

**Corporations Act 2001  
A Public Company Limited by Guarantee  
Constitution**

**Australian and New Zealand Society of Respiratory  
Science Limited  
ACN 147 665 763**

**Adopted on Incorporation: 02 December 2010**

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## **1 Nature of the Company**

- 1.1 The Company is a public company limited by guarantee.
- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$100.00 to the assets of the Company if it is wound up while they are a Member, or within one year afterwards.

## **2 Objects**

- 2.1 The objects of the Company are:
- (a) to provide a forum for scientific and technical communication between members of the respiratory science profession;
  - (b) to advance the knowledge of respiratory science;
  - (c) to promote excellence in respiratory science;
  - (d) to encourage training in respiratory science;
  - (e) to interact with other professional societies with common interests;
  - (f) to raise money to further the aims of the Company and to secure sufficient funds for the objects of the Company;
  - (g) to receive any funds and to distribute these funds in a manner that best attains the objects of the Company; and
  - (h) to do all such things as are incidental or conducive to the operation of the Company and otherwise for the attainment of all or any of the objects of the Company.

## **3 Membership**

### **Membership**

#### **Admission of Members**

- 3.1 The number of Members of the Company is unlimited.
- 3.2 The members of the Company are divided into Voting and Non-Voting Members in the 2 classes described in clauses 3.3 and 3.4 below.
- 3.3 **Voting Members** shall comprise a single class of Membership and shall have the rights of Membership provided in this Constitution including without limitation the right to vote at general meetings of Members and stand for election as an Elected Officer of the Company.
- 3.4 **Non-voting Members** shall comprise a single class of Membership and shall have the rights of Membership provided in this Constitution, but for the avoidance of doubt, they shall not be entitled to:

- (a) vote at general meetings of Members;
- (b) stand for election as an Elected Officer of the Company (see clause 10.3).

### **Voting Members**

3.5 Different categories of Voting Membership:

- 3.5.1 may be determined by ordinary resolution of the Voting Members voting at a general meeting of the Company, with such different criteria for admission or different entitlements (other than rights of Voting Members provided in this Constitution which shall prevail); and
- 3.5.2 have, simultaneously with, or immediately prior to or following the adoption of, this Constitution been determined by the Voting Members as follows:
  - (a) Ordinary Members;
  - (b) Associate Members; and
  - (c) Life Members.

### **Non-Voting Members**

3.6 Different categories of Non-Voting Membership:

- 3.6.1 may be determined by ordinary resolution of the Voting Members at a general meeting of the Company, with such different criteria for admission or different entitlements (other than rights of Non-Voting Members provided in this Constitution which shall prevail); and
- 3.6.2 have, simultaneously with, or immediately prior to or following the adoption of, this Constitution been determined by the Voting Members as follows:
  - (a) Honorary Members; and
  - (b) Corporate Members.

### **Becoming a Member**

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

- (a) Membership is open to persons or bodies corporate who are supportive of the objects of the Company and which are accepted to membership by the Board in accordance with this Constitution;
- (b) the application must be made by completing and signing the form approved for the purpose by the Board, and lodging it with the Secretary; and
- (c) upon lodging the application, the applicant must pay the non-refundable applicable fee (see clause 4);

- 3.8 In respect of each application for membership duly made in accordance with this Constitution:
- (a) the Board, or its duly authorised delegate, shall promptly after it is received from the applicant, consider whether to accept or reject the application;
  - (b) if the application is accepted, the applicant shall be admitted forthwith as a Member and shall be notified accordingly; and
  - (c) the Board does not have to give reasons for rejecting an application.

#### **Notifying Member of admission**

- 3.9 Following admission of a new Member, the Secretary must promptly:
- (a) notify the Member in writing of the admission to membership; and
  - (b) cause the required details to be entered in the Register.

#### **Ongoing Member obligations and rights**

- 3.10 The Members of the Company agree to be bound by the provisions of this Constitution.
- 3.11 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.
- 3.12 All Members have the right to receive notices of, and to attend and be heard at, and to vote (subject to the other provisions of this Constitution and relevant by-laws promulgated by the Board) at any general meeting.

