

26 October 2024

Constitution

Cancer Council Australia

Constitution of Cancer Council Australia

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Preamble

The members of Cancer Council Australia (**CCA**) are charitable organisations in Australian States and Territories. The objects of the Members and CCA are aligned to the common vision of reducing the prevalence and impact of cancer within the Australian community. CCA was established in 1961 by the Members to support this common vision.

Collectively, the member States and Territories and CCA form a Federation. These nine organisations operate as independent corporate entities in the Cancer Council Federation, with different, though complementary, roles. They seek to work collaboratively with each other, with people affected by cancer, with government and non-government sectors, and with other health service providers. The lead strategic forum in the Federation is the Chairs' Forum, supported by the CEO Forum.

1. Name and interpretation

1.1 Company name

The name of the company is Cancer Council Australia.

1.2 Definitions

In this Constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or national education body or otherwise for the not-for-profit sector, and includes:

- (a) any regulations made under that Act or any other such legislation; and
- (b) any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to Cancer Council Australia.

Annual General Meeting has the meaning given to that expression in clause 8.1.

Board means all or some of the Directors of Cancer Council Australia acting as a board.

Business Day means a day other than a Saturday, Sunday or public holiday and on which banks are open for banking business generally in Sydney, New South Wales, Australia.

Chair means the chair of the Board from time to time appointed pursuant to clause 11.4(a).

Cancer Council Australia means Cancer Council Australia (ACN 130 793 725).

Committee means a committee established by the Board in accordance with this Constitution for the purpose of exercising delegated authority.

Constitution means the constitution of Cancer Council Australia as amended from time to time.

Consumer Director means a person appointed by the Board as a Director in accordance with clause 11.3.

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

Director means a person appointed to the Board in accordance with clause 11.

Eligible Recipient means a body corporate in Australia that:

- (a) has one or more objects or purposes similar to the Objects and that agrees to use any distribution or transfer of funds provided by Cancer Council Australia to further such objects or purposes;
- (b) is registered as a charity with the Australian Charities and Not-for-profits Commission;
- (c) is endorsed as a deductible gift recipient under the Tax Act; and
- (d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or on winding up) to an extent at least as great as is imposed on Cancer Council Australia.

General Meeting has the meaning given to that expression in clause 8.1.

Member means a member of Cancer Council Australia in accordance with clause 6.

Objects means the objects of Cancer Council Australia set out in clause 2.

Ordinary Director means a person appointed as a Director in accordance with clause 11.2.

Register means the register of Members maintained in accordance with law.

Registered Entity means a body corporate registered under the ACNC Act.

Secretary means any person appointed by the Board to perform the duties of a company secretary of Cancer Council Australia.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

1.3 Interpretation

- (a) In this Constitution, except where the context otherwise requires, reference to:
 - (i) a gender includes other genders;
 - (ii) the singular includes the plural and vice versa;
 - (iii) another grammatical form of a defined word or expression has a corresponding meaning;
 - (iv) a clause is to a clause of this Constitution;
 - (v) a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

- (vi) **A\$, \$A, dollar** or **\$** is to Australian currency;
 - (vii) time is a reference to Sydney, Australia time;
 - (viii) a statute, ordinance, code or other law include regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them; and
 - (ix) writing or written includes any method of reproducing words, figures, drawings or symbols in a visible and tangible form.
- (b) Headings are for convenience and will be disregarded for interpretation of the Constitution.
 - (c) The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.
 - (d) A word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act.

1.4 Replaceable rules

The provisions of the Corporations Act that apply to certain companies as replaceable rules are disappplied by this Constitution in their entirety and do not apply to Cancer Council Australia.

2. Objects and powers

2.1 Objects of Cancer Council Australia

- (a) Cancer Council Australia is established as a charitable institution operating in Australia to support and enable the charitable purposes of the Members, including by:
 - (i) promoting the prevention and control of cancer;
 - (ii) reducing the incidence of preventable cancers;
 - (iii) reducing deaths from cancer;
 - (iv) fostering and supporting high quality cancer research in Australia;
 - (v) improving survival from cancer;
 - (vi) supporting individuals diagnosed with cancer, their families, carers and communities; and
 - (vii) reducing the impact of cancer.
- (b) In achieving the Objects, Cancer Council Australia is committed to:
 - (i) working in partnership with Members and collaborating with people affected by cancer, health professionals, health service providers, Government and non-Government agencies in improving cancer control;
 - (ii) providing strategic leadership in cancer control;
 - (iii) driving national collaboration and harmonisation in cancer control;

- (iv) being a trusted source of cancer information and evidence in cancer control;
- (v) being a leader in national and international policy and advocacy in cancer control;
- (vi) fostering partnerships that reduce the impact of cancer on our communities;
- (vii) promoting best practice in all aspects of cancer control; and
- (viii) enhancing quality of life for people affected by cancer.

2.2 Powers of Cancer Council Australia

Cancer Council Australia has the powers set out in Section 124 of the Corporations Act.

3. Income and property

3.1 Application of income and property

The income and property of Cancer Council Australia must be applied solely towards promoting the Objects. No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any of the Members in their capacity as Members, or Directors, other than in accordance with clauses 3.2 and 3.3.

