

# **Constitution**

## **The Macfarlane Burnet Institute for Medical Research and Public Health Ltd**

Incorporating amendments adopted by resolution of members  
dated 25 May 2006

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# Corporations Act 2001

A company limited by guarantee not having a share capital

## The Macfarlane Burnet Institute for Medical Research and Public Health Ltd

**ACN 007 349 984**

### 1 Name

- 1.1 The name of the company is The Macfarlane Burnet Institute for Medical Research and Public Health Ltd ACN 007 349 984 ('the Institute')

### 2 Nature of company and liability

#### Nature of company

- 2.1 The Institute is a public company limited by guarantee not having share capital.

#### Liability of Members and guarantee on winding up

- 2.2 The liability of the Members is limited. Every Member undertakes to contribute \$10 to the assets of the Institute if it is wound up while he or she is a Member, or within one year afterwards.

### 3 Objects

- 3.1 The Institute has the following objects:
- 3.1.1 To further knowledge in the field of medicine, particularly human medicine, by:
- (a) Conducting research to further knowledge of virus infections particularly virus infections of humans, including discovering improved methods for their diagnosis treatment and control;
  - (b) Conducting research to further knowledge of the human immune system, particularly in viral and other infections and in cancers, including discovering improved methods for diagnosis treatment and prevention of immune disorders, infection and cancers; and
  - (c) Conducting research to further knowledge of the functioning of the human body in health and in disease, including improved methods for the diagnosis treatment and prevention of human diseases.

Note: paragraph (b) above was inserted, by resolution of members on 25 May 2006, to give effect to the merger of Austin Research Institute ABN 26 007 418 224 with the Institute by transfer of certain assets and activities to the Institute on 1 January 2006.

- 3.1.2 To provide premises, laboratories, equipment and apparatus for the purpose of undertaking such research.
- 3.1.3 To publish information on the results of such research.
- 3.1.4 To provide opportunities for medical and scientific graduates seeking careers in medical research.
- 3.1.5 To promote and participate in the study of immune disorders, virus infections and cancers in other parts of the world.
- 3.1.6 To work with health professionals on the application of its research.
- 3.1.7 To provide services and educational programs in the fields relevant to the work of the Institute.
- 3.1.8 To develop, promote on a commercial basis and bring to market industrial and intellectual property rights developed by or on behalf of the Institute.
- 3.1.9 To promote the health of populations in developing countries through technical assistance to communicable disease prevention and control programs in the context of community-based primary health care.
- 3.1.10 To do all such other things and to develop, promote on a commercial basis and bring to market industrial and intellectual property rights developed by or on behalf of the Institute.
- 3.1.11 Subject to the Corporations Act, to do all such other things and exercise all such powers rights and privileges as a natural person may do or exercise.

## **4 Results of research**

- 4.1 The results of all concluded research undertaken and funded (wholly or partly) out of the Research Fund by the Institute shall be available to all persons with a proper interest in the results. When appropriate, endeavours shall be made to publish the results in scientific journals or other suitable publications.

## **5 Application of income and property**

### **Application of income or property**

- 5.1 The income and property of the Institute is to be applied solely towards the promotion of the objects of the Institute as set out in this Constitution.

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

- 5.2 No income or property of the Institute may be paid or transferred, directly or indirectly to any Member.

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

- 5.3 Nothing in this clause 5 prevents the payment in good faith of any of the following:
  - 5.3.1 Remuneration to any Member, officer or employee of the Institute for services actually rendered to the Institute.

- 5.3.2 An amount to any Member, officer or employee in return for goods supplied in the ordinary and usual course of business.
- 5.3.3 Payment of interest on money borrowed from any Member.
- 5.3.4 Reasonable and proper rent for premises let by any Member to the Institute.

## **6 Membership**

### **Membership**

- 6.1 The Members of the Institute are such persons who apply for membership and the Institute admits to membership in accordance with this Constitution.

### **Classes of Membership**

- 6.2 The membership of the Institute will be divided into the following 3 classes of membership:
  - 6.2.1 Staff Members.
  - 6.2.2 Nominated Members.
  - 6.2.3 Honorary Members.

### **Staff Members**

- 6.3 There shall be a maximum of 5 Staff Members.
  - 6.3.1 The Board will approve a process called the Staff Election by which Staff Members are nominated for membership.
  - 6.3.2 Staff Members shall be nominated by the Staff Election as required from time to time for membership.

### **Nominated Members**

- 6.4 There shall be a maximum of 5 Nominated Members.
  - 6.4.1 Nominated Members shall be nominated by the Board as required from time to time for membership and selected from persons the Board considers eminent.

### **Honorary Members**

- 6.5 Honorary Members shall be nominated by the Board from time to time for membership.
  - 6.5.1 Honorary Members shall not be entitled to vote at or be counted towards the quorum of any general meeting of the Institute's Members but shall otherwise have the same rights, privileges and obligations as Voting Members.
  - 6.5.2 There shall be no limit to the number of Honorary Members.

### **Application for membership**

- 6.6 Each person nominated for membership must apply for and consent to membership in the form as the Board shall prescribe at any one time or in any particular case accept.

### **Members**

- 6.7 A Staff Member has the right to receive notices of and to attend and be heard at any general meeting and has the right to vote at any general meeting.
- 6.8 A Nominated Member has the right to receive notices of and to attend and be heard at any general meeting and has the right to vote at any general meeting.
- 6.9 An Honorary Member has the right to receive notices of and to attend any general meeting notwithstanding that he or she has no right to vote or to be heard at a general meeting.

### **Admission to membership**

- 6.10 The Board must consider an application for membership by a person nominated for membership in accordance with this clause 6 as soon as practicable after its receipt and determine whether the application is in the form approved by the Board.
- 6.11 If an applicant is accepted for membership by the Board the Secretary must notify the applicant of admission in writing and details of the applicant must be entered in the Register.

### **Transitional arrangements**

- 6.12 Upon the adoption of this Constitution by the existing members of the Institute, those members will remain members of the Institute until such time as they are appointed as Members or replaced in accordance with this clause 6.

## **7 Members' subscription**

- 7.1 The Board may from time to time determine that Members shall pay a subscription not being greater than \$10.
- 7.2 The Board shall give Members not less than one month's notice of the amount of any subscription determined by the Board and the date the subscription is payable.
- 7.3 Subsequent subscription shall be payable when the Board determines but not less than 12 months after the date on which the previous subscription is payable.

### **Unpaid subscriptions**

- 7.4 A Member ceases to be a Member if the subscription of that Member remains unpaid for 2 months after it becomes payable.

## **8 Removal and cessation of membership**

### **Resignation**

- 8.1 A Member may resign from membership of the Institute by giving written notice to the Secretary.



- 8.2 The resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

### **Rotation of Staff Members**

- 8.3 The Board will determine the Staff Membership Period from time to time, which will be no less than 12 months in consultation with the Staff Committee. Any change to the Staff Membership Period must be notified to the Staff Committee and the Members.
- 8.4 The Board must remove a Staff Member from the Register upon the earlier of the following:
- 8.4.1 his or her period of membership as a Staff Member (calculated from his or her most recent appointment as a Staff Member under clause 6) exceeds the Staff Membership Period; or
  - 8.4.2 the Staff Member ceases to be a Member in accordance with another provision of this Constitution or otherwise by operation of law.
- 8.5 A Staff Member who ceases to be a Member as a result of the operation of clause 8.4.1 will be entitled to seek re-nomination as a Staff Member by means of the Staff Election (provided that he or she satisfies the requirements of that process at that time).
- 8.6 A replacement for a Staff Member who is removed from the Register under clause 8.4.1 will be nominated by the Staff Election. If such nomination has not occurred within 20 business days after a Staff Member is required to be removed from the Register under clause 8.4.1, the Board will be entitled to appoint a replacement Staff Member in accordance with clause 8.15.

### **Removal of Staff Member from membership by staff of Institute**

- 8.7 The staff of the Institute may elect to replace a Staff Member at any time.
- 8.8 The following matters will be governed by policies approved by the Board from time to time, in consultation with the Staff Committee:
- 8.8.1 The manner in which the Staff of the Institute may resolve to replace a Staff Member under clause 8.7.
  - 8.8.2 Any rights that a Staff Member subject to replacement under clause 8.7 will have.
  - 8.8.3 Any other matters relating to the rotation or replacement of Staff Members, as the Board sees fit.

If the Board adopts or amends a policy in accordance with this clause 8.8 it must promptly notify the Staff Committee and the Members of the changes.

- 8.9 A person nominated as a replacement for a Staff Member under clause 8.7 will only become a Member when the Board:
- 8.9.1 removes the Staff Member whom they are nominated to replace from the Register; and
  - 8.9.2 accepts their application for membership in accordance with clause 6.

### **Removal of Staff Member from membership by Board**

- 8.10 If any Staff Member:
- 8.10.1 wilfully refuses or neglects to comply with the provisions of this Constitution; or
  - 8.10.2 is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Institute; or
  - 8.10.3 is a Director and loses or resigns from his or her office as a Director by virtue of this Constitution or the Corporations Act,
- then notwithstanding clause 8.7 the Board shall have power by resolution to remove the Staff Member from the Register.
- 8.11 The Board will be required to provide at least 1 week's written notice to any Staff Member of:
- 8.11.1 any Board meeting at which a resolution is proposed to be passed to remove the Staff Member from the Register; and
  - 8.11.2 any allegations against the Staff Member that will be considered at that Board meeting; and
  - 8.11.3 the proposed resolution to be considered at that Board meeting.
- 8.12 Any Staff Member subject to removal proceedings may do either or both of the following:
- 8.12.1 Give an oral or written explanation or defence.
  - 8.12.2 At least 24 hours before the time set for the Board meeting to remove the Staff Member, lodge with the Secretary written notice electing to have the proposed resolution dealt with by the Institute in a general meeting. In that event, the Board must not consider the proposed resolution but must promptly call a general meeting in accordance with clause 9 of this Constitution. At such general meeting, the vote of two-thirds of those Voting Members present is required to remove the Staff Member. The vote must be taken by ballot.
- 8.13 If a Staff Member is removed from the Register (whether by the Board under clause 8.10 or by the Members in general meeting in accordance with clause 8.12.2), a replacement will be nominated by the Staff Election. If such nomination has not occurred within 20 business days after a Staff Member is removed from the Register, the Board will be entitled to appoint a replacement Staff Member in accordance with clause 8.15.

### **Removal of Nominated Members and Honorary Members from membership**

- 8.14 Subject always to the law, the Board shall have power by resolution to remove any Nominated Member or Honorary Member from the Register for any reason. A Nominated Member or Honorary Member who is the subject of removal proceedings under this clause 8.14 will have the same rights as Staff Members under clauses 8.11 and 8.12.

## **Replacement of Staff Members and Nominated Members**

- 8.15 Subject always to clause 8.6 and clause 8.13, the Board may nominate as a replacement for any Staff Member or Nominated Member that resigns or is removed from the Register any person that it thinks would benefit the Institute by becoming a Member.
- 8.16 In the event that a Staff Member is replaced in accordance with the provisions of this Constitution, any replacement nominated by the Board shall remain a Member until such time as a Staff Election selects a replacement for the person nominated by the Board under this clause 8.16.
- 8.17 Any person accepted as a replacement for a Staff Member in accordance with clause 8.16 shall have all the rights, privileges and obligations of a Staff Member until such time as he or she is replaced by a Staff Election in accordance with clause 8.16.

## **9 General meetings**

### **Convening of meetings**

- 9.1 The Board may convene a general meeting.
- 9.2 Subject to the provisions of the Corporations Act, the Institute must hold its first general meeting within 18 months after its incorporation (but no more than 5 months after the end of its first financial year). Thereafter a general meeting must be held at least annually within 5 months after the end of the financial year.
- 9.3 Each general meeting shall be held at the times and places as the Board may determine.
- 9.4 General meetings before which the annual accounts of the Institute are to be laid shall be called the annual general meeting.

### **Notice of general meeting**

- 9.5 Subject to the provisions of the Corporations Act relating to special resolutions, written notice of a general meeting must be given to the Members not less than 21 days before the meeting. The notice must specify the place, the day and the hour of meeting.
- 9.6 Without prejudice to the provisions of section 249F of the Corporations Act and provisions of the Corporations Act relating to special resolutions, the meeting may be convened by shorter notice and in any manner with the consent of all Voting Members.
- 9.7 A notice of a general meeting may be given by any form of communication permitted by the Corporations Act.
- 9.8 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.

### **Business of general meetings**

- 9.9 The business of an annual general meeting may include the receipt and consideration of:

- 9.9.1 the balance sheet;
  - 9.9.2 the income and expenditure account; and
  - 9.9.3 the reports of the Board and the Auditor.
- 9.10 The Board may transact other business which, under the Corporations Act or this Constitution:
- 9.10.1 ought to be transacted at any annual general meeting; and
  - 9.10.2 is brought under consideration by any reports of the Board issued with the notice convening the meeting.
- 9.11 All other business transacted at the annual general meeting shall be deemed special.

#### **Quorum at general meetings**

- 9.12 Business may not be transacted at a general meeting (except election of a chair and the adjournment of the meeting) unless a quorum of Voting Members is present at the time when the meeting proceeds to business.
- 9.13 Except as otherwise set out in this document, 5 Voting Members present in person or by representative is a quorum.
- 9.14 If a quorum is not present within 15 minutes from the time appointed for the meeting:
- 9.14.1 if the meeting was convened by request of the Board, it must be dissolved.
  - 9.14.2 otherwise, it must stand adjourned to the same day in the next week at the same time and place.

#### **Quorum at adjourned general meetings**

- 9.15 At the adjourned meeting 5 Voting Members present is a quorum but if a quorum is not present within 15 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **Appointment of Chairperson**

- 9.16 The Chairperson of the Board is entitled to preside as chair at every general meeting.
- 9.17 If there is no Chairperson, or the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or s/he is unwilling to act, the Vice-Chairperson will be entitled to preside as chair.
- 9.18 If there is no Vice-Chairperson, or the Vice-Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or s/he is unwilling to act, then those Voting Members present may choose another Director as chair.
- 9.19 If there is no Director present, or if all the Directors present decline to take the chair, then those Voting Members present may choose one of their number to be chair of the meeting.

#### **Adjournment of meetings**

- 9.20 The chair may, with the consent of any meeting at which a quorum is present, adjourn the meeting to another time and to another place.

- 9.21 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.
- 9.22 If any general meeting is adjourned for more than 21 days, a notice of adjournment must be given to all Members in the same manner as notice was or ought to have been given of the original meeting.

### **Chair's powers**

- 9.23 Subject to the terms of this document dealing with adjournment of meetings, the ruling of the chair on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chair may be accepted.

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

- 9.24 At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before or on the declaration of the result.
- 9.25 If a poll is not duly demanded, a declaration by the chair that a resolution has on a show of hands 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 Institute, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **Demand for a poll**

- 9.26 A poll may be demanded by either:
- 9.26.1 The chair.
  - 9.26.2 At least 2 Voting Members on the resolution.
- 9.27 The demand for a poll may be withdrawn.
- 9.28 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- 9.29 If a poll is duly demanded, it must be taken in the manner, time and place as the chair of the meeting directs, 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.
- 9.30 No poll may be demanded on the election of a chair of a meeting.
- 9.31 A poll demanded on any question of adjournment shall be taken immediately.

### **Voting rights of Voting Members**

- 9.32 On a show of hands every person present who is a Voting Member has 1 vote.
- 9.33 On a poll every Voting Member present in person or by proxy, attorney or representative has 1 vote.

### **Vote of the chair at general meetings**

- 9.34 The chair of a general meeting is entitled to a second or casting vote in addition to the vote or votes which he or she may be entitled as a Voting Member, or as a proxy, attorney or representative of a Voting Member.

### **Attendance by Auditor**

- 9.35 The Auditor or the Auditor's agent (authorised in writing by the Auditor for that purpose) is entitled to:
- 9.35.1 attend any general meeting;
  - 9.35.2 receive all notices of and other communications relating to any general meeting which a Member is entitled to receive; and
  - 9.35.3 be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity (including any proposal to remove that Auditor).

## **10 Proxies and representatives**

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

- 10.1 At meetings of Members each Voting Member may vote in person or by proxy or by attorney.
- 10.2 Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Voting Member, has all the powers of a Voting Member, except where expressly stated to the contrary.

### **Appointment of proxies**

- 10.3 A Voting Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be a Member.
- 10.4 A document appointing a proxy must be in writing, in any form permitted by the Corporations Act or in a form as the Board may at any time prescribe or accept.
- 10.5 A document appointing a proxy need not be witnessed.
- 10.6 Unless the contrary is stated on the document appointing a proxy, the proxy will be valid for any adjournment of the meeting.

### **Authority of proxies**

- 10.7 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- 10.8 Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Voting Member can do in respect of a general meeting, including that the proxy is entitled to demand or join in demanding a poll.

### **Verification of proxies**

- 10.9 Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Institute:
- 10.9.1 The document appointing the proxy.
- 10.9.2 If the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- 10.10 Those documents must be deposited at the Office, or any other place as the Board may determine, not less than 36 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the document proposes to vote.

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

- 10.11 A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Institute at the Office before the commencement of the meeting or adjourned meeting at which the document is used:
- 10.11.1 The previous death or unsoundness of mind of the principal.
- 10.11.2 The revocation of the instrument or of the authority under which the instrument was executed.
- 10.12 A proxy may not be revoked by the principal attending and taking part in the meeting, unless that principal actually votes on the poll at the meeting on the resolution for which the proxy is to be used.

### **Attorneys**

- 10.13 Any Voting Member may, by power of attorney, appoint an attorney to act on his/her behalf at all or certain specified meetings.
- 10.14 The power of attorney or proof of it to the satisfaction of the Board together with evidence of due execution must be produced for inspection at the Office or any other place as the Board may determine before the attorney is entitled to appoint a proxy for the Member granting the power of attorney.
- 10.15 The Directors may by power of attorney appoint for any period any Institute, firm or persons or fluctuating body of persons to be an attorney or attorneys for any purpose within those powers set out in this Constitution.
- 10.16 The Directors may authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in the attorney.

## **11 Appointment and retirement of directors**

### **Number of Directors constituting the Board**

- 11.1 The number of Directors constituting the Board must not be less than 8 nor more than 20, subject to the following:

11.1.1 subject to clause 17.4, 1 Director must be the Executive Director; and

11.1.2 each Affiliated University may propose 1 director.

Any other Directors that are required may be chosen by the Board.

11.2 The Directors shall be appointed by resolution of the Board. The resolution may specify the period of office that Director is to hold.

#### **Term of office**

11.3 Subject to clause 11.7:

11.3.1 A Director shall hold office until the expiration of the period specified when elected.

11.3.2 If no term of office was specified when a Director was appointed, that Director will hold office until the conclusion of the third annual general meeting after his/her appointment.

11.3.3 A Director whose term concludes will be eligible for reappointment.

#### **Removal from office**

11.4 Subject to clauses 11.5 and 11.6, the Institute may by resolution of 50% or more of Voting Members remove a Director from office.

11.5 Provided there is no less than 8 continuing members of the Board, the Board may continue to act.

11.6 If there is less than 8 continuing members of Board, the Board may only act for the purpose of:

11.6.1 increasing the number of Directors to 8; or

11.6.2 summoning a general meeting of the Institute's Members.

#### **Loss of Director's office**

11.7 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this document, the office of Director becomes vacant if any of the following occurs:

11.7.1 if the Director becomes bankrupt or makes any arrangement or composition with creditors generally.

11.7.2 if the Director 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.

11.7.3 if the Director resigns from office by notice in writing to the Institute delivered to the Office.

#### **Executive of Institute ceasing to hold office as Director**

11.8 If an executive of the Institute ceases to be an executive for any reason (including resignation or termination of employment), and that person holds the office of Director by reason of their former position as an executive, that person's office as Director will



become vacant immediately upon his or her ceasing to be an executive unless the Board decides otherwise. For the avoidance of doubt, this clause will apply to the Executive Director.

## **12 Directors' remuneration**

### **Raising money**

- 12.1 The Directors must be paid by way of fees for their services the amounts, if any, determined from time to time by the Institute in general meeting.
- 12.2 Directors' fees accrue from day to day.
- 12.3 The Directors must be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings or otherwise in the execution of their duties as Directors.

## **13 Power of the Board**

- 13.1 Subject to clauses 15.8, 15.9, 19.3 and 19.4 the control and direction of the Institute and the management of its property and affairs shall be vested in the Board.
- 13.2 The Board may exercise all power as the Institute is authorised by this Constitution or by statute or otherwise to exercise.

### **Raising money**

- 13.3 The Board may raise money for and on behalf of the Institute in any manner it thinks fit including:
  - 13.3.1 solicitation of donations; and
  - 13.3.2 borrowing of money either from Members or other persons or organisations on the security of any of the Institute's assets or without giving security.

### **Investment of funds**

- 13.4 The Board may invest funds of the Institute not forming part of the Research Fund as it thinks fit and may realise any investments or part of them or change any investments as it thinks fit.

### **Negotiable Instruments**

- 13.5 All negotiable instruments and all receipts of money paid to the Institute shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) for the Institute by:
  - 13.5.1 2 Directors; or
  - 13.5.2 1 Director and some other officer authorised by the Board for the purpose; or
  - 13.5.3 in any other manner as the Board may determine.

## **14 Proceedings of the Board**

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

- 14.1 A Director may at any time, and a Secretary must on the request of a Director, convene a meeting of the Directors.

### **Notice of Directors' meetings**

- 14.2 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director shall not invalidate proceedings at a Board meeting.

### **Quorum at Directors' meetings**

- 14.3 At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is one-half of the number of Directors that make up the Board or another number determined by the Directors by resolution.

Note: Pursuant to this clause 14.3, the Directors resolved at a meeting of Directors on 18 April 2006 that henceforth the number of Directors required to constitute a quorum is seven (7).

- 14.4 No business may be transacted at any meeting unless the requisite quorum is present.

### **Appointment of Chairperson and Vice-Chairperson of Directors**

- 14.5 The Directors may elect a Director to chair and vice-chair their meetings (referred to as the 'Chairperson' and the 'Vice-Chairperson' respectively).
- 14.6 The Chairperson shall be entitled to preside at every meeting of the Board at which he or she is present and willing to act.
- 14.7 If the Chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Vice-Chairperson may chair the meeting.
- 14.8 If the Vice-Chairperson is not present or is unwilling to act, the Directors present may choose one of their number to chair the meeting.

### **Voting at Directors' meetings**

- 14.9 Questions arising at a meeting of Directors must be decided by a majority of votes of Directors present and voting.
- 14.10 Each Director present is entitled to 1 vote.
- 14.11 A decision of the majority is for all purposes a decision of the Directors.

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

- 14.12 In the event of equality of votes at meetings of Directors, the chair of the meeting has a second or casting vote.

## 15 Directors' actions

### Director's contracts

- 15.1 If a Director is interested in a contract or proposed contract with the Institute and the financial benefit to the Director under the contract is authorised by the Corporations Act:
- 15.1.1 The Director is not disqualified by holding office as Director from contracting or entering into any arrangement with the Institute, whether as vendor, purchaser or otherwise.
  - 15.1.2 A contract or arrangement entered into by or on behalf of the Institute in which the Director is in any way, whether directly or indirectly, interested, is not liable to be avoided.
  - 15.1.3 The Director is not liable to account to the Institute for a profit realised from that contract or arrangement by reason of the Director holding that office or the fiduciary relation established.
- 15.2 Every Director must observe the provisions of the Corporations Act relating to the declaration of the interests of Directors in contracts or proposed contracts with the Institute or of any office or property held by the Directors which might create duties or interests in conflict with their duties or interests as Directors.

### Participation where Directors interested

- 15.3 Subject always to clause 15.4 and clause 15.5, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not be present while the matter is being considered at the meeting or vote in respect of that matter or that proposed resolution. At all times, a Director shall observe the provisions of section 195 of the Corporations Act.
- 15.4 Despite clause 15.3, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors may be present, and have his or her vote counted in relation to, any contract between the Director and the Institute to give the Director any security for advances or by way of indemnity, or to any contract or arrangement where the Director is interested merely as a shareholder or director of another Institute. Despite clause 15.3 a director may be present and have his or her vote counted if approved by the Institute in general meeting.
- 15.5 A Director who has a material personal interest in any contract or arrangement may despite that interest attest the fixing of the common seal of the Institute to any document evidencing or otherwise connected with the contract or arrangement.

### Minutes

- 15.6 The Directors must cause minutes of the names of Directors present and of all proceedings of general meetings, of meetings of the Directors and of committees formed by the Directors to be entered in books kept for the purpose.
- 15.7 The Directors must cause all minutes to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

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

- 15.8 The Directors may delegate any of their powers to committees consisting of any persons they think fit.
- 15.9 In the exercise of any powers delegated to it, a committee formed under clause 15.8 must conform to any regulations that may be imposed on it by the Directors.

### **Appointment of chair of Committee**

- 15.10 A committee may elect a chair to chair meetings. If no chair is elected, or if at any meeting the chair is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the members present may choose one of their number to chair the meeting.

### **Committee meetings and voting**

- 15.11 A committee may meet and adjourn as it thinks fit.
- 15.12 Questions arising at any meeting must be decided by a majority of votes of the eligible members present. In the case of an equality of votes, the chair of the committee has a second or casting vote.

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

- 15.13 All acts done by a meeting of the Directors or of a committee of Directors 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.

### **Circular Resolution**

- 15.14 A resolution in writing signed by a majority all Directors entitled to notice of meetings of the Board is to be treated as a determination of the Directors passed at a meeting of the Directors duly convened and held.

### **Form of Circular Resolution**

- 15.15 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.

## **16 Secretary**

- 16.1 The Directors may appoint a Secretary and may at any time terminate the appointment.

## **17 The Executive Director**

- 17.1 The Board must appoint a managing Director of the Institute ('the Executive Director'). The Executive Director must be a Director.
- 17.2 The Executive Director is subject to the control of the Board.
- 17.3 The Board may confer on the Executive Director any powers of the Board under this Constitution and on any conditions, and may revoke such powers.

- 17.4 While in office, a person appointed under clause 17.1 shall, subject to the provisions of any contract with the Institute, be subject to the provisions of clause 11.7 so far as applicable. For the avoidance of doubt, if the Executive Director ceases to hold the office of Director under this clause 17.4, the Board will determine whether his or her appointment as Executive Director will also be terminated (subject always to the provisions of any contract with the Institute).
- 17.5 Subject to the provisions of any contract between the Institute and the Executive Director, the Board may at any time terminate the appointment of the Executive Director.

## **18 Research Committee**

- 18.1 The Board must appoint a Research Committee comprising:
- 18.1.1 The Executive Director; and
  - 18.1.2 Any Directors and other persons as the Board may appoint.
- 18.2 The appointment of the Research Committee will be subject to the approval of the National Health and Medical Research Council or equivalent person in any body which may succeed or be substituted for that body.
- 18.3 Subject to the approval of the National Health and Medical Research Council or equivalent person in any body which may succeed or be substitute for that body, the Board may remove any person appointed to the Research Committee.

### **Restriction of powers of Research Committee**

- 18.4 The Research Committee will only be entitled to exercise any of the powers conferred on it if:
- 18.4.1 there are 5 or more members of the Research Committee; and
  - 18.4.2 at least 4 members of the Research Committee are persons who are appropriately qualified to assess medical or scientific research.

### **Resignation from Research Committee**

- 18.5 A member of the Research Committee may resign at any time by giving written notice to the Institute.
- 18.6 The resignation is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

## **19 Research Fund**

- 19.1 The Board must establish a fund called the Research Fund, which shall be the Gift Fund for the purposes of the Income Tax Assessment Act. The Institute must:
- 19.1.1 Maintain the Gift Fund, which shall be applied solely towards pursuing its principal purpose;

19.1.2 Keep the Gift Fund separate from the other income and assets of the Institute; and

19.1.3 Maintain a separate bank account for the Gift Fund.

19.2 All money received by way of donations to the Institute and which are allowable deductions for the purpose of the Income Tax Assessment Act shall be credited to the Research Fund.

### **Control of the Research Fund**

19.3 Subject to the approval of the Board, the Research Committee shall have control of the Research Fund.

19.4 No money may be paid out of the Research Fund except with the approval of the Research Committee, having first obtained the approval of the Board to authorise that payment.

### **Application of the Research Fund**

19.5 The Research Fund must be applied solely for the purpose of furthering medical and scientific research approved in accordance with clause 19.9 including (without limiting the generality of this clause):

19.5.1 the provision of any necessary facilities;

19.5.2 equipment or apparatus;

19.5.3 administrative expenses relating to research; and,

19.5.4 all other activities, materials and services which in the opinion of the Research Committee (having first obtained the approval of the Board) are ancillary or related to the research referred to in this clause 19.5.

19.6 The Board may invest funds held in the Research Fund in the name of the Institute as the Board directs.

19.7 The Board may realise or change investments as it determines.

19.8 The Board must consider any recommendations put to it by the Research Committee and has discretion as to whether to approve those recommendations.

### **Research approval**

19.9 Medical or scientific research financed by the Research Fund may be undertaken by the Institute if that research has been approved:

19.9.1 by the Board on the recommendation of the Executive Director; and

19.9.2 by the Research Committee.

19.10 The provisions of clause 15 shall, with any necessary modifications, apply to the proceedings of the Research Committee as if references in those clauses to the Board was a reference to the Research Committee and references to Directors were a reference to members of the Research Committee.

## **20 Intellectual property**

- 20.1 From time to time the Institute will publish an intellectual property policy which will govern the Institute's policies and procedures relating to intellectual property generated by the Institute. The Board will be responsible for overseeing this publication.

## **21 Accounts, audit and records**

### **Accounts**

- 21.1 The Directors must cause proper accounting and other records to be kept in accordance with the Corporations Act.

### **Audit**

- 21.2 The Directors must appoint a registered company auditor to act as Auditor. The remuneration of the Auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act.

### **Rights of Inspection**

- 21.3 The books of account must be kept at the Office or other place as the Directors think fit and must be open for the inspection by Directors during usual business hours.

## **22 Notices**

### **Method of giving notice**

- 22.1 A notice by the Institute may be given to any Member either:
- 22.1.1 personally; or
  - 22.1.2 by sending it by prepaid ordinary post or facsimile to the Member's Registered Address or facsimile number within Australia as supplied to the Institute for the giving of notices.

### **Time notice of meeting given**

- 22.2 A notice of meeting given in accordance with this document is to be taken as given, served and received at the following times:
- 22.2.1 if given personally, at the time of delivery;
  - 22.2.2 if sent by post, on the business day after posting;
  - 22.2.3 if sent by facsimile or e-mail, at the time transmission is completed.

## **23 Seal**

- 23.1 The Board must adopt a common seal of the Institute.
- 23.2 The Board has power to destroy the adopted seal and to substitute a new common seal in its place.

- 23.3 The common seal shall be kept under custody and control as the Board may direct.
- 23.4 The common seal may be used to execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
- 23.4.1 2 Directors; or
- 23.4.2 a Director and the Secretary.

## **24 Indemnity and insurance**

### **Indemnity**

- 24.1 Every officer and past officer of the Institute may be indemnified by the Institute, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Institute or a subsidiary of the Institute, including without limitation legal costs and expenses incurred in defending an action.

### **Insurance premiums**

- 24.2 The Institute may pay the premium on a contract insuring a person who is or has been an officer of the Institute to the fullest extent permitted by law.

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

- 25.1 Upon the winding up or dissolution of the Institute, 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 Institute which satisfies the 3 following requirements:
- 25.1.1 it has objects similar to the objects of the Institute;
- 25.1.2 it is approved by the Commissioner of Taxation or the Deputy Commissioner of Taxation for the purposes of Division 30 of the Income Tax Assessment Act; and
- 25.1.3 its constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 5 of this Constitution.
- 25.2 This is to be determined by the Members at or before the time of winding up or dissolution of the Institute and, in default of any determination, by the Supreme Court of Victoria.
- 25.3 At the first occurrence of:
- 25.3.1 the winding up of the Gift Fund; or
- 25.3.2 the Institute ceasing to be endorsed as a deductible gift recipient under the Income Tax Assessment Act,
- the Institute must transfer any surplus assets of the Gift Fund to another fund, authority or institution to which deductible gifts can be made in accordance with the Income Tax Assessment Act.



## 26 Definitions and Interpretation

### Definitions

- 26.1 In this Constitution, the following definitions apply:
- (a) “Affiliated University” means a University which is closely affiliated with the Institute (as determined by the Board). Until such time as the Board may determine otherwise, each of The University of Melbourne and Monash University will be an Affiliated University;
  - (b) “Auditor” means the auditor of the Institute appointed by the Board or otherwise pursuant to the Corporations Act;
  - (c) “Board” means the Board of Directors of the Institute;
  - (d) “by-laws” and “rules” means by-laws and rules made pursuant to this Constitution;
  - (e) “Chairperson” means the Director elected from time to time to chair Directors’ meetings in accordance with clause 14.5.
  - (f) “Corporations Act” means the Corporations Act 2001 and any statutory modification of that Act or any statutory provisions substituted for that Act;
  - (g) “Directors” means the members of the Board of Directors from time to time;
  - (h) “Eligible Staff” means those current staff members of the Institute (not being Directors) who are eligible for nomination as Staff Members;
  - (i) “Gift Fund” means a fund:
    - (a) into which gifts or money or property are to be made;
    - (b) to which any money received by the Institute because of any gift under paragraph (a) is to be credited; and
    - (c) that does not receive any other money or property.
  - (j) “Honorary Member” means a Member who is accepted for membership by the Board following his or her nomination in accordance with clause 6.5;
  - (k) “Income Tax Assessment Act” means the Income Tax Assessment Act 1997 (Cth);
  - (l) “Institute” means The Macfarlane Burnet Institute for Medical Research and Public Health Ltd ACN 007 349 984;
  - (m) “Member” means a member of the Institute in accordance with the provisions of this Constitution, being either an Honorary Member, a Nominated Member or a Staff Member;
  - (n) “month” means calendar month;

- (o) “negotiable instrument” has the meaning of ‘negotiable instrument’ in section 9 of the Corporations Act;
- (p) “Nominated Member” means a Member who is accepted for membership by the Board following his or her nomination in accordance with clause 6.4;
- (q) “Office” means the registered office of the Institute;
- (r) “Officer” has the meaning of “officer” in section 9 of the Corporations Act and includes the Executive Director and members of any committee formed in accordance with the provisions of this Constitution;
- (s) “Register” means the register of Members to be kept in accordance with the Corporations Act;
- (t) “Registered Address” means the address of a Member as shown in the Register;
- (u) “Research Committee” means the committee established pursuant to clause 18;
- (v) “Research Fund” means the fund established pursuant to clause 19;
- (w) “Secretary” means persons appointed from time to time to perform the duties of a secretary of the Institute;
- (x) “the Executive Director” means the person appointed to that position from time to time in accordance with clause 17 of this Constitution;
- (y) “this Constitution” means this Constitution as altered or added to from time to time and any reference to any clause by number is a reference to the clause of that number in this Constitution;
- (z) “Staff Election” means the process approved by the Board by which consenting Eligible Staff of the Institute are selected by staff of the Institute for nomination as Staff Members;
- (aa) “Staff Member” means a Member who is accepted for Membership by the Board following his or her nomination by the Staff Election;
- (bb) “Staff Membership Period” means the rotation period for Staff Members determined from time to time pursuant to clause 8.3.
- (cc) “Staff Committee” means a committee comprised of staff members of the Institute (chosen in accordance with a process approved by the Board) for the purposes of liaising with the Board and management of the Institute on behalf of staff;
- (dd) “Vice-Chairperson” means the Director elected from time to time to vice-chair Directors’ meetings in accordance with clause 14.5;
- (ee) “Voting Member” means a Member with voting rights as outlined in this Constitution, being either a Nominated Member or a Staff Member; and

- (ff) “writing” and “written” includes printing, typing, lithography and other modes of reproducing words in a visible form.

### **Interpretation**

26.2 In this document, unless the context otherwise requires:

- 26.2.1 A reference to any Act, law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this document.
- 26.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 26.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.
- 26.2.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 26.2.5 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 26.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 26.2.7 A reference to dollars or \$ means Australian dollars.
- 26.2.8 References to the word ‘include’ or ‘including’ are to be construed without limitation.
- 26.2.9 A reference to a time of day means that time of day in the place where the Office is located.
- 26.2.10 A reference to a business day means a day other than a Saturday or Sunday on which all banks are open for business generally in the place where the Office is located.
- 26.2.11 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 26.2.12 A term of this document 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.

### **References to the document**

26.3 A reference to this document, where amended, means this document as so amended.

**Replaceable rules**

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