#### **Register of Members**

- 3.13 A Register of the Members must be kept in accordance with the Act.
- 3.14 The following details must be entered and kept current in the Register in respect of each Member:
- (a) the full name and contact details of the Member;
  - (b) the date of admission to and cessation of membership; and
  - (c) such other information as the Board requires.
- 3.15 Each Member is responsible to notify the Secretary in writing of any change in that person's name, address, telephone, facsimile number and e-mail address within 1 month after the change.

#### **Transitional membership provision**

- 3.16 All persons who were, immediately prior to the incorporation of the Company, entered into the register of members of the Association as an:
- (a) Ordinary Member;

- (b) Associate Member;
- (c) Life Member;
- (d) Honorary Member; and
- (e) Sustaining Member,

shall be admitted to the Company in the same category of Member automatically upon incorporation of the Company, but for the category of Members known as Sustaining Members, who shall be admitted to the category of "Corporate Member" in lieu.

## **4 Fees**

### **Amount of fees**

4.1 The:

- (a) application fee, payable upon application to any category of membership; and
- (b) annual subscription, payable upon entry and renewal of membership to those categories of membership attracting annual subscription fees,

is the amount determined by the Board from time to time.

## **5 Removal and cessation of membership**

### **Resignation**

- 5.1 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.
- 5.2 Despite resignation of a Member under clause 5.1, such Member's liability for any fees, subscriptions, guarantee (as per clause 1.2) or other moneys in arrears at the date of such resignation shall continue until discharged by payment.

### **Removal from membership**

- 5.3 Subject to clause 5.4, a Member may be removed by ordinary resolution of the Voting Members at a general meeting.
- 5.4 The following provisions must be fulfilled before a Member can be removed by a resolution of the Voting Members under clause 5.3:
  - (a) 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;
  - (b) the Board must give at least 2 months' written notice to the Member of the

intention to terminate their membership and the grounds of the intended termination,

- (c) the Member must be invited, in the written notice, to provide to the Board any written representations of a reasonable length which the Member wishes the meeting of Members to consider;
- (d) if the Member makes written representations, and requests that they be notified to the other Voting Members, in sufficient time before the notices of meeting are sent to the Voting Members, the Board must ensure that a copy of the representations is included in the notices calling the meeting;
- (e) 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
- (f) whether or not representations have been circulated or read, the Member must be given a full and fair opportunity to address the meeting.

#### **Other cessation of membership**

5.5 A Member ceases to be a Member:

- (a) on the dissolution of the Member;
- (b) on the bankruptcy or insolvency of the Member, or
- (c) has any fees referred to in clause 4 in arrears for at least 2 months or such other length of time as determined by the Board and notified to members.

### **6 No profits for members**

#### **Transfer of income or property**

6.1 Subject to clause 6.2, 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.

#### **Payments, services and information**

6.2 Nothing in clause 6.1 prevents the payment, in good faith, of an amount, calculated on arms length terms, in respect of:

- (a) remuneration payable to an employee of the Company, who is also a Member's Representative under clause 9, for services actually rendered to the Company; or
- (b) goods or services actually supplied to the Company by a Member in the ordinary and usual course of the Member's business; or
- (c) scholarships, awards or travel grants awarded by the Company to recipients based on merit.

## **7 General meetings**

### **Convening of meetings**

- 7.1 The Secretary must comply with a request to convene a general meeting of the Members on:
- (a) the request of the President or any 2 Directors of the Company; or
  - (b) a requisition signed by not less than 5% of the Voting Members who are entitled to vote at any general meeting at the relevant time. Such requisition shall clearly state the nature of the business to be transacted and the reasons why such special meeting is required.

### **Notice of general meeting**

- 7.2 Notice of a general meeting:
- (a) may be given by any form of communication permitted by the Act;
  - (b) must specify the place, the day and the hour of meeting, the general nature of the business to be transacted and any other matters as are required by the Act; and
  - (c) which is an AGM shall include at least the following items of business:
    - (i) to receive and adopt the statement of accounts and balance sheet;
    - (ii) to elect the auditor or auditors and to fix the auditor's remuneration; and
    - (iii) to announce the results of the election of the Elected Members to the Board.
- 7.3 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.

### **Quorum at general meetings**

- 7.4 A quorum for the purposes of a general meeting of Members shall be at least 10% of Voting Members, whether present personally or by proxy.
- 7.5 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:
- (a) if the meeting was convened by or on the requisition of Members, it must be dissolved; or
  - (b) in any other case it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.
- 7.6 If a meeting has been adjourned to another time and place determined by the Board, then notwithstanding any other provision, not less than 7 days' notice of the

adjourned meeting must be given in the same manner as in the case of the original meeting.

- 7.7 If, at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

#### **Appointment of chair and powers of chair**

- 7.8 The President or, in his/her absence, the Vice President, shall preside as chair at every general meeting of Members.
- 7.9 If for any reason there is not then a President nor a Vice President, or neither of them is present within 30 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.

#### **No casting vote of chair**

- 7.10 The chair of a general meeting is entitled to a deliberative vote on all resolutions, whether by show of hands or on a poll. In the case of equality of votes, the question shall be deemed to be decided in the negative.

#### **Adjournment of meetings**

- 7.11 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.
- 7.12 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- 7.13 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- 7.14 When a meeting is adjourned for less than 30 days, it is not necessary to give a further notice of the adjourned meeting.

#### **Voting on show of hands**

- 7.15 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 7.18.
- 7.16 On a show of hands, every Voting Member present in person, or by proxy, has one vote.
- 7.17 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.

#### **Vote on a poll**

- 7.18 A poll may be demanded in respect of a resolution at a general meeting:

- (a) by the chair; or
  - (b) by at least 2 Voting Members present and entitled to vote on the resolution:
    - (i) before the vote on that resolution is taken;
    - (ii) before the result is declared on a show of hands; or
    - (iii) immediately after the result is declared on a show of hands.
- 7.19 On a poll every Voting Member present in person or by proxy has one vote unless such person belongs to a class of Member which does not have voting rights.
- 7.20 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- 7.21 A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.
- 7.22 The chair, in his/her discretion may expel any Member or Director from a general meeting if the chair reasonably considers that the Member or Director's conduct is inappropriate behaviour within the terms of clause 7.23.
- 7.23 The following conduct may be considered inappropriate in a general meeting:
- (a) the use of offensive or abusive behaviour or language which is directed to any person, object or thing;
  - (b) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance; and
  - (c) the use or consumption of any drug by a person at the meeting.

## **8 Proxies**

### **Proxies and representatives of Members**

- 8.1 At meetings of Members, each Member entitled to vote may vote in person or by proxy.
- 8.2 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.

### **Appointment of proxies**

- 8.3 A Member may appoint another Member as their proxy to attend and vote in their place at a general meeting.
- 8.4 An instrument appointing a proxy must be in writing as provided for in the Annexure to this Constitution or such other form as is approved from time to time

by the Board, and signed by the Member appointing the proxy.

- 8.5 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.

#### **Verification of proxies**

- 8.6 Notwithstanding any other provision, a proxy shall be deemed to be invalid unless the following provisions are fulfilled:

- (a) each Member appointing a proxy must send or deliver to the Company, for receipt no later than 3 business days before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote, the following:
  - (i) the document appointing the proxy; and
  - (ii) 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.

#### **Revocation of appointment of proxy**

- 8.7 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.

### **9 Members' Representatives**

- 9.1 Any Member which comprises a Body Corporate shall appoint an individual as a representative to exercise all or any of the powers of the Member under this Constitution or the Act or otherwise at law.

- 9.2 The appointment may be a standing one.

- 9.3 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.

- 9.4 A Member may appoint more than 1 Representative but only 1 Representative may exercise the body's powers at any one time.

- 9.5 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.

## **10 Board of Directors**

### **Number of Directors**

- 10.1 As and from the end of the Transitional Period, the number of Directors of the Company, together called the "Board", shall be a minimum of 3 and a maximum of 8, comprising:
- (a) At least 3 but no more than 6 Directors elected by the Voting Members (**Elected Directors**); and
  - (b) Up to 2 appointed Directors, appointed by the Board in accordance with clause 10.11 of this Constitution (**Appointed Directors**);
- 10.2 The Company may, by ordinary resolution of its Voting Members, increase or decrease the minimum or maximum number of Directors (provided that the minimum must not fall below 3, 2 ordinarily residing in Australia, 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.

### **Eligibility for election as a Director**

- 10.3 A person is only eligible for election as a Director if the person:
- (a) is a Voting Member;
  - (b) is not an employee of the Company or of any related entity employing staff of the Company;
  - (c) has not then already served for 4 consecutive terms of 3 years on the Board; and
  - (d) is not disqualified or ineligible from being a Director under the Act.

