



# Constitution of the Anti-Cancer Foundation of South Australia



**CONSTITUTION  
of the  
ANTI-CANCER FOUNDATION OF SOUTH AUSTRALIA**

1. The name of the Company is the Anti-Cancer Foundation of South Australia.
2. The liability of the members is limited.
3. The sole object of the Company is to act as trustee of the public charitable trust known as the Anti-Cancer Foundation of South Australia and for that purpose the Company has all the rights, powers and privileges conferred on it by the Corporations Act.
4. A special resolution altering, adding to or omitting this clause or any of the clauses of the Constitution of the Company does not have effect unless it has been passed with the consent in writing of a majority of the Members of the Company for the time being.
5. The income and property of the Company whencesoever derived, shall be applied solely towards the promotion of the object of the Company as set forth in this Constitution, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend bonus or otherwise, to the members of the Company.

Provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the Company or to any member of the Company in return for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable terms, nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this paragraph by the Constitution on money borrowed from any members of the company or reasonable and proper rent for premises demised or let by any member to the company, but so that no director shall be appointed to any salaried office of the company except as an employee of the company where the terms of employment have been approved by a resolution of the Board and that no remuneration or other benefit in money or money's worth shall be paid or given by the company to any director except for the payment of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the Board, interest at the rate aforesaid on money lent and reasonable and proper rent for premises demised or let by the company.

6. If upon the winding-up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to nor distributed among the members of the Company, but shall be given or transferred to some other institution or company approved under the provisions of *Division 50* of the Income Tax Assessment Act, 1997 whose objects are similar to the object of the Company and whose Memorandum of Association or constitution shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of *Clause 5* hereof. Such institution or institutions to be determined by the Members of the Company at or before the time of the dissolution and in default thereof by application to the Supreme Court for determination.

7. The alteration, addition to or omission of *Clauses 5 and 6* of this Constitution is prohibited unless pursuant to *Section 60* of the **Trustee Act, 1936** or some other enabling power, the Supreme Court of South Australia has directed or ordered that the proposed alteration, addition or omission be made.
8. True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Company. Once at least in every year, the accounts of the Company shall be examined by one or more properly qualified Auditor or Auditors who shall report to the members in accordance with the provisions of the Corporations Act.
9. *Clauses 5 and 8* of this Constitution contain conditions upon which a licence is granted by the Commission to the Company. In pursuance of the provisions of the said clauses the Commission may from time to time, on giving notice to the Company of its intention to do so, and after affording the Company an opportunity of being heard in opposition thereto, within such time as may be specified in such notice, impose further conditions which shall be duly observed by the Company.
10. Each member of the Company undertakes to contribute to the property of the Company, in the event of it being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the Company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$100.00.

## **GENERAL**

11. The regulations contained in Replaceable Rules contained in the Corporations Act shall not apply to this Company and in lieu thereof the following shall be the Constitution of this Company.

## **INTERPRETATION**

12. In this Constitution unless there is something in the subject or context inconsistent therewith:
  - 12.1 “Constitution” means the Constitution of the Company for the time being in force.
  - 12.2 “the Directors” or “Board” means the whole or any (not being less than a quorum) of the directors for the time being of the Company assembled at a meeting of directors in accordance with this Constitution.
  - 12.3 “a Director” means a natural person appointed in accordance with this Constitution as a Director of the Board.
  - 12.4 “General Meeting” means a general meeting of Members.

- 12.5 “Act” means the Corporations Act 2001 applying in South Australia as it may be amended from time to time and any Act Ordinance or Code by which it may be replaced.
- 12.6 “Member” means any Person whose name is for the time being entered in the Register as a member.
- 12.7 “Month” means calendar month.
- 12.8 “Officer” in relation to the Company has the meaning assigned to it by the Act.
- 12.9 “Office” means the registered office of the Company for the time being.
- 12.10 “Person” and words importing persons include an association and a corporation (unincorporated or incorporated by Act of Parliament or registration and wherever formed).
- 12.11 “the Register” means the register of members to be kept pursuant to the Act.
- 12.12 “Secretary” includes any person appointed to perform temporarily.
- 12.13 “Special Resolution” has the meaning assigned to it by the Act.
- 12.14 “the State” means the State of South Australia.
- 12.15 “in writing” or “written” includes every means of representing or reproducing words in a visible or permanent form.
- 12.16 The singular number includes the plural number and vice versa. Words importing any gender include the other genders.

