 Director's Remuneration and Payment for Expenses**

- (a) The Company may not pay any Director any amount except as expressly provided for in this Constitution.
- (b) Directors shall be entitled, on an equitable basis, to be paid all reasonable travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board or any of its committee or General Meetings or otherwise in the execution of their duties as Directors provided that any such expenses have first been approved by the Board.

#### **13.2 Payment in Good Faith**

Any payment made to a Director by the Company under this clause 13 must be made in good faith.

### **14. POWERS OF DIRECTORS**

#### **14.1 Powers of Directors**

- (a) The Directors may exercise all of the powers of the Company which are not, by the Act or by this Constitution, required to be exercised by the Members in General Meeting or otherwise.
- (b) No delegation by the Board under this clause limits the duties and liability of each Director of the Board.

#### **14.2 Public Statements**

- (a) The Board may by resolution authorise the Chair, CEO or another person to make public statements on behalf of the Company.
- (b) No person may make any public statement on behalf of the Company unless authorised by the Board.

#### **14.3 Duties**

The Directors must comply with their duties under common law and under the Act.

#### **14.4 Convening of Directors' Meetings**

- (a) A Director may at any time, and a Secretary must on the requisition of a Director, convene a meeting of the Directors.
- (b) The Board shall meet at least once in every financial year, but otherwise as necessary to discharge their duties and functions.
- (c) The Chair or the Deputy Chair or any other two Directors or the CEO may request the Secretary to convene a meeting of the Board at any time and the Secretary must comply with such request.
- (d) Notice of each meeting of the Directors must be given to each Director at least 48 hours before the meeting, or otherwise as determined by resolution of the Board, except in the case of a Director who is out of Australia or who has been given leave of absence from the Board.
- (e) 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.

#### **14.5 Quorum and Voting at Directors' Meetings**

- (a) At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is one-half of the Board as then constituted or the closest whole number above that fraction.
- (b) Each Director has one vote.
- (c) Questions arising at a meeting of the Board must be decided in the manner from time to time determined by the Board, and in the absence of any such agreement, by a majority of votes of Directors present and voting.
- (d) In the event of equality of votes, the Chair has a second and casting vote.

#### **14.6 Chair and Deputy Chair**

If for any reason, within 15 minutes of the time nominated for a Board meeting to start, neither the Chair nor the Deputy Chair is present, but a quorum is present, the Directors who are present at the meeting shall select one of their number to Chair the meeting until such time as the Chair or the Deputy Chair arrives, upon which they shall assume the Chair.

#### **14.7 Delegation of Powers to Committee**

- (a) The Board may delegate any of their powers, except this power to delegate, to committees consisting of such Directors and such other persons as they think fit.
- (b) In the exercise of any powers delegated to it, a committee formed by the Board:

- (i) must conform to the directions of the Board;
- (ii) provide such reports as required by the Board; and
- (iii) otherwise shall conduct its meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.

#### **14.8 Membership Committee**

- (a) There will be a Membership Committee of the Board comprising such number of the Board as the Board determines.
- (b) The Membership Committee will meet from time to time to consider applications for membership to the Society and to make recommendations to the Board in respect of those applications in accordance with this Constitution.

#### **14.9 Validity of Acts of Directors**

All acts done by a meeting of the Board or of a committee appointed by the Board 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.

#### **14.10 Minutes**

- (a) The Board must cause minutes of all proceedings of General Meetings, of meetings of the Board and of committees formed by the Board to be entered, within one month after the relevant meeting is held, in records kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be confirmed by the Chair of the next succeeding meeting.

#### **14.11 Resolution in Writing**

- (a) The Board may pass a resolution in writing without holding a meeting if the following conditions are met:
  - (i) The resolution is set out in a document or documents indicating that all of the Directors are in favour of it.
  - (ii) All Directors who are entitled to vote on the resolution (excluding Directors who have been given leave of absence) sign the document or documents or identical copies of it or them.
- (b) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.

- (c) If a resolution in writing is signed by an alternate Director, it must not also be signed by the appointor of the alternate Director and vice versa.
- (d) In relation to a resolution in writing:
  - (i) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing
  - (ii) a document bearing a facsimile of a signature is to be treated as signed.