### **Rotation and retirement of Directors**

- 10.4 Subject to clause 10.5, there shall be a rotational system of elections of Elected Directors so that at each AGM, those Directors who have served approximately 3 years since they were elected, must retire from office.
- 10.5 An Elected Director retiring at an AGM, and who is not disqualified by law or by this Constitution (see clause 10.3) from being reappointed, is eligible for re-election.

### **Transitional rotation of Directors**

- 10.6 For the purposes of the transition to this rotational system of elections, the first Board of the Company shall comprise those persons elected to the Board of the Company at the Company's 2010 AGM.

- 10.7 For the purposes of the AGM in 2011:
- (a) two thirds of the Board who were elected at the Company's AGM in 2010, rounded down to the nearest whole number, shall continue on the Board (in this clause the **Continuing Elected Directors**), as provided by the remaining provisions of this clause 10.7 and the other remaining positions for members of the Board shall be declared vacant;
  - (b) the Board shall, prior to the 2011 AGM, determine by agreement which of their number shall be the Continuing Elected Directors, continuing on the Board for a further 12 months from the AGM in 2011;
  - (c) if the members of the Board are unable to reach such agreement, then the question shall be determined by the drawing of lots at a meeting of the Board held at least 3 months before the 2011 AGM;
- 10.8 All of the members of the Board other than the Continuing Elected Directors shall retire at the AGM in 2011 but shall provided they are not disqualified by law or under this Constitution, be eligible to stand for re-election.
- 10.9 For the purposes of the AGM in 2012:
- (a) half of the Continuing Elected Directors referred to in clause 10.7 shall stand down and the other half (in this clause the **Further Continuing Elected Directors**) shall remain in office for a further 12 months;
  - (b) the positions on the Board occupied by the Continuing Elected Directors shall be declared vacant; and
  - (c) the Continuing Elected Directors referred to in this rule shall, provided they are not disqualified by law or under this Constitution, be eligible to stand for re-election.
- 10.10 For the purposes of the AGM in 2013:
- (a) the Further Continuing Elected Directors referred to in clause 10.9 shall stand down;
  - (b) the positions on the Board occupied by the Further Continuing Elected Directors shall be declared vacant; and
  - (c) the Further Continuing Elected Directors referred to in this rule shall, provided they are not disqualified by law or under this Constitution, be eligible to stand for re-election.

#### **Appointment of Appointed Directors**

- 10.11 The Board may, in its discretion, and from time to time, appoint up to a maximum of 2 Directors (**Appointed Directors**) to serve at any one time, on the basis that they are persons whose background, skills and/or experience may be thought prudent or necessary to enhance the ability of the Board to better discharge its role and the legal duties and responsibilities of the Directors.
- 10.12 Each Appointed Director shall serve for a term for a period of 2 years from the date

of their appointment, but shall be eligible for reappointment for up to a maximum of 6 consecutive terms.

### **Ballot for election of Directors**

10.13 The election of the Directors appointed by Voting Members at each AGM shall take place in the following manner:

- (a) a Postal Ballot of the Voting Members who are entitled to vote shall, unless otherwise determined by the Board be held prior to the AGM and if so, subject to this clause, the Postal Ballot shall be conducted in the manner determined from time to time by the Board;
- (b) all nominations for election as an Elected Director must be in writing and signed by no fewer than 2 Voting Members and also signed by the nominee consenting to such nomination and shall be delivered to and lodged with the Secretary not less than 21 days prior to the date fixed for the holding of the relevant AGM;
- (c) only persons who are eligible for election or appointment as an Elected Director under this Constitution (see clause 10.3) may be nominated to stand for election;
- (d) the Board must ensure that the Postal 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 Postal Ballot at least 7 days prior to the holding of the relevant AGM;
- (f) if at the expiration of time limited for nomination:
  - (i) there are fewer nominations than positions vacant, the chair shall declare those persons as duly elected at the AGM and any vacancy shall be filled as if it were a casual vacancy;
  - (ii) there are the same number of nominees as there are vacancies, the chair shall declare those persons as duly elected at the AGM;
  - (iii) there are more nominations than there are vacancies, the Board will cause to be conducted a Postal Ballot in such manner as determined by the Board provided it complies with clause 10.13(d) and 10.13(e).

### **Filling casual vacancies of Directors**

10.14 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:

- (a) created by the early retirement of Elected Director;
- (b) resulting from a vacant position for an Elected Director on the Board not having been filled at an AGM; or
- (c) 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.

- 10.15 If a Director has been duly appointed to fill a casual vacancy:
- (a) That Director shall, notwithstanding any other provision, be required to retire, but be eligible for election, at the next AGM following their appointment;
  - (b) 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 3 years from the AGM at which they were elected and thereafter subject to clauses 10.3, 10.4 and 10.5 in respect of their eligibility for, and nomination for, re-election at future AGMs.

#### **Retirement and removal from office**

- 10.16 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.
- 10.17 The Voting Members may by ordinary resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement.
- 10.18 A person appointed to replace a Director under clause 10.17 must retire as a Director at the next AGM. If a Director appointed to fill a casual vacancy has been elected at an AGM following their initial appointment, that Director is entitled to serve for 3 years from the AGM at which they were elected and thereafter subject to clauses 10.3, 10.4 and 10.5 in respect of their eligibility for, and nomination for, re-election at future AGMs.

#### **Vacation of office**

- 10.19 Without limiting any other provision, the office of a Director becomes vacant if required by the Act or if the Director:
- (a) becomes an insolvent under administration;
  - (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (c) is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of 6 months and the Board resolves that the office of that Director be vacated; or
  - (d) becomes prohibited from being a Director by reason of an order made under the Act.

### **11 President and Vice President**

- 11.1 At the first meeting of the Board after each annual general meeting, the Board shall elect from amongst the then current Directors a President and Vice President.
- 11.2 The President and Vice President of the Board shall be elected in accordance with the following provisions:

- (a) all Elected Directors will be eligible for election as:
  - (i) President, provided that any such Director has been on the Board for one of the previous two years (which shall be waived if no Elected Director has reached such requirement as to tenure), or
  - (ii) Vice President,except for any Director who expressly indicates that they do not wish to be considered for either position;
- (b) the election of the President will be conducted first and will be held by secret ballot, unless only one Director wishes to be considered for election to this office, in which case that Director will be considered automatically elected as President;
- (c) in the case of more than one Director wishing to be considered for the position of President, the Director who obtains a simple majority of votes from the Board shall be considered elected to the position of President;
- (d) if the outcome of the secret ballot in clause 11.2(b) is a tie, a further secret ballot shall be conducted between the tied Directors and the Director who obtains a simple majority of votes shall be elected to the position of President, and if the outcome of the further secret ballot is also a tie, the result will be determined by drawing lots;
- (e) subject to the next following paragraph, once the President has been elected, the provisions of clause 11.2(a) to 11.2(d) (inclusive) shall apply with necessary modifications, in relation to the election of a Vice President; and
- (f) notwithstanding any other provision, a Director may at any one time occupy only one of the office bearer positions referred to in this clause (President and Vice President) and so once elected to, and whilst occupying, an office bearer position is no longer eligible for election to any other office bearer position.

11.3 If at any time the office of President or Vice President becomes vacant, the Board must elect another Director to fill the vacancy, even in the event that clause 11.2 cannot be complied with.

11.4 The President or, in his/her absence, the Vice President, shall preside as chair at every meeting of the Board.

## **12 Directors' remuneration**

### **Payment for expenses**

12.1 Directors shall not be entitled to be paid sitting fees for their role as Directors.

12.2 Directors shall however be entitled, on an equitable basis, to be reimbursed all 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 such expenses have first been approved by the Board.

### **13 Powers of Directors**

- 13.1 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.

### **14 Proceedings of Directors**

#### **Convening of Directors' meetings**

- 14.1 The Board shall meet not less than 4 times per year, but otherwise as necessary to discharge their duties and functions.
- 14.2 The President or the Vice President or any other 2 Directors may request the Secretary to convene a meeting of the Board at any time and the Secretary must comply with such request.
- 14.3 Notice of each meeting of the Directors must be given to each Director at least:
- (a) 21 days before a meeting; and
  - (b) despite (a) above, at least 24 hours before a meeting dealing with urgent business; or
  - (c) otherwise as determined by resolution of the Board,
- except in the case of a Director who is out of Australia for business or leisure who is uncontactable or who has been given leave of absence from the Board.
- 14.4 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.

#### **Teleconference meeting of the Board**

- 14.5 For the purpose of this Constitution the contemporaneous linking together by telephone, radio or other form of instantaneous audio or audio and visual communication of a number of Directors constituting not less than the quorum required for the purpose of this Constitution whether or not one or more of the Directors is outside the Commonwealth of Australia shall be deemed to constitute a meeting of the Board and all the provisions of this Constitution as to the meetings of the Board shall apply to such meeting so long as the conditions set out in clause 14.6 are met.
- 14.6 The conditions referred to in clause 14.5 are that:
- (a) all the Directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of the meeting to be conducted by telephone, radio or other form of instantaneous audio or audio and visual communication;

- (b) notice of any such meeting shall be given in accordance with clause 14.3;
  - (c) each of the Directors taking part in the meeting shall be linked by telephone, radio or other form of instantaneous audio or audio and visual communication and must throughout the meeting be able to hear each of the other Directors so taking part;
  - (d) at the commencement of the meeting each Director must acknowledge his/her presence to all the other Directors taking part; and
  - (e) if the Secretary is not present at the meeting, either one of the Directors so present or a person nominated by the Directors shall take minutes of the meeting.
- 14.7 A Director may not leave a meeting conducted pursuant to clause 14.5 by disconnecting his or her telephone, radio or other form of communication unless he/she has previously obtained the express consent of the chair of the meeting.
- 14.8 A Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone, radio or other form of instantaneous audio or audio and visual communication unless they have previously obtained the express consent of the chair of the meeting to leave the meeting.
- 14.9 A minute of the proceedings at a meeting held by telephone, radio or instantaneous audio or audio and visual communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the President of the meeting or by the Vice President if present at the meeting.
- 14.10 A meeting by electronic communications shall not be invalidated by a voluntary or involuntary disconnection of a participant provided that there shall remain or be reconnected sufficient Directors able to communicate with each other as constitutes a quorum

#### **Quorum and voting at Directors' meetings**

- 14.11 A quorum for the purposes of a meeting of the Board is a simple majority of the Board as then constituted.
- 14.12 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.

#### **President and Vice President**

- 14.13 If for any reason, within 30 minutes of the time nominated for a Board meeting to start, neither the President nor the Vice President 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 President or the Vice President arrives, upon which they shall assume the chair.

#### **President's vote at Directors' meetings**

- 14.14 The chair of a Board meeting is entitled to a deliberative vote on all resolutions,

and in the case of equality of votes, the question shall be deemed to be decided in the negative.

### **Delegation of powers to committee**

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

### **Validity of acts of Directors**

- 14.17 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.

### **Minutes**

- 14.18 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 books kept for the purpose.
- 14.19 The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

### **Resolution in writing**

- 14.20 A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.
- 14.21 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.
- 14.22 In relation to a resolution in writing:
- (a) 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; and
  - (b) a document bearing a facsimile of a signature is to be treated as signed.

### **Conflict of Interest**

- 14.23 The Board shall, agree from time to time in writing on its policy for the regulation of conflicts of interest, which shall include a requirement that Directors only be

engaged to provide goods or services to or on behalf of the Company if:

- (a) that Director is for bona fide reasons considered by the Board, agreed to be a suitable person to provide, such goods or services;
- (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Directors rates and service levels;
- (c) the goods or services are provided on arms-length terms;
- (d) The provision of the goods and services is disclosed clearly and expressly to the Members in the annual report of the Company; and
- (e) The Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

## **15 Chief Executive Officer**

- 15.1 The Board may appoint any person, to the position of Chief Executive Officer (**CEO**), to act as chief executive officer of the Company for the period and on the terms (including as to remuneration) the Board sees fit.
- 15.2 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.
- 15.3 The Board may at any time revoke or vary an appointment of; or any of the powers conferred on, the CEO.
- 15.4 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.

## **16 Secretary**

- 16.1 The Directors shall:
  - (a) appoint, and terminate the appointment of, one or more Secretaries;
  - (b) determine their terms and conditions of appointment.
- 16.2 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 Regions**

### **Establishment of Regions**

- 17.1 The Board may, subject to the approval of the Voting Members obtained by ordinary resolution at a general meeting of the Members, establish Regions of the Company.

- 17.2 The Board may, subject to the approval of the Members obtained by ordinary resolution at a general meeting of the Voting Members, amalgamate or abolish (as the case may be) Regions of the Company if in the opinion of the Board the Region:
- (a) has ceased to function;
  - (b) has conducted itself in a manner detrimental to the interests of the Company;
  - (c) has failed to comply with any policies or directives applicable to Regions made by the Board from time to time existing; or
  - (d) fails to ensure that its members will be bound by this Constitution and such policies and directives made by the Board as are applicable to Regions as the case requires.
- 17.3 Each Region shall:
- (a) be established and conducted in accordance with by-laws and any other relevant policies and directives of the Board as to the manner in which the Regions (or Regions generally) is to be conducted;
  - (b) operate under the leadership of a regional chair (as the case requires) approved and appointed by the members of the Region as the case may be in accordance with any policies and directives of the Board, and on terms from time to time determined by the Board; and
  - (c) report as regularly as required by the Board in the form, and providing the information, required by the Board from time to time.
- 17.4 Regions shall each have an office or headquarters to which communications or notices may be addressed or served and that address, including any change to such address, shall be furnished to the Board.

## **18 By-laws**

- 18.1 The Board may, by resolution of the Board, make or adopt by-laws 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 shall be binding on the Members, provided that to the extent of any inconsistency, this Constitution shall prevail over all such by-laws.

## **19 Seals and execution of documents**

- 19.1 If the Company has one, the Board must provide for the safe custody of the Seal.
- 19.2 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
- (a) 2 Directors;

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

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

- (a) 2 Directors; or
- (b) a Director and a Secretary.

## **20 Surplus assets on winding up or dissolution**

20.1 Upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities, will not be paid to or distributed among the Members, but will be given or transferred to some other institution or organisation which:

- (a) has objects similar to the objects of the Company; and
- (b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 6.1,

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.

## **21 Indemnity**

### **Costs and expenses**

21.1 Every officer and past officer of the Company is indemnified by the Company against a liability for costs and expenses incurred by that person as an officer:

- (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.

### **Liabilities to third parties**

21.2 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.

### **Insurance premiums**

21.3 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.

## **22 Accounts, audit and records**

### **Accounts**

- 22.1 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.

### **Audit**

- 22.2 A registered Company auditor must be appointed.
- 22.3 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

### **Rights of Inspection**

- 22.4 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.

## **23 Notices**

### **Persons authorised to give notices**

- 23.1 A notice given by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, or, in the case of the Company, by the Secretary or a Director.
- 23.2 The signature of a person on a notice given by the Company may be written, printed or stamped.

### **Method and time of giving notices**

- 23.3 In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given by:
- (a) delivering it to the street address of the addressee and shall be taken to have been received at the time of delivery;
  - (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or

postal address of the addressee and shall be taken to have been received on the third business day (or 5<sup>th</sup> business day if sent outside Australia) after posting;

- (c) sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee and shall be taken to have been received when the transmission is complete; or
- (d) sending it by means of any other technology which the Members in general meeting agree to be permissible for the purpose of giving notices.

### **Addresses for giving notices to Members and to the Company**

23.4 For the purposes of clause 23.3:

- (a) The address, facsimile, email or other contact details of a Member are the last details formally notified by the Member to the Company with a request that they be recorded in the Register or the other records of the Company.
- (b) The street and postal address of the Company is the registered office of the Company and the facsimile, e-mail or other contact details are as the Company may specify from time to time by written notice to the Members as the contact details for the Company.

### **Proof of giving notices**

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

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgement of receipt of the e-mail.

### **Persons entitled to notice of meeting**

23.6 Notice of every general meeting must be given by a method authorised by this Constitution to every Member, Director, Secretary and the auditor for the time being of the Company, if any. No other person is entitled to receive notices of general meetings.

## **24 Interpretation**

### **References to law and the Constitution**

24.1 A reference to:

- (a) 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
- (b) this Constitution, where amended, means this Constitution as so amended.

## **Replaceable rules**

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

## **Presumptions of interpretation**

- 24.3 Unless the context otherwise requires a word which denotes:
- (a) the singular denotes the plural and vice versa;
  - (b) any gender denotes the other genders; and
  - (c) a person denotes an individual and a Body Corporate.
- 24.4 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.
- 24.5 Headings and any table of contents must be ignored in the interpretation of this Constitution.
- 24.6 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 Office is situated.
- 24.7 For the purposes of determining the length of a period (but not its commencement) a reference to:
- (a) a day means a period of time commencing at midnight and ending 24 hours later; and
  - (b) 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.
- 24.8 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.
- 24.9 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.
- 24.10 A reference to a business day means a day during which banks are open for general banking business in the state or territory in which the Office is situated
- 24.11 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.

## 25 Definitions

25.1 In this Constitution, except where the context requires otherwise:

**Act** means the *Corporations Act 2001*.

**AGM** means an annual general meeting of the Members of the Company and, where the context requires, means the specific annual general meeting in the context.

**Appointed Directors** means the Directors appointed to the Board, rather than being elected by and from amongst the Members, in accordance with this Constitution (see clause 10.11).

**Associate Member** means a person who is properly admitted to membership as a Member of the Company in the Associate Membership class referred to in clause 3.5.2(b).

**Association** means the incorporated association and predecessor to the Company known as "Australian & New Zealand Society of Respiratory Science Inc." ABN 62 096 524 191

**Board** means the board of Directors of the Company unless the context demands otherwise.

**Body Corporate** means a corporation, as that expression is defined in the Act, and any other form of organisation, whether or not incorporated, which the Board determines may be treated as a body corporate.

**CEO** means the chief executive, referred to in clause 15.

**Company** means the Australian & New Zealand Society of Respiratory Science Limited.

**Corporate Member** means a person who is properly admitted to membership as a Non-voting Member of the Company in the Corporate Membership class referred to in clause 3.6.2(a).

**Director** means a person elected or appointed in accordance with this Constitution to perform the duties of a Director of the Company.

**Elected Directors** means the Directors elected by and from amongst the Members, in accordance with this Constitution (see clauses 10.1(a) and 10.1(b)).

**Honorary Member** means a person who is properly admitted to membership as a Member of the Company in the Honorary Membership class referred to in clause 3.6.2(a).

**Life Member** means a person who is properly admitted to membership as a Member of the Company in the Life Membership class referred to in clause 3.5.2(c).

**Member** means the individuals or bodies corporate that, at the relevant time, are Members of the Company admitted in accordance with this Constitution.

**Non-voting Member** means a person properly admitted to one of the categories of Non-voting membership permitted by clause 3.6.

**Postal Ballot** in relation to the election of Elected Directors under clause 10.13 includes without limitation a ballot of Voting Members conducted electronically via e-mail or a website.

**President** means the person elected to that position from time to time in accordance with this Constitution.

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

**Representative** means, in relation to a Member, the representative of the Member appointed under clause 9.

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

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

**Transitional Period** means the date from the adoption of this Constitution until the first AGM occurring after adoption of this Constitution by the Company.

**Vice President** means the person elected to that position from time to time in accordance with this Constitution.

**Voting Member** means a person properly admitted to one of the categories of Voting membership permitted by clause 3.5.

**ANNEXURE**

**DRAFT Form of proxy**

**Company:** Australian and New Zealand Society of Respiratory Science Limited (ANZSRS)

**Address:** [insert address for delivery of completed proxy]

I, \_\_\_\_\_ of \_\_\_\_\_, being a  
(insert name) (insert address)

member of the Company, appoint:

\*another member of ANZSRS \_\_\_\_\_  
(insert name of proxy)  
of, \_\_\_\_\_  
(insert address of proxy)

\*the Chair of the meeting of c/- [insert address]

as my proxy to vote for me on my behalf at the annual general meeting of the Company, to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and at any adjournment of the meeting.

#My proxy may exercise his/her discretion on the resolutions to be voted upon at the general meeting

**OR**

#My proxy is directed to vote as follows:

Resolution Number	Resolution	In favour	Against
1			
2			
3 etc			

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Name of Member

\_\_\_\_\_  
Signature of Member

\* Insert an "x" in only 1 of these boxes.

# Insert an "x" in only 1 of these boxes. If the second box is marked, the Member must then indicate how the proxy is required to vote by completing the "In favour"/ "Against" column accordingly. Marking both boxes invalidates this proxy.