3.2 Permitted payments to Directors

Clause 3.1 does not prohibit making a payment approved by the Board for:

- (a) reasonable out of pocket expenses incurred by a Director in performing a duty as a Director;
- (b) a service rendered to Cancer Council Australia by a Director in a professional or technical capacity or as an employee of Cancer Council Australia, other than in the capacity as a Director where:
 - (i) the provision of the service has the prior approval of the Board; and
 - (ii) the amount payable is not more than an amount that commercially would be reasonable payment for the service;
- (c) goods or services supplied by a Director in good faith in the ordinary and usual course of business;
- (d) reasonable and proper interest on money borrowed from a Director;
- (e) reasonable and proper rent for premises let by any Director to Cancer Council Australia; or
- (f) indemnification of, or payment of premiums on contracts of insurance for, any Director to the extent permitted by law and this Constitution.

3.3 Permitted payments to Members

Clause 3.1 does not prohibit making a payment approved by the Board for:

- (a) distribution or transfer to a Member, in furtherance of the Objects ; or

- (b) reasonable expenses incurred or to be incurred by a Member on behalf of Cancer Council Australia or proper remuneration for goods or services provided or rendered by a Member.

4. Members' contribution and liability

4.1 Liability

The liability of the Members is limited to the contribution required under clause 4.2.

4.2 Contribution on winding up

Each Member undertakes to contribute to the property of Cancer Council Australia in the event of a winding up while it is a Member such amount as may be required (but not exceeding one hundred dollars (\$100.00)) for the:

- (a) payment of the debts and liabilities of Cancer Council Australia contracted before it ceases to be a Member;
- (b) costs, charges and the expenses of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

4.3 Annual membership fee

Each Member undertakes to pay the annual membership fee, if any, as determined by the Board. The Board may determine different annual membership fees for different Members.

5. Establishment and operation of Gift Fund

5.1 Maintaining Gift Fund

Cancer Council Australia must maintain for its Objects a fund (**Gift Fund**):

- (a) to which gifts of money or property for its Objects are to be made;
- (b) to which contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund raising event held for that purpose are to be made;
- (c) to which any money received by Cancer Council Australia because of those gifts or contributions is to be credited; and
- (d) that does not receive any other money or property.

5.2 Limits on use of Gift Fund

Cancer Council Australia must use the Gift Fund only for its Objects.

5.3 Winding up

On the earlier of:

- (a) the winding up of the Gift Fund; or

- (b) Cancer Council Australia ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act,

any surplus assets of the Gift Fund must be transferred to:

- (c) those Members that are Eligible Recipients (in proportions determined by the Board); or
- (d) if no Members are Eligible Recipients, such other Eligible Recipients as are chosen by the Board.

6. Membership

6.1 Members

The Members shall be:

The Cancer Council NSW
ABN 51 116 463 846
ACN 116 463 846
153 Dowling Street
WOOLLOOMOOLOO NSW 2011

Cancer Council Victoria
ABN 61 426 486 715
ACN 608 530 972
Level 8, 200 Victoria Parade,
EAST MELBOURNE VIC 3002

Cancer Council South Australia
ABN 29 053 873 822
ACN 053 873 822
202 Greenhill Road
EASTWOOD SA 5063

Cancer Council Western Australia (Inc)
Registration number A0820219W
420 Bagot Road
SUBIACO WA 6008

Cancer Council Queensland
ACN 009 784 356
553 Gregory Terrace
FORTITUDE VALLEY QLD 4006

The Cancer Council Tasmania
180 -184 Collins Street
HOBART TAS 7000

The Cancer Council ACT
ABN 33 113 296 601
ACN 113 296 601
Unit 1, 173 Strickland Crescent

DEAKIN ACT 2600

Cancer Council of the Northern Territory Incorporated
Registration number 00603C
Unit 1 - 3
Casi House
Vanderlin Drive
CASUARINA NT 0810

6.2 Register

- (a) The Secretary must maintain the Register.
- (b) The Register must contain:
 - (i) the name, address and date of admission to membership – for each current Member; and
 - (ii) the name, date of admission to membership and date on which a Member stopped being a Member – for each person who ceased to be Member in the past seven years.
- (c) The Secretary may keep former Member entries separately from current Member entries.
- (d) Cancer Council Australia must give Members access to the Register in accordance with the Act.
- (e) Information that is accessed from the Register must only be used in a manner relevant to the interests or rights of Members.

7. Cessation of membership

7.1 When a Member ceases to be a Member

A Member ceases to be a Member:

- (a) on being dissolved or otherwise ceasing to exist;
- (b) on having a liquidator or provisional liquidator appointed to it;
- (c) on being insolvent; or
- (d) upon resigning, at any time, by giving notice in writing to the Secretary.

7.2 Effect of cessation of membership

If any Member ceases to be a Member under this constitution, the Member remains liable to pay to Cancer Council Australia any money which, at the time of the Member ceasing to be a Member, the Member owes to Cancer Council Australia on any account and for any sum not exceeding \$100 for which the Member is liable under clause 4.3.

8. General Meetings

8.1 Annual General Meeting

A general meeting to be called the **Annual General Meeting** must be held at least once in each calendar year and within five (5) months after the end of Cancer Council Australia's financial year. All meetings of the Members, including the Annual General Meeting, shall be called **General Meetings**.¹

8.2 Requisition by Board and Members

- (a) The Board may, whenever it considers it appropriate, call a General Meeting.
- (b) The Board must, on the requisition in writing of not fewer than two (2) Members made in accordance with clause 8.2(c), call a General Meeting.
- (c) A requisition of Members for a General Meeting:
 - (i) must state the purpose or purposes of the meeting;
 - (ii) must be signed by the Members making the requisition;
 - (iii) must be lodged with the Secretary; and
 - (iv) may consist of several documents in a similar form, each signed by one (1) or more of the Members making the requisition.