## **MEMBERS AND MEMBERSHIP**

13. 13.1 Such Persons who execute such application for membership as the Board requires and whose admission to membership is approved by the Board shall be Members of the Company.
- 13.2 A Member may relinquish his, her or its membership of the Company by giving notice in writing to the Company specifying that the Member concerned no longer wishes to be a Member and on receipt of that notice, the Company shall make an entry in the Register to the effect that the Member concerned has ceased to be a Member.
- 13.3 A person’s membership of the Company shall automatically cease contemporaneously with that person ceasing to be a Director of the Company but without prejudice to that Member’s obligations under Clause 10 of this Constitution.
14. No Member shall be at liberty to transfer his membership or any rights or privileges attached to such membership to any other Person.

## GENERAL MEETINGS

15. The Board or any two Members may whenever they or the Members concerned thinks fit, convene a General Meeting on written notice to Members or the Board.
16. Subject to the Act all General meetings shall be held at such time and place as shall be determined by the Board.
17. A notice of a General Meeting shall specify the place, the day and the hour of meeting and, (except as provided by this Constitution) shall state the general nature of the business to be transacted at the meeting.
18. A notice convening a General Meeting shall be given to Members at least 21 days before that meeting excluding the day on which the notice is sent or given to Members and the day of that meeting.
19. It is not necessary for a notice of an Annual General Meeting of the Company to state that the business to be transacted at that meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Directors in place of those retiring or the appointment and fixing of remuneration of the auditors.

## PROCEEDINGS AT GENERAL MEETINGS

20. No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
21. The quorum for a General Meeting shall be one-third of the Members present in person or by proxy.
22. If a quorum of Members is not present within half an hour from the time appointed for the General meeting, the meeting stands adjourned to a day (being a day within 14 days of the day appointed for the General Meeting), and a time and place, as the Board determines or, if no determination is made by the Board, to the same day in the next week at the same time and place.
23. If at such adjourned meeting a quorum of Members is not present within half an hour from the time appointed for the meeting, any one-quarter of the Members present shall constitute a quorum.
24. If the Board has elected one of their number as Chairman of their meetings, he shall preside as Chairman at every General Meeting.
25. Where a General Meeting is held and:
  - 25.1 a Chairman has not been elected as provided by *Clause 24*; or
  - 25.2 the Chairman is not present within 15 minutes after the time appointed for the holding of the General Meeting or is unwilling to act,the Members present shall elect one of their number to be Chairman of the General Meeting.

26. The Chairman may with the consent of any General Meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
27. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of a General Meeting.
28. Except as provided by *Clause 27*, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
29. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands) a poll is demanded:
  - 29.1 by the Chairman; or
  - 29.2 by any Member present in person or by proxy or attorney.
30. The demand for a poll may be withdrawn.
31. If a poll is duly demanded, it shall be taken in such manner and (subject to *Clause 32*) either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
32. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith.
33. A declaration by the Chairman that a resolution has been carried or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of that fact without proof of the number of the votes recorded in favour of or against the resolution.

## **VOTES OF MEMBERS**

34. A Member may appoint another Member to be a proxy in his/her place at an Annual General Meeting or General Meeting.
35. At Meetings both on a show of hands and on a poll every Member present in person or by proxy has one vote.
36. An objection as to the qualification of a voter may be raised only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
37. Any such objection shall be referred to the Chairman of the meeting, whose decision is final and a vote not disallowed pursuant to such an objection is valid for all purposes.
38. An instrument appointing a proxy:
  - 38.1 shall be in writing and signed (where the Member is a body corporate) either under the common seal of the Member concerned or under the hand of an officer or attorney duly authorised by that Member;

- 38.2 may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument; and
- 38.3 shall be deemed to confer authority to demand a poll.
39. A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the revocation of the instrument (or of the authority under which the instrument was executed) or of the power if no intimation in writing of the revocation has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used.

