

**CONSTITUTION
OF
HUNTINGTON'S AUSTRALIA
LIMITED**

Australian Company Number (ACN) [663 438 971]
Australian Business Number (ABN) [29 663 438 971]

A company limited by guarantee

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Preamble

Huntington's Australia Limited is established through the support, involvement and endorsement of the following state-registered incorporated associations, whose objectives and values are aligned with Huntington's Australia Limited.

- Huntington's NSW ACT Inc
- Huntington's WA Inc
- Australia Huntington's Disease Association Qld Inc
- Australian Huntington's Disease Association Tasmania Inc
- Huntington's SA & NT Inc

The contribution of knowledge and resources made by these organisations enables the establishment of Huntington's Australia Limited.

Preliminary

1. Name of the company

The name of the **company** is Huntington's Australia Limited (the **company**).

2. Type of company

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

3. Limited liability of members

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

4. The guarantee

Each member must contribute an amount not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

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

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 69 and 71.

Purposes and powers

6. Object

The company's object is to enable those impacted by Huntington's disease to live their best lives (purpose) by means which include, but are not limited to:

- (a) promoting the prevention and treatment of Huntington's disease;
- (b) seeking to relieve the impact, distress or misfortune of all people with Huntington's disease and those impacted by Huntington's disease;

- (c) providing support, respite, recreation, interaction and education for all people with Huntington's disease and those impacted by Huntington's disease, with consideration to age and culture;
- (d) promoting greater awareness and understanding by providing education about Huntington's disease and facilitating skills development in Huntington's care, especially within:
 - i. government and non-government agencies dealing with people that have, and are impacted by, Huntington's disease;
 - ii. aged care and nursing facilities/homes and hospitals;
 - iii. the wider medical profession;
 - iv. the housing accommodation sector;
- (e) improving the community's awareness of Huntington's disease and its effect on individuals, their dependants and the community; and to enhance the community's awareness of the need and moral obligation to provide adequate help for people with Huntington's disease and their dependants;
- (f) facilitating the provision of suitable services, professional help and advice for:
 - i. those at risk of having Huntington's disease; and
 - ii. non-professional people having the responsibility of caring and making decisions for people with Huntington's disease; and
- (g) giving families of people with of Huntington's disease a strong single voice when making representations to government and other bodies.

7. Powers

Subject to clause 8, the **company** has:

- (a) the powers of an individual; and
- (b) all the powers of a **company** limited by guarantee under the **Corporations Act** which may only be used to carry out its purposes set out in clause 6 and to do all things incidental or convenient in relation to the exercise of its powers to advance those purposes.

8. Not-for-profit

- 8.1 The income and property of the **company** shall be used and applied solely in promotion of the purposes of the **company** set out in clause 6.
- 8.2 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.3 and 67.
- 8.3 Clauses 8.1 and 8.2 do not stop the **company** from doing the following things, provided they are done in good faith:
 - (a) the payment of a premium in respect of a contract insuring a current or former officer against a liability incurred by that person in their capacity as an officer, except in circumstances prohibited by the **Corporations Act**;
 - (b) paying a member for goods or services they have provided to the **company** at fair and reasonable rates in the ordinary course of business (or at rates that are more favourable to the **company**); or
 - (c) making a payment to a member in the course of carrying out the **company's** purpose(s).

9. Amending the constitution

The members may amend this constitution by passing a **special resolution**.

Members

10. Membership and register of members

- 10.1 The members of the **company** are:
- (a) **initial members**; and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 10.2 The directors may determine, from time to time, that a membership fee is to be paid by Ordinary and Organisational Members and, if they do so, must give notice of any such determination in writing to the members. The directors may also determine:
- (a) the period of membership to which the membership fee will relate, provided that it can only be a period commencing after the determination to impose the membership fee is made;
 - (b) the method to be used for payment of the membership fee; and
 - (c) the due date for payment of the membership fee.
- 10.3 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the member for the service of notices; and
 - iv. date the member was entered on to the register;
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the member for the service of notices; and
 - iv. dates the membership started and ended.
- 10.4 The **company** must give current members access to the register of members in accordance with the **Corporations Act**.
- 10.5 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members in accordance with the **Corporations Act**.

11. Who can be a member

- 11.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 12. This person is called an Ordinary Member.
- 11.2 An incorporated body which supports the purposes of the **company** is eligible to apply to be a member of the company under clause 12. This incorporated body is called an Organisational Member.
- 11.3 A person under the age of 18 years who is impacted by Huntington's disease is eligible to apply to be a member under clause 12. This person is called a Youth Member.
- 11.4 An ordinary member whom the directors deem has given exceptional service to their state Huntington's Association and/or to the **company** over a significant period of time. This person is called a Life Member. Other members (except Youth

Members) can nominate a member to become a Life Member. Members cannot nominate themselves to become a Life Member.

12. How to apply to become a member

A person (as defined in clause 11) may apply to become a member of the **company** by giving notice to the secretary in a form approved by the directors from time to time and signed by the applicant stating that they:

- (a) want to become a member;
- (b) support the purpose(s) of the **company**;
- (c) agree to comply with, and be bound by, the **company's** constitution, including paying the guarantee under clause 4 if required; and
- (d) agree to pay the membership fee (if any).

13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application. The directors may accept or reject the application.
- 13.2 If the directors approve an application then, subject to the receipt of the membership fee (if any) and the directors not having decided to revoke their approval of the application, the secretary must as soon as possible:
 - (a) enter the new member on the register of members; and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 The secretary will return any membership fee if the application is rejected.

14. When a person becomes a member

Other than **initial members**, an applicant will become a member only after the applicant's application for membership has been approved by the directors and the applicant's name has been entered on the register of members.

15. When a person stops being a member

- 15.1 A person immediately stops being a member if the person:
 - (a) dies;
 - (b) is convicted of an indictable offence;
 - (c) in the case of an Organisational Member, is wound up or otherwise dissolved or deregistered;
 - (d) resigns, by writing to the secretary;
 - (e) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - (f) has not paid a membership fee imposed by a determination of the directors made in accordance with clause 10.2 within three months after it becomes due and, having been given notice of that fact by the company, has still not paid the outstanding membership fee within 21 days of the date of that notice;
 - (g) is expelled under clause 16;
 - (h) has not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member; or

- (i) has not paid the membership fee (if any) within a certain period.
- 15.2 Any person ceasing to be a member:
- (a) will not be entitled to any refund (or part refund) of any membership fees;
 - (b) will remain liable for and will pay to the **company** all membership fees and monies which were due at the date of ceasing to be a member; and
 - (c) will not have any claim, monetary or otherwise, against the **company**.

Disciplinary procedures

16. Disciplining members

- 16.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors determine, in their absolute discretion, that:
- (a) the member has wilfully breached this constitution; or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company** or is, or is likely to be, prejudicial to the interests of the **company**.
- 16.2 At least 14 days before the directors' meeting at which a resolution under clause 16.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member;
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
 - (c) what the member is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 16.3 Before the directors pass any resolution under clause 16.1, the member must be given a chance to explain or defend themselves by (at the option of the member):
- (a) sending the directors a written explanation before that directors' meeting; and/or
 - (b) speaking at the meeting.
- Any costs incurred by a member preparing or presenting an explanation to the directors are to be borne by the member.
- 16.4 After considering any explanation under clause 16.3, the directors may:
- (a) take no further action;
 - (b) warn the member;
 - (c) suspend the member's rights as a member for a period of no more than 12 months;
 - (d) expel the member;
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
 - (f) require the matter to be determined at a **general meeting**.
- 16.5 The directors cannot fine a member.
- 16.6 The secretary must give written notice to the member of the decision under clause 16.4 as soon as possible.
- 16.7 Disciplinary procedures must be completed as soon as reasonably practical.

- 16.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of members

17. General meetings called by directors

- 17.1 Any director may, at any time, call a **general meeting** if the majority of directors agree to call the meeting.
- 17.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held in accordance with section 249D of the **Corporations Act**, the directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**; and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 17.3 The percentage of votes that members have (in clause 17.2) is to be worked out as at midnight before the members request the meeting.
- 17.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the **company**.
- 17.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

18. General meetings called by members

- 18.1 If the directors do not call the meeting within 21 days of being requested under clause 17.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting** in accordance with section 249E of the **Corporations Act**.
- 18.2 To call and hold a meeting under clause 18.1 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
 - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost; and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 18.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.
- 18.4 Other than as provided for in clause 18.1, a member may not request or call and arrange to hold a **general meeting** except under section 249F of the **Corporations Act**.

19. Annual general meeting

- 19.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) within 18 months after registration of the **company**; and

- (b) after the first annual **general meeting**, at least once in every calendar year unless the **Corporations Act** provides otherwise.
- 19.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
 - (a) a review of the **company's** activities;
 - (b) a review of the **company's** finances;
 - (c) consideration of the reports provided by the directors to the members in respect of the matters described in clauses 19.2(a) and 19.2(b);
 - (d) any auditor's report;
 - (e) the election of directors; and
 - (f) the appointment and fixing of remuneration of auditors, if any.
- 19.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.
- 19.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

20. Notice of general meetings

- 20.1 Notice of a **general meeting** must be given to:
 - (a) each member entitled to vote at the meeting;
 - (b) each director; and
 - (c) the auditor (if any).
- 20.2 Subject to clause 20.3, notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 20.3 Subject to clause 20.4 and the **Corporations Act**, notice of a general meeting may be provided less than 21 days before the meeting if:
 - (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand; or
 - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 20.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 20.5 Notice of a **general meeting** must include:
 - (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places or virtually, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the **company**;

- ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 20.6 The directors may postpone or cancel any **general meeting** whenever they think fit (other than a meeting called as the result of a request under clause 17.2).
- 20.7 The directors must give notice of the postponement or cancellation of a **general meeting** to all persons referred to in clause 20.1 as being entitled to receive notices from the **company**.
- 20.8 An accidental omission to send a notice of a **general meeting** (including a proxy appointment form) to any member or the non-receipt of a notice (or form) by any member does not invalidate the proceedings at or any resolution passed at the **general meeting**.
- 20.9 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

21. Quorum at general meetings

- 21.1 For a **general meeting** to be held, at least 15 members (a quorum) must be present (in person or by proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 21.2 No business may be conducted at a **general meeting** if a quorum is not present when the meeting proceeds to business.
- 21.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 21.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is automatically dissolved.

22. Auditor's right to attend meetings

- 22.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 22.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

23. Representatives of members

- 23.1 An Organisational Member may appoint as a representative:
 - (a) one individual to represent the member at meetings; and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 23.2 The appointment of a representative by a member must:
 - (a) be in writing;

- (b) include the name of the representative;
 - (c) be signed on behalf of the member; and
 - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 23.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 23.4 The appointment may be standing (ongoing).

24. Using technology to hold meetings

- 24.1 Notwithstanding any other clause of this Constitution, to the extent permitted by law a general meeting of the **company** may be held using one or more technologies approved by the directors that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place, and if a general meeting is held in that way then the following will apply:
- (a) a meeting may be held at multiple venues or not held at any specified venue;
 - (b) all persons so participating in the meeting (including any adjournment or postponement of the meeting) are taken for all purposes to be present at the meeting while so participating;
 - (c) a requirement to allow an opportunity for persons attending the meeting to speak may be complied with by using one or more technologies that allow that opportunity; and
 - (d) a reference in another clause of this Constitution to the 'place' of the general meeting will include, as the context requires, the online or other technological place or places at which the general meeting was held or appointed to be held.
- 24.2 If, before or during a general meeting, any technical difficulty occurs, such that the Members as a whole do not have a reasonable opportunity to participate, the chairperson may:
- (a) adjourn the meeting until the difficulty is remedied; or
 - (b) where a quorum remains present (either at the place at which the chairperson is present or by technology as contemplated by this clause 24) and able to participate, subject to the Act, continue the meeting.
- 24.3 If a general meeting is to be held in accordance with this clause 24, the directors may prescribe regulations, rules and procedures in relation to the manner in which the meeting is to be conducted.
- 24.4 Nothing in this clause 24 is to be taken to limit the powers conferred on the chairperson of the meeting by law.

25. Chairperson for general meetings

- 25.1 The **elected chairperson** is entitled to chair **general meetings**.
- 25.2 The directors present may elect a director to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**; or
 - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting; or
 - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

- 25.4 If no election is made under clause 25.2, then:
- (a) the members may elect one of the directors present as chairperson; or
 - (b) if no director is present or is willing to take the chair, the members may elect one of the members present as chairperson.
- 25.5 The general conduct of each **general meeting** of the **company** and the procedures to be adopted at the meeting will be determined by the chairperson. If there is a dispute at a **general meeting** about a question of procedure, the chairperson may determine the question.
- 25.6 The chairperson does not have a casting vote in addition to the chairperson's votes as a member or proxy.

26. Role of the chairperson

- 26.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 26.2 The chairperson does not have a casting vote in addition to the chairperson's votes as a member or proxy.

27. Adjournment of meetings

- 27.1 If a quorum is present:
- (a) a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it; and
 - (b) a **general meeting** may be adjourned in the chairperson's discretion with the meeting's consent.
- 27.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

28. Members' resolutions and statements

- 28.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution); and/or
 - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 28.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 28.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 28.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 28.5 The percentage of votes that members have (as described in clause 28.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 28.6 If the **company** has been given notice of a members' resolution under clause 29.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.

28.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

29. Company must give notice of proposed resolution or distribute statement

29.1 If the **company** has been given a notice or request under clause 28:

- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost; or
- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.

29.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 1,000 words long;
- (b) the directors consider it may be defamatory;
- (c) clause 29.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

Voting at general meetings

30. How many votes a member has

30.1 Each Ordinary Member, Life Member and Organisational Member will have the right to attend, speak and vote at general meetings of the Company and each such Member has one vote. Youth Members will have the right to attend and speak, but not to vote, at general meetings of the Company.

30.2 Subject to this constitution and the **Corporations Act**, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

30.3 A member is not entitled to speak or vote at a **general meeting** if the person has not paid a membership fee imposed by a determination of the directors made in accordance with clause 10.2 within three months after it becomes due.

31. Challenge to member's right to vote

31.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.

31.2 If a challenge is made under clause 31.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final and a decision of a **general meeting** may not be impeached or invalidated on the ground that a person voting at the **general meeting** was not entitled to do so.

32. How voting is carried out

- 32.1 Voting must be conducted and decided by:
- (a) a show of hands;
 - (b) a vote in writing; or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 32.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 32.3 A resolution put to the vote of a **general meeting** is to be decided on a show of hands unless a vote in writing (in other words, a poll) is demanded in accordance with clause 33 or otherwise in accordance with the **Corporations Act**.
- 32.4 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 32.5 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

33. When and how a vote in writing must be held

- 33.1 A vote in writing may be demanded on any resolution (other than a resolution for the election of a chairperson or to adjourn the meeting) before, instead of or after a vote by a show of hands by:
- (a) at least five **members present**;
 - (b) **members present** with at least 5% of the votes that may be cast on the resolution of the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (c) the chairperson.
- 33.2 A vote in writing must be taken when and how the chairperson directs, unless clause 33.3 applies.
- 33.3 After a vote in writing has been demanded at a **general meeting**, the **general meeting** may continue for the transaction of business other than the question on which the vote in writing was demanded.
- 33.4 A demand for a vote in writing may be withdrawn.

34. Appointment of proxy

- 34.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 34.2 A proxy does not need to be a member.
- 34.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 33.1.
- 34.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
 - (b) the **company's** name;

- (c) the proxy's name or the name of the office held by the proxy (provided that, if a proxy is not named then it will be deemed to name the chairperson of the meeting as proxy);
 - (d) the meeting(s) at which the appointment may be used; and
 - (e) the member's request (if any) for the proxy to speak or vote for the member when they are both at the meeting because the member is unable to speak or vote.
- 34.5 A proxy form must be in any form as agreed by the directors.
- 34.6 The directors may determine that an appointment of proxy is valid even if it only contains some of the information specified in clause 34.4.
- 34.7 A proxy appointment may be standing (ongoing).
- 34.8 Proxy forms must be received by the **company** at the address or electronic address stated in the notice under clause 20.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 34.9 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting unless the member is unable to speak or vote because of Huntington's disease and this should be indicated on the proxy form.
- 34.10 Unless the **company** receives written notice of the death, mental incapacitation or revocation before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 34.11 A proxy appointment may specify the way the proxy must vote on a particular resolution.

35. Voting by proxy

- 35.1 A proxy is entitled to vote on a show of hands.
- 35.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

36. Number of directors

The **company** must have at least five and no more than nine directors.

37. Election and appointment of directors

- 37.1 The initial and foundational directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.

- 37.2 The members may elect a director by a resolution passed in a **general meeting**.
- 37.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together; and
 - (b) no votes were cast against that resolution.
- 37.4 A person is eligible for election as a director of the **company** if they:
- (a) are a member of the **company**, or a representative of a member of the **company** (appointed under clause 23);
 - (b) are nominated by two members or representatives of members entitled to vote or were previously elected as a director at a **general meeting** and have been a director since that meeting;
 - (c) give the **company** their signed consent to act as a director of the **company**; and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 37.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the **company**, or a representative of a member of the **company** (appointed under clause 23);
 - (b) gives the **company** their signed consent to act as a director of the **company**; and
 - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 37.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.
- 37.7 If it is discovered that:
- (a) there was a defect in the appointment of a person as a director or member of a committee; or
 - (b) a person appointed to one of those positions was disqualified;
- all acts of the directors or the committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

38. Election of chairperson

The directors must elect a director as the **company's elected chairperson** and may determine the period for which the chairperson shall hold office (save that any chairperson shall cease to be chairperson if they cease to be a director).

39. Term of office

- 39.1 At each annual **general meeting**:
- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
 - (b) at least one-third of the remaining directors must retire.
- 39.2 The directors who must retire at each annual **general meeting** under clause 39.1(b) will be the directors who have been longest in office since last being elected. Where

directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

- 39.3 Other than a director appointed under clause 39.5, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 39.4 Each director must retire at least once every three years.
- 39.5 A director who retires under clause 39.1 may nominate for election or re-election, subject to clause 39.6.
- 39.6 A director who has held office for a continuous period of nine years must retire and is not eligible for re-election until they have not held office as a director for at least 12 months after retirement in accordance with this clause.
- 39.7 When a director retires at a **general meeting**, the **company** may by resolution elect a person to fill the vacated office.

40. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the **company**;
- (e) are a representative of a member, and that member stops being a member;
- (f) are a representative of a member, and the member notifies the **company** that the representative is no longer a representative;
- (g) are liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
- (h) are absent for 3 consecutive directors' meetings without approval from the directors; or
- (i) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

41. Powers of directors

- 41.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 41.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be exercised by the members in a **general meeting**.
- 41.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 42; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

- 41.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.
- 41.5 The directors will not sell or dispose of the **company's** main undertaking unless such sale or disposal has been approved by members at a **general meeting**.

42. Delegation of directors' powers

- 42.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate, and a delegate of the directors may be authorised to sub-delegate to others.
- 42.2 Meetings of any committee of directors will be governed by the provisions of this constitution which deal with directors' meetings so far as they are applicable and are not inconsistent with any directions of the directors.
- 42.3 Any delegations must be recorded in the **company's** minute book.

43. Appointment of attorneys and agents

- 43.1 The directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the **Corporations Act** appoint any person to be the attorney or agent of the **company**:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the directors under this constitution);
 - (c) for the period; and
 - (d) subject to the conditions;
- determined by the directors.
- 43.2 An appointment by the directors of an attorney or agent of the **company** may be made in favour of:
- (a) any member of any committee established under this constitution;
 - (b) any company;
 - (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the directors.
- 43.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the directors think fit.
- 43.4 The directors may appoint attorneys or agents by electronic transmission, facsimile or other means of written communication to act for and on behalf of the **company**.
- 43.5 An attorney or agent appointed under this clause 43 may be authorised by the directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in the attorney or agent.

44. Payments to directors

- 44.1 The **company** must not pay fees to a director for acting as a director.

- 44.2 The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a director for reasonable expenses properly incurred by the director in connection with the affairs of the **company**.
- 44.3 Any payment made under clause 44.2 must be approved by the directors.
- 44.4 The **company** will pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

45. Execution of documents

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

- (a) two directors of the **company**; or
- (b) a director and the secretary; or
- (c) any other persons duly authorised to do so by the directors.

Duties of directors

46. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), which generally are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**;
- (b) to act in good faith in the best interests of the **company** and to further the purpose of the **company** set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any material personal interest in the manner set out in clause 47;
- (f) to ensure that the financial affairs of the **company** are managed responsibly; and
- (g) not to allow the **company** to operate while it is insolvent.

47. Conflicts of interest

- 47.1 A director must disclose the nature and extent of any material personal interest in a matter that relates to the affairs of the **company** and is being considered at a meeting of directors (or that is proposed in a circular resolution) to the other directors as required by the **Corporations Act**.
- 47.2 The disclosure of a material personal interest by a director must be recorded in the minutes of the meeting.
- 47.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 47.4 or permitted under the **Corporations Act**:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.

- 47.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company**;
 - (c) their interest relates to a payment by the **company** under clause 64 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order or a **general meeting** passes a resolution allowing the director to vote on the matter; or
 - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**; and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

48. When the directors meet

The directors may decide how often, where and when they meet but must use reasonable endeavours to have a minimum of 7 meetings each year.

49. Calling directors' meetings

- 49.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 49.2 A director may give notice in writing via letter, facsimile, email or any other means of communication that has previously been agreed to by all of the directors.
- 49.3 By attending a directors' meeting, a director waives any objection he or she may have had in relation to the notice of meeting.
- 49.4 An accidental omission to give notice of a meeting of directors to any director or the non-receipt of such notice by any director does not invalidate the proceedings at or any resolution passed at the meeting.

50. Chairperson for directors' meetings

- 50.1 The **elected chairperson** is entitled to chair directors' meetings.
- 50.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
- (a) not present within 30 minutes after the starting time set for the meeting; or
 - (b) present but does not want to act as chairperson of the meeting.

51. Quorum at directors' meetings

- 51.1 The quorum for a directors' meeting is a majority (more than 50%) of directors.
- 51.2 A quorum must be present for the whole directors' meeting.

51.3 Where a quorum cannot be established for the consideration of a particular matter at a meeting of directors, the chairperson may call a **general meeting** to deal with the matter.

52. Using technology to hold directors' meetings

52.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors and which allows the directors to simultaneously hear each other and participate in discussion.

52.2 The directors' agreement may be a standing (ongoing) one.

53. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution and each director present and entitled to vote on a resolution has one vote.

54. Circular resolutions of directors

54.1 The directors may pass a circular resolution without a directors' meeting being held.

54.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 54.3 or clause 54.4.

54.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

54.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

54.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 54.3 or clause 54.4.

Secretary

55. Appointment and role of secretary

55.1 The **company** must have at least one secretary, who may also be a director.

55.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) on such terms and conditions as they may decide and may be removed by the directors.

55.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

55.4 The role of the secretary includes:

- (a) maintaining a register of the **company's** members; and
- (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

55.5 The secretary is entitled to attend and be heard on any matter at all directors' and **general meetings**.

55.6 The directors may, subject to the terms of the secretary's employment contract, suspend, remove or dismiss the secretary.

Minutes and records

56. Minutes and records

- 56.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**;
 - (b) a copy of a notice of each **general meeting**; and
 - (c) a copy of a members' statement distributed to members under clause 28.
- 56.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
 - (b) minutes of circular resolutions of directors.
- 56.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 56.1; and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 56.2 and clause 57.1.
- 56.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
 - (b) the chairperson of the next meeting.
- 56.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

57. Financial and related records

- 57.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 57.2 The **company** must also keep written records that correctly record its operations.
- 57.3 The **company** must retain its records for at least 7 years.
- 57.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.
- 57.5 Except as otherwise required by law, a member other than a director does not have the right to inspect any financial records or other documents of the **company** unless the member is authorised to do so by a court order or a resolution of the directors.

By-laws

58. By-laws

- 58.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 58.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

59. What is notice

- 59.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 60 to 62, unless specified otherwise.
- 59.2 Clauses 60 to 62 do not apply to a notice of proxy under clause 34.8.

60. Notice to the company

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

- (a) delivering it to the **company's** registered office;
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address; or
- (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

61. Notice to members

- 61.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
 - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
 - (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 61.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

62. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the seventh business day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 61.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

63. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

64. Indemnity

- 64.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against:
- (a) any liability (other than for legal costs) incurred by that person as an officer of the **company**; or
 - (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the **company**.
- 64.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 64.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so; and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 64.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

65. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

66. Directors' access to documents

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

Winding up and revocation of deductible gift recipient endorsement

67. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is an organisation described in clause 68.1.

68. Distribution of surplus assets

- 68.1 Subject to the **Corporations Act** and any other applicable Act, any court order and clause 68.5, any **surplus assets** (including 'gift funds' defined in clause 68.4) that remain after the **company** is wound up must be distributed to one or more organisations which is not carried on for the profit or gain of its individual members:
- (a) with charitable purpose similar to, or inclusive of, the purpose(s) in clause 6;
 - (b) which, by its constitution, is prohibited from making a distribution of any **surplus assets** to its members to at least the same extent as the **company**; and
 - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- 68.2 The decision as to the organisation to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court of any Australian State or Territory to make this decision.
- 68.3 If the **company's** deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 68.1(a), (b) and (c) and clause 68.5, as decided by the directors.
- 68.4 For the purpose of this clause:
- (a) 'gift funds' means:
 - (i) gifts of money or property for the principal purpose of the **company**;
 - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the **company**; and
 - (iii) money received by the **company** because of such gifts and contributions;
 - (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).
- 68.5 The surpluses described in clauses 68.1 and 68.3 may only be given or transferred:
- (a) to an institution that may be registered under Part 11A of the TAA;
 - (b) to an institution the QLD Commissioner is satisfied has a principal object or pursuit that is fulfilling a charitable object or promoting the public good; or
 - (c) for a purpose the QLD Commissioner is satisfied is charitable or for the promotion of the public good.

Definitions and interpretation

69. Definitions

In this constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and includes any exemption or modification to that Act applying to the **company**;

company means the company to which this constitution relates and which has the name set out in clause 1;

Corporations Act means the *Corporations Act 2001* (Cth) and includes any exemption or modification to that Act applying to the **company**;

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 38;

general meeting means a meeting of members and includes the annual **general meeting**, under clause 19.1;

initial member means a person who is named in the application for registration of the **company**, with their consent, as a proposed member of the **company**;

member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting

QLD Commissioner means the Commissioner of State Revenue appointed under the TAA;

registered charity means a charity that is registered under the **ACNC Act**;

special resolution means a resolution:

- i. of which notice has been given under clause 20.5(c); and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up;

TAA means the Taxation Administration Act 2001 (Qld).

70. Reading this constitution with the Corporations Act

- 70.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 70.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 70.3 If the **company** is not a **registered charity** (whether or not it is a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act. For the avoidance of doubt, the exclusion of the replaceable rules effected by clause 70.1 is not affected by this clause.
- 70.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution. Where the expression has more than one meaning in the **Corporations Act** and a provision of the **Corporations Act** deals with the same matter as a clause of this constitution, that expression has the same meaning as in that provision.

71. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and the meaning of general words is not limited by specific examples introduced by these expressions;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this constitution, and a reference to this constitution includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

CONSTITUTION OF HUNTINGTON'S AUSTRALIA LIMITED

- (f) headings are inserted for convenience and do not affect the construction of this constitution;
- (g) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
- (h) a reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).