#### **14.12 Conflict of Interest**

- (a) Unless an exception in section 191(2) of the Act applies, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of the interest.
- (b) The notice required by clause 14.12(a) must:
  - (i) include details of:
    - (A) the nature and extent of the interest; and
    - (B) the relation of the interest to the affairs of the Company; and
  - (ii) be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter, the details of which must be recorded in the minutes of the meeting.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting shall not be present while the matter is being considered at the meeting or vote on the matter unless:
  - (i) the interest does not need to be disclosed under section 191 of the Act; or
  - (ii) the other Directors on the Board who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Director, the nature of his or her interest in the matter and its relation to the affairs of the Company; and
    - (B) states that the Board is satisfied that the interest should not disqualify the Director from voting or being present.
- (d) A Director who votes when not otherwise authorised to do so under this clause shall have his or her vote discounted.
- (e) A Director with an interest in a matter may give the Board standing notice of the nature and extent of this interest in accordance with the Act.

#### **14.13 Negotiable instruments**

- (a) The Board shall determine the mechanism for signing, drawing, accepting, endorsing or otherwise executing a negotiable instrument.
- (b) Receipts for money payable to or receivable by the Company may be signed by a Director or the Secretary or by any other person authorised by the Board to receive money either generally or any particular sum of money on behalf of the Company and such receipt shall be deemed to be valid.

#### **15. CHIEF EXECUTIVE OFFICER (CEO)**

- (a) The Board may (but is not required to) appoint any person, to the position of CEO, to act as chief executive officer of the Company for the period and on the terms (including as to remuneration) the Board see fit.
- (b) The Board may, upon terms and conditions and with any restrictions they see fit, confer on the CEO any of the powers that the Board can exercise.
- (c) The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.
- (d) If the CEO becomes incapable of acting in that capacity the Directors may appoint any other person, not being a Director, to act temporarily as CEO until such time as the position can be permanently filled.
- (e) The CEO is not a Member or Director of the Company by virtue only of being appointed to the office of CEO but shall have the right to attend and speak at meetings of the Board.
- (f) The Board may delegate any of the roles and powers of the Board to the CEO:
  - (i) on the terms and subject to any restrictions the Board decides; and
  - (ii) so as to be concurrent with the powers of the Board, and may revoke the delegation at any time.
- (g) Without affecting the generality of clause 15(f) the CEO will:
  - (i) be the executive officer of the Company;
  - (ii) act consistently with the Objects of the Company;
  - (iii) use his or her best endeavours at all times to enhance the good name of the Company;
  - (iv) insofar as the resources available permit, implement the policies of the Board;

- (v) prepare an annual report for the Board on the work and activities of the Company during the preceding 12 months ending on 30 June in each year; and
- (vi) exercise such other functions duties and responsibilities as may be determined from time to time by the Board.
- (h) The appointment of the CEO terminates:
  - (i) at the expiration of a fixed term if so defined in a written contract; or
  - (ii) if the Board removes the CEO from that office (which, subject to any contract between the Company and the CEO, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

## **16. SECRETARY**

- (a) The Directors may:
  - (i) appoint, and terminate the appointment of, one or more persons to be a Secretary; and
  - (ii) determine their terms and conditions of appointment.
- (b) A Secretary shall be responsible to carry out all acts and deeds required by this Constitution, the Act or by law to be carried out by the secretary of the Company.

## **17. BY-LAWS AND RULES**

The Board may, by resolution of the Board, make or adopt by-laws and rules with respect to any matter or thing for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Company, which by-laws and rules shall be binding on the Members, provided that to the extent of any inconsistency, this Constitution shall prevail over all such by-laws and rules.

## **18. SEALS AND EXECUTION OF DOCUMENTS**

- (a) If the Company has one, the Board must provide for the safe custody of the Seal.
- (b) The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
  - (i) two Directors;
  - (ii) a Director and the Secretary; or
  - (iii) a Director and some other person appointed by the Directors for the purpose.
- (c) The Company may execute a document without the use of a seal if the document is signed by:

- (i) two Directors;
- (ii) a Director and a Secretary; or
- (iii) any other manner permitted by the Act.

## **19. SURPLUS ASSETS ON WINDING UP OR DISSOLUTION**

Upon the winding up or dissolution of the Company [or the Company losing its deductible gift recipient status], 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(s) or organisation(s) which satisfy both of the following requirements:

- (a) has objects similar to the objects of the Company and is a charity at law; and
- (b) whose constituent documents have rules prohibiting the distribution of its assets and income to its members and is an endorsed deductible gift recipient as determined by the Members 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.

## **20. INDEMNITY**

### **20.1 Costs and Expenses**

Every Officer and past Officer of the Company may be indemnified by the Company, to the fullest extent permitted by law, against a liability for costs and expenses incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation:

- (a) in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
- (b) in connection with any application in relation to those proceedings in which the Court grants relief to the person under the Act.