## **APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

40. The number of Directors shall be not less than four nor more than twelve. No person may be appointed as a Director unless he or she is a Member of the Company.
41. The Members in General Meeting may by resolution appoint a Director or remove any Director so appointed from office and may by resolution appoint another person in his stead.
42. 42.1 At every annual general meeting one third of the Directors or if their number is not a multiple of three then the number nearest to but not exceeding one third shall retire from office, subject to clause 42.3, and be eligible for re-election **PROVIDED** that no Director shall retain office after the third annual general meeting after such Director's appointment without submitting himself for re-election even though such submission results in more than one third retiring from office.
- 42.2 As between two or more who have been in office an equal length of time the Director or Directors to retire shall in default of agreement between them be determined by lot. The length of time a Director has been in office shall be computed from his last election or appointment. A retiring Director shall act as a Director throughout the meeting at which he retires.
- 42.3 As from the Annual General Meeting in the year 2011, a Director who has served three or more consecutive terms (including terms that began before 2011) is not eligible for re-election for another consecutive term unless, prior to his or her election, the other Directors resolve by not less than 2/3rds majority of their number to accept his or her nomination for re-election.
43. Subject to the Act no Director shall be disqualified by his office from contracting with the Company either as vendor purchaser or otherwise in any manner howsoever nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided.
44. No Director shall be liable to account to the Company for any profit arising from any contract or arrangement referred to in *Clause 43* so long as the Director concerned has disclosed his or her interest in accordance with the Corporations Act.

45. No remuneration or other benefit in money or money's worth may be paid or given by the Company to any Director except as an employee of the company where the terms of employment have been approved by a resolution of the Board or pursuant to *Clause 46* or for the provision of a financial benefit to a director to which *Section 200A* (or its equivalent section) of the Corporations Act refers or payment of an insurance premium in respect of a contract insuring a director to which *Section 199B* (or its equivalent section) of the Corporations Act refers.
46. A Director may, if it is so resolved by the Members in General Meeting, be paid all travelling and other expenses properly incurred by him in attending and returning from meetings of the Directors or any committee of the Directors or General Meeting of the Company or otherwise in connection with the business of the Company where the payments do not exceed an amount previously approved by the Members.
47. A Director may be paid for any service rendered to the Company in a professional or technical capacity, where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms. Any such payments to be declared in the Annual Accounts.
48. In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director shall become vacant if the Director:
  - 48.1 becomes an insolvent under administration;
  - 48.2 becomes prohibited from being a Director by reason of any order made under the Act;
  - 48.3 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;
  - 48.4 resigns his office by notice in writing to the Company;
  - 48.5 ceases to be a Member of the Company;
  - 48.6 is removed from office pursuant to *Clause 41*; or
  - 48.7 is directly or indirectly interested in any contract or proposed contract with the Company and does not declare his or her interest in accordance with *Section 191* of the Corporations Act or its equivalent section.

## **POWERS AND DUTIES OF DIRECTORS**

49. Subject to the Act and to any other provision of this Constitution, the business of the Company shall be managed by the Board, which may pay all expenses incurred in promoting and forming the Company, and may exercise all powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Members in General Meeting.
50. The Board may, for the purpose of carrying into effect the object of the Company, appoint such Persons and constitute such committees with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board) and upon such terms as it thinks fit.

51. The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for any purposes, with any powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for any period and subject to any conditions as they think fit.
52. Any power of attorney may contain a provision for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.
53. 53.1 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in a manner as the Board determines.  
  
53.2 All credit card and electronic transactions shall be executed in a manner as the Board determines.
54. For the purpose of *Clause 5* of this Constitution of the Company, the rate of interest payable in respect of money lent by Members to the Company shall not exceed the lowest rate paid for the time being by BankSA in respect of term deposits.

#### **PROCEEDINGS OF DIRECTORS**

55. The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
56. A Director may at any time, and a Secretary shall on the requisition of a Director, convene a meeting of the Directors but it shall not be necessary to give any notice to a Director for the time being absent from Australia.
57. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be two.
58. Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any decision shall for all purposes be deemed a decision of the Directors.
59. The Directors shall elect one of their number as Chairman of their meetings and may determine the period for which he is to hold office as Chairman.
60. In the case of an equality of votes the Chairman shall not have a second or casting vote.
61. A Director may not vote in respect of any contract or arrangement in which he or she is interested and nor shall he or she be counted in a quorum at any meeting at which any such contract or arrangement is considered.