8.3 General Meeting by requisition of Members

- (a) If the Board fails to call a General Meeting within one (1) month after the date when a requisition of Members for the meeting made in accordance with clauses 8.2(b) and 8.2(c) is lodged with the Secretary, any one (1) or more of the Members who made the requisition may call a General Meeting to be held not later than three (3) months after that date.
- (b) To call and hold a meeting under clause 8.3(a) the Members must:
 - (i) as far as possible, follow the general meeting procedures in this Constitution;
 - (ii) hold the general meeting within three (3) months after making the requisition; and
 - (iii) pay their own expenses for calling and holding the meeting.

8.4 Notice of General Meetings

Subject to clause 8.5, at least twenty one (21) days' notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying:

- (a) the place, date and time for the General Meeting;
- (b) the general nature of the General Meeting's business;
- (c) if a special resolution is to be proposed at the General Meeting, the intention to propose the special resolution and the terms of the proposed resolution; and

¹ This clause provides that all meetings of the Members (including the AGM) of Cancer Council Australia are called 'General Meetings'. All references to 'General Meetings' in this Constitution also relate to AGMs by operation of the definition.

(d) details of any technology that will be used to facilitate the meeting,

shall be given to such persons as are entitled to receive such notices from Cancer Council Australia.

8.5 Short notice

Cancer Council Australia may call on shorter notice:

- (a) an Annual General Meeting if all the Members entitled to attend and vote at the Annual General Meeting agree in writing beforehand; and
- (b) any other General Meeting if Members with at least 75% of the votes that may be cast at the General Meeting agree beforehand.

8.6 Special resolutions

A special resolution means a resolution:

- (a) of which notice as set out in section 8.4(c) has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

8.7 Technology meeting of Members

- (a) A General Meeting may be called or held at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) The Members need not all be physically present in the same place for a General Meeting to be held.
- (c) A General Meeting held solely or partly using technology is treated as being held at the place at which the greatest number of Members present at the meeting is located or, if there is an equal number of Members located at two (2) or more places, at the place where the chair of the General Meeting is located.
- (d) The following provisions apply to a technology meeting:
 - (i) each of the Members taking part in the meeting must be able to hear and be heard by each of the other Members taking part in the meeting;
 - (ii) at the commencement of the meeting each Member must announce their presence to all the other Members taking part in the meeting;
 - (iii) a Member who participates in a meeting held in accordance with this clause 8.7 is taken to be present and entitled to vote at the meeting; and
 - (iv) a document that is required or permitted to be tabled at a technology meeting is taken to have been tabled if it is:
 - (A) given to the persons entitled to attend the meeting (whether physically or using technology) before the meeting; or
 - (B) made accessible to the persons entitled to attend the meeting (whether physically or using technology) during the meeting.

- (e) If the Secretary is not present at a technology meeting one (1) of the Members present or another person nominated by them present at the meeting must take minutes of the meeting.
- (f) For the purposes of this clause 8.7, a reference to a Member shall be taken to include the representative of the Member appointed to attend the General Meeting on behalf of the Member in accordance with clause 9.8.

9. Proceedings at General Meetings

9.1 Quorum required

No business shall be transacted at any General Meeting unless a quorum of Members is present when that item of business is being considered. Subject to clause 9.2, five (5) Members present shall be a quorum.

9.2 Effect on meeting if quorum not present

If within half an hour from the time appointed for the General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine. If, at the adjourned General Meeting, a quorum is not present within half an hour from the time appointed for the General Meeting, the Members present (being not less than two (2)) shall constitute a quorum.

9.3 Chair at General Meetings

The Chair shall preside as chair at each General Meeting of Cancer Council Australia. If the Chair is not present within 15 minutes after the time appointed for the holding of the General Meeting, or is unwilling to act, then the Members present shall elect one (1) of their number to be the chair of the General Meeting.

9.4 Chair may adjourn meeting

The chair of a General Meeting may, with the consent of a majority of Members present at a General Meeting at which a quorum is present (and shall, if so directed by a majority of the Members), adjourn the General Meeting from time to time and from place to place, but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place. When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned General Meeting shall be given as in the case of an original General Meeting. It shall not otherwise be necessary to give any notice of an adjournment for the business to be transacted at an adjourned meeting.

9.5 Resolutions to be decided by show of hands unless poll demanded

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded:

- (a) by the chair of the General Meeting; or
- (b) by at least three (3) Members present.

9.6 When a poll may be demanded

A poll may be demanded in accordance with clause 9.5:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

The demand for the poll may be withdrawn by the person or persons who made the demand.

9.7 Chair may declare resolution on show of hands

Unless a poll is so demanded, a declaration by the chair of the General Meeting that a resolution has on a show of hands been carried, 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 Cancer Council Australia shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

9.8 Members to appoint representatives

- (a) A Member may appoint a representative to attend the General Meeting on its behalf.
- (b) The appointment of a representative may:
 - (i) set out restrictions on the representative's powers; and
 - (ii) may be a standing one.
- (c) If the appointment is not a standing one, notice of the appointment must be given to the Secretary not less than one week before the date fixed for the General Meeting.
- (d) If the appointment is a standing one, notice of the appointment must be given to the Secretary not less than one week before the date fixed for the first General Meeting at which the representative will attend on behalf of the Member.
- (e) Notice of the appointment of a representative given in accordance with clause 9.8(c) or 9.8(d) is prima facie evidence of a representative having been validly appointed.
- (f) The chair of a General Meeting may permit a person claiming to be a representative to exercise the Member's powers even if:
 - (i) the chair of the General Meeting has not received notice in accordance with clause 9.8(c) or 9.8(d); or
 - (ii) they have not produced satisfactory evidence of their appointment.

9.9 Poll

If a poll is duly demanded it shall be taken in such manner and time as the chair of the General Meeting directs, but a poll demanded on the election of a chair or on a question

of adjournment shall be taken immediately. The result of the poll will determine whether the resolution on which the poll was taken is won or lost.

9.10 Entitlement to vote

The Members are entitled to cast one (1) vote each.

9.11 Equality of votes

In case of an equality of votes the chair of the General Meeting shall have a second or casting vote.

9.12 Proxies

Proxy voting is not permitted.

9.13 Written resolutions

- (a) This clause does not apply to a special resolution, a resolution to remove a Director or a resolution to appoint or remove an auditor.
- (b) The Members may pass a resolution in respect of a matter without a General Meeting being held provided at least 75% of all Members entitled to vote on the resolution consent to the resolution in accordance with the manner described in clause 9.13(e).
- (c) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) Any document referred to in this clause may be in the form of a facsimile transmission, electronic notification, or produced by other electronic or mechanical means.
- (e) A Member may consent to a resolution by:
 - (i) signing a document containing the resolution (or a copy of the document);
 - (ii) sending the consent in any document produced under the name of the Member with the Member's authority;
 - (iii) delivering to the registered office of Cancer Council Australia a written document addressed to the Secretary or the Chair, signifying assent to the resolution and either setting out its terms or otherwise clearly identifying the resolution; or
 - (iv) telephoning the Secretary or the Chair and signifying assent to the resolution and clearly identifying its terms. In such a case, the Secretary should make a contemporaneous file note that the assent has been received by telephone and the Member should promptly confirm the assent by email to the Secretary (but failure by the Secretary or Member to do so shall not invalidate the assent).
- (f) The resolution is passed when the last of the required number of Members, as set out in clause 9.13(b), consents to the resolution in accordance with clause 9.13(f).

10. Dispute resolution

- (a) The parties to a dispute under this Constitution, being a Member or Director and:
 - (i) one or more Members;
 - (ii) one or more Directors; or
 - (iii) Cancer Council Australia;must attempt to resolve the matter between themselves within 30 Business Days of being made aware of the dispute.
- (b) If the parties cannot resolve the dispute within 30 Business Days, they must:
 - (i) notify Cancer Council Australia;
 - (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (c) The mediator must:
 - (i) be a person chosen by agreement between the parties or;
 - (ii) in the absence of agreement:
 - (A) for disputes between Members, a person chosen by the Board; and
 - (B) for other disputes, a person chosen by the president of the Law Society of New South Wales.
- (d) A mediator chosen by the Board pursuant to clause 10(c)(ii)(A):
 - (i) must be a professionally accredited mediator;
 - (ii) must not have a personal interest in the dispute; and
 - (iii) must not be biased towards or against anyone involved in the dispute.
- (e) When conducting the mediation, the mediator must allow those involved a reasonable chance to be heard and to review any written statements.
- (f) The mediator must not determine the dispute.
- (g) A Member or a Director must not commence a formal legal proceeding (except for interlocutory relief) in relation to a dispute under this Constitution unless and until they have complied with this dispute resolution procedure.

11. Board

11.1 Composition of Board

Subject to clause 11.5, the Board shall consist of the following persons:

- (a) **Chair:** one (1) person appointed by the Board in accordance with clause 11.4, such person being the '**Chair**';
- (b) **Ordinary Directors:** up to eleven (11) persons appointed by the Members in accordance with clause 11.2, such persons being '**Ordinary Directors**'; and

- (c) **Consumer Director:** one (1) person appointed by the Board in accordance with clause 11.3, such person being the '**Consumer Director**'.

11.2 Ordinary Directors

- (a) The Ordinary Directors shall be appointed as follows:
- (i) The Cancer Council NSW shall be entitled to appoint two (2) Directors;
 - (ii) Cancer Council Victoria shall be entitled to appoint two (2) Directors;
 - (iii) Cancer Council Queensland shall be entitled to appoint two (2) Directors;
 - (iv) the following Members shall be entitled to appoint one (1) Director each:
 - (A) Cancer Council South Australia;
 - (B) Cancer Council Western Australia (Inc);
 - (C) The Cancer Council Tasmania;
 - (D) The Cancer Council ACT; and
 - (E) Cancer Council of the Northern Territory Incorporated.
- (b) A Member may appoint, remove or substitute the Ordinary Director appointed by it, including where a casual vacancy arises at any time, by giving written notice to the Secretary. Such appointment, removal or substitution will be effective from the date the notice is received by Cancer Council Australia provided, in the case of appointment, that Cancer Council Australia has also received a consent to act as a Director from the relevant person.
- (c) Each Ordinary Director (other than an Ordinary Director appointed by a Member to fill a casual vacancy) shall be appointed for a term of three (3) years and, on expiration of their term, shall be eligible for re-appointment provided that no person may serve more than six (6) years in total as an Ordinary Director.
- (d) Each Ordinary Director appointed by a Member to fill a casual vacancy may be appointed for a term of up to three (3) years and, on expiration of their term, shall be eligible for re-appointment provided that no person may serve more than six (6) years in total as an Ordinary Director.
- (e) An Ordinary Director must not be ineligible to be a Director under the Corporations Act or the ACNC Act.

11.3 Consumer Director

- (a) The Board shall appoint as the Consumer Director one (1) person who:
- (i) is not ineligible to be a Director under the Corporations Act or the ACNC Act;
 - (ii) shall be a consumer who has been directly affected by cancer as a patient, survivor, carer or family member; and
 - (iii) who is not a Director appointed by a Member and who has never been a Director appointed by a Member.

- (b) A Consumer Director shall be appointed for a term of three (3) years and on expiration of their term shall be eligible for re-appointment provided that no person may serve more than six (6) years in total as a Consumer Director.

11.4 Chair and Deputy Chair

- (a) The Board shall appoint:
 - (i) as Chair, a person who must not be:
 - (A) a Director of any Member; or
 - (B) an employee of any Member; and
 - (ii) one (1) of their number (other than the Chair) as Deputy Chair.
- (b) If a person held the office of Director immediately prior to being appointed as Chair:
 - (i) the Member who appointed the person as a Director or, in the case where the Board appointed the person as a Director, the Board, shall be entitled to appoint one (1) further Director (**Additional Appointment**); and
 - (ii) the Additional Appointment shall be governed by the provisions of:
 - (A) clause 11.2 in the case where the Chair had been appointed as a Director by a Member; and
 - (B) clause 11.3 in the case where the Chair had been appointed as a Consumer Director by the Board.
- (c) The Chair shall be appointed for a term of three (3) years and on expiration of their term shall be eligible for re-appointment, provided that no person may serve more than nine (9) years in total in holding the office of Director or Chair. Otherwise, the Board shall specify the terms of each appointment.
- (d) The Deputy Chair shall be appointed for a term of one (1) year and on expiration of their term shall be eligible for re-appointment as Deputy Chair (but shall not by virtue only of expiration of their office as Deputy Chair cease to hold office as a Director), provided that no person may serve more than three (3) years in total as Deputy Chair. Otherwise, the Board shall specify the terms of each appointment.
- (e) The Chair, or in the Chair's absence, the Deputy Chair shall preside at all meetings of the Board, subject to clause 13.5. The Chair shall also preside at General Meetings unless the Members at such a General Meeting elect someone else to be chair of the General Meeting pursuant to clause 9.3.
- (f) A person will automatically cease to be the Chair and a new Chair will be appointed in their stead by resolution of the Board in accordance with clause 11.4, if the person becomes at any time while holding office:
 - (i) a Director of any Member; or
 - (ii) an employee of any Member.
- (g) The Board may, by resolution, request that the Members remove a person as Chair and Director in accordance with clause 11.5(a).

11.5 Removal of Director by resolution

- (a) Cancer Council Australia may by ordinary resolution passed at a General Meeting of the Members remove any Director.
- (b) If a Director has been removed in accordance with clause 11.5(a):
 - (i) in the case of a Consumer Director, the Board may resolve to appoint another person in their stead in accordance with clause 11.3;
 - (ii) in the case of the Chair, the Board may resolve to appoint another person in their stead in accordance with clause 11.4; and
 - (iii) in the case of an Ordinary Director, only the Member that appointed that Ordinary Director may appoint another person as an Ordinary Director as a replacement of the removed Ordinary Director.

11.6 Vacancy

- (a) The office of a Director shall become vacant if the Director:
 - (i) ceases to be a Director by virtue of the Corporations Act;
 - (ii) becomes bankrupt or makes any arrangement or composition with their creditors;
 - (iii) becomes ineligible to be a Director under the Corporations Act or becomes prohibited from being a director of a company by reason of any order or disqualification made under the Corporations Act;
 - (iv) 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;
 - (v) resigns their office by notice in writing to Cancer Council Australia;
 - (vi) is absent without permission of the Board from two (2) consecutive meetings of the Board;
 - (vii) is an Ordinary Director nominated by a Member and that Member ceases to be a Member;
 - (viii) is directly or indirectly interested in any contract or proposed contract with Cancer Council Australia and fails to declare the nature of the interest in the manner required by s191 of the Corporations Act (or as would be required under s191 of the Corporations Act if Cancer Council Australia were not a Registered Entity); or
 - (ix) becomes ineligible to be a Director under the ACNC Act while Cancer Council Australia is a Registered Entity.
- (b) Any such vacancy may be filled as contemplated in clauses 11.2, 11.3 and 11.4(a) (as applicable).

12. Powers and duties of the Board

12.1 General business management

- (a) The business of Cancer Council Australia is to be managed by, or under the direction and control of, the Board.

- (b) The Board has overall responsibility for governance, management and strategic direction of Cancer Council Australia.
- (c) The Board may exercise all the powers of Cancer Council Australia except any powers that the Corporations Act or this Constitution requires Cancer Council Australia to exercise in a General Meeting.
- (d) Directors must comply with any duties imposed on them by the Corporations Act and with the duties described in governance standard 5 of the ACNC Act.
- (e) The Board may not delegate the following powers and functions:
 - (i) receipt and consideration of reports of the auditor and any audit committee;
 - (ii) establishment and membership of Committees of the Board;
 - (iii) appointment of a Consumer Director under clause 11.3;
 - (iv) appointment of the Chief Executive Officer (CEO) and selection panels for appointment of the CEO;
 - (v) acquisition, sale, mortgaging or otherwise disposing or dealing with real property;
 - (vi) the authority to call a General Meeting;
 - (vii) the authority to borrow money; and
 - (viii) the authority to enter into contracts of a value equal to or greater than \$250,000.
- (f) Subject to clause 12.1(e) the Board may delegate any of its powers to Committees (not being duties imposed on the Directors at law) and:
 - (i) any Committee so formed must comply with any direction that may be given by the Board;
 - (ii) each Committee shall have the power to co-opt any person to advise and assist the Committee in the discharge of its functions; and
 - (iii) all members of such Committees shall have one (1) vote.
- (g) A Committee must exercise the power delegated to it in accordance with any directions of the Board. The exercise of the power by the Committee is as effective as if the Board had exercised that power.
- (h) The Board may from time to time appoint advisory committees having such membership and charter as the Board considers appropriate.
- (i) A rule made or resolution passed by Cancer Council Australia in a General Meeting does not invalidate any prior act of the Board which would have been valid if that rule or resolution had not been made or passed.
- (j) All cheques, promissory notes, draft bills of exchange and other negotiable instruments and all receipts for money paid to Cancer Council Australia shall be drawn, accepted, endorsed or otherwise executed as the case may be by any two (2) Directors or in such manner as the Board from time to time determines.

12.2 Board may exercise the borrowing powers

Without limiting the generality of clause 12.1, but subject to clause 3.1, the Board may exercise all the powers of Cancer Council Australia to borrow money and to mortgage or charge all or any part of its property and to issue debentures or give any other security for any debt liability, or obligation of Cancer Council Australia.

12.3 Appointment of Chief Executive Officer

- (a) The Board may from time to time appoint a CEO on terms agreed by the Board, including the remuneration to be paid to the CEO. The CEO is not a member of the Board, but will have a standing invitation to attend meetings of the Board unless excused from doing so by the Chair or where the Board otherwise request.
- (b) The CEO will be responsible for the day-to-day management of Cancer Council Australia.
- (c) The Board may:
 - (i) subject to 12.1(e) confer on the CEO any of the powers that the Board may exercise;
 - (ii) authorise the CEO to further delegate all or any of the powers conferred on the CEO by the Board;
 - (iii) vary or revoke a conferral of any power on the CEO; and
 - (iv) terminate the appointment of the CEO.

12.4 Minutes to be kept

The Board shall cause minutes to be made of:

- (a) the names of Members present at General Meetings and the names of all Directors present at meetings of the Board; and
- (b) all proceedings at all General Meetings and meetings of the Board.

12.5 Minutes to be signed by chair

All minutes of a General Meeting and of meetings of the Board shall be signed within a reasonable period after the meeting by the chair of the meeting at which the proceedings were held, or by the chair of the next succeeding meeting.

13. Proceedings of the Board

13.1 Board meetings

The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Secretary shall on the requisition of a Director summon a meeting of the Board.

13.2 Board to decide by majority

- (a) Subject to this Constitution questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Directors shall for all purposes be deemed a determination of the Board.
- (b) Each Director present at any meeting is entitled to one vote on any matter being voted on.
- (c) In case of an equality of votes the chair of the meeting of the Board shall have a second or casting vote.

13.3 Quorum for Board meetings

The quorum necessary for the transaction of the business of the Board shall be seven (7) Directors, or such greater number as may be fixed by the Board and the quorum must be present at all times during the meeting.

13.4 Board may continue to act notwithstanding a vacancy

The Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of the Board, the Directors at that time may act for the purpose of increasing the number of Directors to that number or summoning a General Meeting but for no other purpose.

13.5 Chair of Board meetings

The Chair shall preside at each meeting of the Board, or if the Chair is not present within fifteen (15) minutes after the time appointed for holding the meeting, the Deputy Chair shall be chair of the Board meeting. If the Deputy Chair is not present at the meeting then the Directors present at the meeting may choose one of their number to be chair of the Board meeting.

13.6 Technology meetings of Directors

- (a) A Board meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw their consent (including consent under 13.6(b)) within a reasonable period before the time appointed for the meeting.
- (b) Without limiting clause 13.6(a), each Director consents to the use of the following technology for holding a Board meeting:
 - (i) video; and
 - (ii) telephone.
- (c) The directors need not all be physically present in the same place for a Board meeting to be held.
- (d) A Board meeting held solely or partly using technology is treated as being held at the place at which the greatest number of Directors present at the Board meeting is located or, if there is an equal number of Directors located at two (2) or more places, at the place where the chair of the Board meeting is located.
- (e) The following provisions apply to a technology meeting:

- (i) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting;
- (ii) at the commencement of the meeting each Director must announce their presence to all the other Directors taking part in the meeting;
- (iii) a Director who participates in a meeting held in accordance with this clause 13.6 is taken to be present and entitled to vote at the meeting; and
- (iv) a document that is required or permitted to be tabled at a technology meeting is taken to have been tabled if it is:
 - (A) given to the persons entitled to attend the meeting (whether physically or using technology) before the meeting; or
 - (B) made accessible to the persons entitled to attend the meeting (whether physically or using technology) during the meeting.
- (f) If the Secretary is not present at a technology meeting one (1) of the Directors present or another person nominated by them present at the meeting must take minutes of the meeting.

14. Directors' interests

14.1 Material conflicts of interest

Except where permitted by the Corporations Act (or where it would be permitted by the Corporations Act if Cancer Council Australia were not a Registered Entity), a Director who has a material personal interest in a matter that is being considered at a meeting of the Board:

- (a) must not be counted in a quorum;
- (b) must not vote on the matter; and
- (c) must not be present while the matter is being considered at the meeting.

14.2 Notice of interest

- (a) A Director who has an interest in a matter shall give the other Directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and regardless of whether or not the matter relates to the affairs of Cancer Council Australia at the time the notice is given.
- (b) A notice under clause 14.2(a) may be given:
 - (i) at a Board meeting (either orally or in writing); or
 - (ii) to the other Directors individually in writing.
- (c) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

15. Proceedings of Committees

15.1 General

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

15.2 Composition of Committees

Subject to clause 15.3, a Committee must include at least one Director and may include other persons determined by the Board.

15.3 Chair of Committees

The Board will appoint a chair of each Committee who is a Director. If at any meeting the Committee chair is not present within fifteen (15) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chair of the meeting.

15.4 Meetings of Committees

- (a) A Committee may meet and adjourn as it thinks proper. A resolution on a matter before a committee arising at any meeting of the Committee shall be determined by a majority of votes of the committee members present, and in the case of an equality of votes the Committee chair of the relevant Committee meeting shall have a second or casting vote.
- (b) The Committee chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- (c) The quorum necessary for the transaction of business by a committee shall be a majority of the members of the Committee.

16. Validity of acts

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Board Committee; or
- (b) a person appointed to one of those positions was disqualified from the office of Director,

all acts of the Directors or of the Board and its Committees before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

17. Written resolutions

- (a) The Directors may pass a resolution in respect of a matter without a Board meeting being held provided a majority of all Directors entitled to vote on the resolution consent to the resolution in accordance with the manner described in clause 17(e).
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The outcome of a resolution that is passed in accordance with clause 17(a), will be included for noting in the minutes of the next meeting of the Board.

- (d) Any document referred to in this clause may be in the form of a facsimile transmission, electronic notification, or produced by other electronic or mechanical means.
- (e) A Director may consent to a resolution by:
 - (i) signing a document containing the resolution (or a copy of the document) and sending the document to the Secretary or the Chair;
 - (ii) sending the consent to the Secretary or the Chair in any document produced under the name of the Director with the Director's authority;
 - (iii) delivering to the registered office of Cancer Council Australia a written document addressed to the Secretary or the Chair, signifying assent to the resolution and either setting out its terms or otherwise clearly identifying the resolution; or
 - (iv) telephoning the Secretary or the Chair and signifying assent to the resolution and clearly identifying its terms. In such a case, the Secretary should make a contemporaneous file note that the assent has been received by telephone and the Director should promptly confirm the assent by email to the Secretary (but failure by the Secretary or Director to do so shall not invalidate the assent).
- (f) The resolution is passed when the last of the required number of Directors, as set out in clause 17(a), consents to the resolution in accordance with clause 17(e).
- (g) The provisions applying to Directors in this clause 17 (relating to written resolutions of the Board) apply in the same manner to members of Committees for the purposes of Committees effecting written resolutions.

18. Secretary

The Secretary shall be appointed by the Board for such term, at such remuneration and on such conditions as the Board thinks fit and any Secretary so appointed may be removed by the Board.

19. Accounts

- (a) The Board must cause proper accounting and records to be kept in accordance with all legal and regulatory requirements.
- (b) The Board must distribute copies of the financial accounts (including every document required by law to be attached to it) in accordance with all legal and regulatory requirements.

20. Audit

- (a) If required by law, Cancer Council Australia must appoint and remunerate an auditor..
- (b) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

- (c) The auditor is entitled to attend any General Meeting and to be heard by the Members on any business of the meeting that concerns the auditor in their capacity as auditor.
- (d) Cancer Council Australia may give any auditor all communications relating to the General Meeting that the Members of Cancer Council Australia are entitled to receive.

21. Financial year

Cancer Council Australia's financial year will begin on 1 July and end on 30 June, unless the Board passes a resolution to change the financial year.

22. Notices

22.1 Service of notices

- (a) Notice may be given by Cancer Council Australia to any person who is entitled to notice under this constitution:
 - (i) by serving it on the person; or
 - (ii) by sending it by post, courier, facsimile transmission or electric notification to the person's address shown in the Register or the address supplied by the person to Cancer Council Australia for sending notices to the person.
- (b) A notice sent by post or courier is taken to be served:
 - (i) by properly addressing, prepaying and posting or directing the delivery of the notice; and
 - (ii) on the third Business Day after the Business Day on which it was posted or given to the courier for delivery.
- (c) A notice sent by facsimile transmission or electronic notification is taken to be served:
 - (i) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (ii) on the day of its transmission except if transmitted after 5.00pm in which case it is taken to be served on the next Business Day.
- (d) The signature to a written notice given by Cancer Council Australia may be written or printed.
- (e) For the purposes of this Constitution, a reference to a Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in any Australian State or Territory.

22.2 Notices of General Meetings

- (a) Notice of a General Meeting must be given to:
 - (i) every Member;
 - (ii) every Director; and

- (iii) each auditor,
for the time being of Cancer Council Australia.

- (b) No other person is entitled to receive notice of a General Meeting.

23. Execution of documents

23.1 Common seal

Cancer Council Australia does not have a common seal.

23.2 Execution of documents without common seal

Cancer Council Australia may execute documents by having any such documents signed by:

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

24. Indemnity and insurance

24.1 Persons to whom clauses 24.2 and 24.5 apply

Clauses 24.2 and 24.5 apply to:

- (a) each person who is or has been a Director or Secretary; and
- (b) any other officers or former officers of Cancer Council Australia or of its related bodies corporate that the Board decide in each case.

24.2 Indemnity

- (a) To the extent permitted under the Corporations Act, Cancer Council Australia indemnifies:
 - (i) every person who is or has been an officer of Cancer Council Australia; and
 - (ii) where the Board considers it appropriate to do so, any person who is or has been an officer of a related body corporate of Cancer Council Australia,

against all losses, liabilities, costs, charges and expenses incurred by that person in their capacity as an officer of Cancer Council Australia or of the related body corporate (as the case may be). This indemnity includes, without limitation:

- (iii) a liability for negligence; and
 - (iv) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Corporations Act.
- (b) The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable

or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.

- (c) In accordance with section 199A of the Corporations Act, Cancer Council Australia must not indemnify a person against:
- (i) any of the following liabilities incurred as an officer of Cancer Council Australia:
 - (A) a liability owed to Cancer Council Australia or a related body corporate;
 - (B) a liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations Act; or
 - (C) a liability that is owed to someone other than Cancer Council Australia or a related body corporate and did not arise out of conduct in good faith; or
 - (ii) legal costs incurred in defending an action for a liability incurred as an officer of Cancer Council Australia if the costs are incurred:
 - (A) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 24.2(c)(i);
 - (B) in defending or resisting criminal proceedings in which the person is found guilty;
 - (C) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (D) in connection with proceedings for relief to the person under the Corporations Act in which the Court denies the relief.
 - (iii) Clause 24.2(c)(ii)(C) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.
 - (iv) For the purposes of clause 24.2(c)(ii) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
- (d) An officer must:
- (i) give notice to Cancer Council Australia promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified by Cancer Council Australia;
 - (ii) take such action as Cancer Council Australia reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
 - (iii) not make any admission of liability in respect of or settle any Claim without the prior written consent of Cancer Council Australia;

- (iv) allow Cancer Council Australia or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by Cancer Council Australia, render all reasonable assistance and co-operation to Cancer Council Australia or its insurers in the conduct of any Claim, including giving Cancer Council Australia or its insurers any document, authority or direction that Cancer Council Australia or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
 - (v) on request by Cancer Council Australia or its insurers, do everything necessary or desirable which Cancer Council Australia reasonably requests to enable Cancer Council Australia or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by Cancer Council Australia or its insurers for that purpose; and
 - (vi) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.
- (e) In clause 24.2(d), **Claim** means:
- (i) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of Cancer Council Australia;
 - (ii) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of Cancer Council Australia; or
 - (iii) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in clause 24.2(e)(i) or 24.2(e)(ii) may be initiated.
- (f) If an officer of Cancer Council Australia becomes personally liable for the payment of any sum primarily due from Cancer Council Australia, and the officer may be indemnified under clause 24.2(a), the Directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of Cancer Council Australia by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

24.3 Advance

The Board may agree to advance to an officer an amount which Cancer Council Australia might otherwise be liable to pay to the officer under clause 24.2 on such terms as the Board thinks fit, but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether Cancer Council Australia is in fact liable to indemnify the officer under clause 24.2. If, after Cancer Council Australia makes the advance, the Board forms the view that Cancer Council Australia is not liable to indemnify the officer, Cancer Council Australia may recover an advance from the officer as a debt due by the officer to Cancer Council Australia.

24.4 Extent of indemnity

The indemnity in clause 24.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 24.2 applies even though that person has ceased to be an officer of Cancer Council Australia or of a related body corporate; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

24.5 Insurance

Cancer Council Australia will, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 24.5 applies against any liability incurred by the person as an officer of Cancer Council Australia or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome but excluding a liability (other than one for legal costs) arising out of:

- (c) conduct involving a wilful breach of duty in relation to Cancer Council Australia; or
- (d) a contravention of section 182 or 183 of the Corporations Act.

24.6 Entry into an agreement

- (a) Subject to the Corporations Act and without limiting a person's rights under this clause 24, Cancer Council Australia may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of Cancer Council Australia to give effect to the rights of the person under this clause 24, or to the exercise of a discretion under this clause 24, on any terms and conditions that the Board thinks fit. Any such agreement may also give the person rights to inspect and obtain copies of the books of Cancer Council Australia for the purposes, and on such other terms and conditions, as the Board decides.
- (b) For the avoidance of doubt, the Board may authorise Cancer Council Australia to enter into any agreement (including a deed) permitted by this clause 24.

25. Winding up

- (a) Subject to clause 4.2, if on the winding up or dissolution of Cancer Council Australia any property remains, and after satisfaction of all its debts and liabilities, that property must be given or transferred to:
 - (i) those Members that are Eligible Recipients (in proportions determined by the Members); and
 - (ii) if no Members are Eligible Recipients, such Eligible Recipients as are determined by the Members at or before the time of dissolution.

- (b) If the Members do not make the necessary determination under clause 25(a), Cancer Council Australia may apply to the Supreme Court of New South Wales to determine such Eligible Recipients.

26. Alterations to this Constitution

- (a) Cancer Council Australia may only alter this Constitution by special resolution in accordance with the Corporations Act.
- (b) The Members must not pass a special resolution that amends this Constitution if passing it causes Cancer Council Australia to no longer be a charity registered under the ACNC Act.
- (c) All alterations making a material alteration to or materially affecting this Constitution must, as and to the extent required by law, be notified in writing to the Australian Charities and Not-for-Profits Commissioner.

27. Applicable not-for-profit laws

Cancer Council Australia will comply with all laws relating to the regulation or operation of charities or not-for-profit entities including the ACNC Act and the Tax Act, and any rulings or requirements of the Commissioner of the Australian Charities and Not-for-Profits Commission or the Commissioner of Taxation, having application to Cancer Council Australia.