### **20.2 Liabilities to Third Parties**

To the extent permitted by the Act, every officer and past officer of the Company is indemnified against a liability incurred by that person as an officer to a person other than the Company or a related body corporate, except a liability which arises from conduct that involves a lack of good faith.

### **20.3 Insurance Premiums**

The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company against:

- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
- (b) other liability incurred by the person as an officer of the Company except a liability which arises from conduct that involves a wilful breach of duty in relation to the Company or a contravention of sections 182, 183 or 184(2) or (3) of the Act.

## **21. ACCOUNTS, AUDIT AND RECORDS**

### **21.1 Accounts**

The Board must cause proper accounting and other records to be kept in accordance with the Act and must comply with the requirements of the Act in respect of reporting and the provision of accounts to Members.

### **21.2 Audit**

- (a) If required by the Act, a registered Company auditor must be appointed.
- (b) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.
- (c) The Board must arrange for the accounts for the last financial year to be audited in accordance with requirements of the Act before being submitted to the AGM in accordance with clause 8.13.

### **21.3 Rights of Inspection**

Subject to the 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 resolution of the Board.

### **21.4 Audit Committees**

- (a) The Board must at its first meeting after the AGM each year appoint an Audit Committee consisting of at least two (2) Members, who:
  - (i) may or may not be Directors or Members of the Company; but
  - (ii) must not be employees of the Company.
- (b) The Audit Committee must:
  - (i) ensure that accurate and up-to-date financial statements are presented to each meeting of the Board;

- (ii) report to each Board meeting on the financial position of the Company; and
- (iii) ensure that the Board complies with its statutory financial and legal obligations.
- (c) Nothing in clause 21.4(a) limits the duties and liability of each Director of the Board.
- (d) The Board may by resolution establish other standing or ad hoc committees with such membership and terms of reference as it thinks appropriate.
- (e) Board committees may include members who are not Board Directors or Members of the Company.
- (f) The quorum for committee meetings is the presence in person of a majority of committee members at the time, unless the Board resolves otherwise.
- (g) The meeting procedures of the Board contained in clause 14 apply to committee meetings (including the Audit Committee) with such modifications as are necessary.

## **22. FURTHER OBLIGATIONS UNDER AUSTRALIAN CHARITIES AND NOT FOR PROFITS COMMISSION ACT LEGISLATION**

The Company must comply and the Board must procure that the Company complies with all requirements (whether financial or otherwise) that apply to the Company under the *Australian Charities and Not for Profits Commission Act* and all related legislation as commenced and amended from time to time.

## **23. GIFT FUND REQUIREMENTS**

### **23.1 Company to Maintain a Gift Fund**

The Company must maintain a Gift Fund in accordance with this clause 23 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.

### **23.2 Rules Applying to the Gift Fund**

The following rules apply to any Gift Fund established and maintained by the Company:

- (a) The Gift Fund must have a name.
- (b) The Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.
- (c) The Company must maintain a separate bank account for the Gift Fund.
- (d) The following must be credited to the Gift Fund:

- (i) All gifts of money or property to the Company for the Principal Purpose.
- (ii) All money or property received by the Company because of those gifts.
- (e) No other money or property may be credited to the Gift Fund.
- (f) The Company must use any gifts, money or property of the kind referred to in clause 23.2(d) only for the Principal Purpose.
- (g) The public will be invited to contribute to the Gift Fund.
- (h) The Gift Fund is managed by the Board of Directors, a majority of whom have a degree of responsibility to the general community, unless delegated pursuant to the provisions contained in this Constitution.
- (i) The Gift Fund is controlled and administered by the Board of Directors which only include persons or institutions which have a degree of responsibility to the community as a whole, unless delegated pursuant to the provisions contained in this Constitution.

### **23.3 Winding Up of Gift Fund**

Despite clause 23.2 if the Gift Fund or the Company is wound up or ceases to be a DGR for any reason, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made. For the avoidance of doubt, if a Gift Fund operated by the Company is wound up but the Company remains a DGR and operates any other gift fund in accordance with this clause 23, any surplus assets of the Gift Fund that is being wound up may be transferred to any other gift fund operated by the Company.

### **23.4 Definitions**

In this clause 23 the following definitions apply:

- (a) **DGR** means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.
- (b) **Gift Fund** means a fund that is maintained for the Principal Purpose.
- (c) **ITAA 97** means Income Tax Assessment Act 1997 (Cth).
- (d) **Principal Purpose** means the purposes of the Company as reflected in the objects of the Company specified in clause 3 or any of those purposes.

### **23.5 Financial Year**

The financial year of the Company is from 1 July to 30 June.

## **23.6 Payments**

- (a) All payments by the Company must be:
  - (i) specifically authorised by the signatories approved by the Board, and
  - (ii) in the case of cheques – signed by, at least 2 persons nominated by the Board in writing.
- (b) The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 23.6(a).

## **23.7 Records**

- (a) The Board must provide for the safe keeping of the records of the Company.
- (b) Members may inspect records of the Company permitted by the Act.
- (c) Members may not inspect the records of the Company that relate to confidential personal, employment, commercial and legal matters.
- (d) Copies of the constitution and Members resolutions must be freely available to Members.

## **24. NOTICES**

### **24.1 Method of sending notices**

- (a) Except as required by clause 8.2, any notice to a Member required to be given under the Act or this Constitution of the Company must be:
  - (i) in writing; and
  - (ii) given to the Member by any one or more of the following methods:
    - (A) by Electronic Communication;
    - (B) published on the Company's website provided that the Company notifies the Member:
      - (I) that the notice is available; and
      - (II) how the Member may access the notice.
  - (iii) by public advertisement in the official journal of the Company;
  - (iv) served personally ;
  - (v) by sending it by post to the address for the member in the register of Members or the alternative address (if any) nominated by the Member, and otherwise to the recipient's last known place of residence or business; or

(vi) by sending it to the fax number (if any) nominated by the Member.

(b) The notification is effective as described in the following table.

| Method of notification                                                                                               | Date deemed receipt of notification                                                                          |
|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| By fax or an Electronic Communication or other electronic message                                                    | on the same day if it is transmitted on a business day by 5:00pm AEST and otherwise on the next business day |
| By personal delivery                                                                                                 | Date of delivery                                                                                             |
| By sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee | One day after it is posted                                                                                   |

#### **24.2 Notices to legal representatives**

A notice may be given by the Company to the legal representative of a Member by sending it through the post in a prepaid letter addressed to them by name or by their title as representatives of the relevant member or at the address (if any) within the Commonwealth of Australia supplied for the purpose by the persons claiming to be entitled or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the death, lunacy, liquidation or bankruptcy had not occurred.

#### **24.3 Notices to foreign residents**

Subject to clause 24.1 notices and other documents for members outside the Commonwealth of Australia shall be forwarded to those members by airmail or by facsimile or by email at the address or facsimile number or email address outside the Commonwealth of Australia supplied to the Company by them.

#### **24.4 Notices of General Meetings**

Notice of every General Meeting shall be given in any manner authorised to:

- (a) every member; and
- (b) the Auditor (if any) for the time being of the Company.

#### **24.5 Signature on notices**

The signature to any notice to be given by or on behalf of the Company may be written, printed or stamped.

## **25. GENERAL**

### **25.1 Exercise of power**

Except as specifically contemplated by this Constitution, the Company may exercise any power, take any action or engage in any conduct or procedure which under the Act a public company limited by guarantee has the power to do.

### **25.2 Amendment of Constitution**

This Constitution may be amended or repealed by Special Resolution in accordance with the Act.

### **25.3 Copy of Constitution**

The Company must send a copy of this Constitution to a member of the Company within seven days if the member asks the Company in writing for a copy and pays the fee (up to the amount prescribed by the Act) required by the Company as approved by the Board.

### **25.4 Formality Omissions**

If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission has directly prejudiced any Member financially. The decision of the Board is final and binding on all Members.

## **26. DEFINITIONS AND INTERPRETATION**

### **26.1 Definitions**

In this Constitution, except where the context requires otherwise:

- (a) **Act** means the Corporations Act 2001 (Commonwealth).
- (b) **Adoption Date** means the date that this Constitution was adopted.
- (c) **AGM** means an annual general meeting of the Members of the Company and, where the content requires, means the specific annual general meeting in the context.
- (d) **Board** means the board of Directors of the Company, unless the context demands otherwise.
- (e) **CEO** means the chief executive, referred to in clause 15.
- (f) **Chair** means the Chair of the Board, elected or appointed from time to time in accordance with this Constitution.
- (g) **Company** means Australasian Diabetes in Pregnancy Society (ACN [insert]).

- (h) **Department or Unit** means a grouping of medical specialists/scientists recognised within an institution (approved for this purpose by the Board in its discretion) as an entity/department/unit.
- (i) **Director** means a person elected or appointed in accordance with this Constitution to perform the duties of a director of the Company.
- (j) **Elected Directors** means the Directors elected by and from amongst the Members, in accordance with this Constitution.
- (k) **Electronic Communication** has the meaning given in section 5 of the Electronic Transactions Act 2000 (NSW)
- (l) **Financial Member** means a Member who has no money or debt outstanding and payable to the Company.
- (m) **General Meeting** means a general meeting of the Members of the Company, including an extraordinary meeting and the AGM.
- (n) **Guarantee** means the amount of the Member's guarantee as specified in clause 2(c).
- (o) **Initial Members** means the organisations listed in Schedule 1.
- (p) **Member** means a person or company that, at the relevant time, are ordinary Members of the Company admitted in accordance with this Constitution.
- (q) **Officer** has the meaning given in section 9 of the Act.
- (r) **Ordinary Resolution** means any resolution passed by a simple majority of persons entitled to vote.
- (s) **Register** means the register of Members kept by the Company under the Act.
- (t) **Replaceable Rules** means the Replaceable Rules contained in the Act.
- (u) **Representative** means, in relation to a Member, the representative of the Member appointed under clause 10.
- (v) **retired from full-time employment** means to be employed, self-employed or engaged in any activity for remuneration for less than 10 hours per week.
- (w) **Seal** means, if the Company has one, the common seal of the Company, if any.
- (x) **Secretary** means a person appointed to perform the duties of a secretary of the Company.
- (y) **Special Resolution** means a resolution that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

## **26.2 References to Law and the Constitution**

- (a) A word or phrase used in the Act that is given a special meaning for the purposes of the relevant part of the Act, unless this Constitution specifically states otherwise, has the same meaning in this Constitution.
- (b) A reference to:
  - (i) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation, or
  - (ii) this Constitution, where amended, means this Constitution as so amended.

## **26.3 Interpretation**

In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- (a) The singular denotes the plural and vice versa.
- (b) Any gender denotes the other genders.
- (c) A person denotes an individual and a body corporate.
- (d) Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (e) Headings and any table of contents must be ignored in the interpretation of this Constitution.
- (f) Unless the context otherwise requires a reference to a time of day means that time of day in the state or territory in which the registered office of the Company is situated.
- (g) For the purposes of determining the length of a period (but not its commencement) a reference to:
  - (i) a day means a period of time commencing at midnight and ending 24 hours later
  - (ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.

- (h) Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.
- (i) A provision of this Constitution, except that specifying the time for deposit of proxies with the Company, 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.
- (j) A reference to a business day means a day during which banks are open for general banking business in New South Wales.
- (k) A reference to an Act of Parliament, whether State or Federal, includes a reference to that Act of Parliament as amended from time to time, and a reference to a specific provision of an Act of Parliament means, unless the context demands otherwise, a reference to the equivalent provision in any later amended version of that Act of Parliament, or if the original Act of Parliament has been repealed in any Act of Parliament substituted in its place.
- (l) Including and similar expressions are not words of limitation.
- (m) This Constitution shall be construed according to the laws of New South Wales.
- (n) "In writing" or "written" includes printing, lithography, typing, writing or other modes representing or reproducing words, figures, drawings or symbols in a visible form including by electronic means as contemplated by the *Electronic Transactions Act 2000 (NSW)*.

## **Schedule 1 – Initial Members**

### **INITIAL MEMBERS**

All those members of The Australasian Diabetes in Pregnancy Society Inc. as at the date of the incorporation of the Company.

## **Schedule 2 – Initial Board**

### **INITIAL DIRECTORS**

Dr Aidan McElduff  
Professor Leonie Callaway  
Dr Bradley de Vries  
Dr Robert Moses  
Dr Peter Wein  
Dr David McIntyre  
Dr Janet Rowan  
Dr Cindy Porter  
Ms Amanda Bartlett  
Dr Louise Maple-Brown  
Dr Martha Lappas  
Dr Alison Nankervis

### **Schedule 3 – Matters requiring prior written agreement of specified Members**

[optional]

## Schedule 4 – Proxy Form

**[insert name of Company]**  
**ACN [insert]**  
**FORM OF APPOINTMENT OF PROXY**

I, .....

(full name of member)

(address)

being a member of the above Company.

hereby appoint.....

(full name of proxy)

of .....

(Insert address)

as proxy of the appointing member

at the                      Annual/Special General Meeting                      of the Company to be held on

the..... day of..... / 20.....

and at any adjournment of that meeting.

My proxy is authorized to vote (please tick selected option):

☐ in favour of☐ against☐ abstain

☐ as they see fit

for the following resolutions [insert]

.....

|                                                           |      |
|-----------------------------------------------------------|------|
| Signature authorised signatory of member appointing proxy | Date |
|-----------------------------------------------------------|------|

**NOTES:** In accordance with clause 9.4 of the Constitution; this proxy must be provided to the Company no later than, 48 hours before the time for holding the meeting or adjourned meeting.

Please send all proxy forms to: [insert contact details].