62. In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act and, if the number or remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act for the purpose of increasing the number of Directors to a number at least sufficient to constitute the required quorum. The additional Directors so appointed shall hold office only until the next General Meeting but may be re-appointed under *Clause 42*.
63. Where a meeting of Directors is held and:
  - 63.1 a Chairman has not been elected as provided by *Clause 59*; or
  - 63.2 the Chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,the Directors present shall elect one of their number to be Chairman of the meeting.
64. The Directors may delegate any of their powers to a committee or committees consisting of any one or more of their number as they think fit.
65. A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any direction of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
66. A committee of more than one person established under *Clause 64* may elect one of their number as Chairman of their meetings.
67. A committee may meet and adjourn as it thinks proper.
68. Questions arising at a meeting of a committee of more than one member shall be determined by a majority of votes of the members present and voting and in the case of an equality of votes the Chairman shall not have a second or casting vote.
69. If all Directors entitled to receive notice for the time being have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
70. For the purposes of *Clause 69*, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
71. All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are as valid as if the person had been duly appointed and was qualified to be a Director or to be a committee member notwithstanding that it is afterwards discovered that there was some defect in the appointment of that person to be a Director or a Member of the committee, or to act as, a Director, or that person so appointed was disqualified.

## **AUDIO CONFERENCE**

- 72 72.1 Without limiting the discretion of the Board to regulate its meetings the Board may confer using any technology consented to by all the Directors, including without limitation, by radio telephone closed circuit television or other electronic means of contemporaneous audio or audio-visual communication (“Audio Conference”).
- 72.2 A resolution passed at an audio conference shall be taken to have been passed at a meeting of the Board held on the day on which and at the time at which the audio conference was held.
- 72.3 The provisions of this Constitution relating to proceedings of the Board apply so far as they are capable of application to an audio conference.

## **CHIEF EXECUTIVE OFFICER**

73. 73.1 The Chief Executive Officer shall be appointed by the Board on such terms and conditions as the Board shall from time to time determine.
- 73.2 The Chief Executive Officer shall be responsible to the Board for the routine operation and management of the Company's affairs, for the implementation of Company policy and Board decisions, and for the employment, termination and supervision of other employees of the company.

## **SECRETARY**

74. The Secretary holds office on terms and conditions, as to remuneration or otherwise, as the Board determine.

## **SEAL**

75. Under the provisions of the Corporations Act the Board of Directors has resolved that the use of the Seal be discontinued.

## **INSPECTION OF RECORDS**

76. Subject to the Act, the Board shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be 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 the Directors.

## AUDIT

77. The accounts of the Company shall be audited once at least in every year and the correctness of the profit and loss account and balance sheet ascertained by one or more auditor or auditors.
78. Auditors of the Company shall be appointed and may resign or be removed and their remuneration rights and duties shall be regulated in accordance with the provisions of the Act.
79. A person shall not be appointed or act as auditor of the Company if he is disqualified under the provisions of the Act or is a Member of the Company.
80. Every account of the Company when audited and approved by a General Meeting shall be conclusive except as regards any error discovered therein within three months next after the approval thereof and whenever any error is discovered within that period the account shall forthwith be corrected and thenceforth shall be conclusive.

## NOTICES

81. A notice may be given by the Company to any Member either by serving it on him personally or by sending it by post to him at his address as shown in the Register or to the address supplied by him to the Company for the giving of notices to him.
82. Where a notice is sent by post to a Member, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice of a meeting, on the date after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
83. Notice of every General Meeting shall be given in the manner authorised by *Clause 82* to:
  - 83.1 every Member; and
  - 83.2 the auditor for the time being of the Company.
84. Only the persons referred to in *Clause 83* are entitled to receive notices of the meetings referred to therein.

## INDEMNITY

85. Every Officer, auditor or agent of the Company shall be indemnified out of the property of the Company against any liability incurred by him in his capacity as Officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is, under the Act, granted to him by the Court.

## **OFFICERS LIABILITY INSURANCE**

86. The Company may pay a premium for a contract insuring any person who is or who has been an Officer against any liability:

86.1 Incurred by that person as such an Officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of *Sections 182, 183 or 184* of the Act; or

86.2 For costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome.