



CORPORATIONS LAW

COMPANY LIMITED BY GUARANTEE  
CONSTITUTION OF  
DIABETES AUSTRALIA LIMITED

ABN 47 008 528 461  
21 March 2010

Turning diabetes around

awareness | prevention | detection | management | cure

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	3
3.	OBJECTS .....	5
4.	PATRON.....	6
5.	INCOME AND PROPERTY OF COMPANY .....	6
6.	PAYMENTS TO DIRECTORS .....	6
7.	ADMISSION OF MEMBERS .....	6
8.	SUBSCRIPTIONS AND LEVY .....	8
9.	CEASING TO BE A MEMBER .....	9
10.	DELEGATES.....	10
11.	CALLING GENERAL MEETING .....	11
12.	NOTICE OF GENERAL MEETING .....	11
13.	QUORUM .....	12
14.	CHAIR .....	13
15.	ADJOURNMENT .....	13
16.	DECISION ON QUESTIONS.....	14
17.	TAKING A POLL.....	14
18.	VOTES OF EXECUTIVE OFFICERS .....	15
19.	ENTITLEMENT TO VOTE .....	15
20.	OBJECTIONS .....	15
21.	VOTES BY DELEGATES OF MEMBERS.....	16
22.	DOCUMENT APPOINTING A DELEGATE OR PROXY .....	16
23.	APPOINTMENT AND REMOVAL OF DIRECTORS .....	16
24.	VACATION OF OFFICE .....	17
25.	PRESIDENT .....	17
26.	POWERS AND DUTIES OF DIRECTORS .....	18
27.	DIRECTORS' MEETINGS .....	19
28.	VOTING AT DIRECTORS MEETINGS .....	20
29.	DIRECTORS' INTERESTS.....	20
30.	ALTERNATE DIRECTORS .....	21
31.	REMAINING DIRECTORS .....	21
32.	DELEGATION.....	21
33.	WRITTEN RESOLUTIONS.....	22
34.	VALIDITY OF ACTS OF DIRECTORS .....	22
35.	MINUTES AND REGISTERS .....	22
36.	COMPANY SECRETARY .....	23
37.	INSPECTION OF RECORDS .....	23
38.	SERVICE OF NOTICES.....	23
39.	PERSONS ENTITLED TO NOTICE .....	24
40.	AUDIT AND ACCOUNTS.....	24
41.	WINDING UP .....	25
42.	INDEMNITY.....	25
43.	TRANSITIONAL PROVISION .....	26
	<i>Schedule 1</i> .....	27
	<i>Schedule 2</i> .....	28
	<i>Schedule 3</i> .....	29

## **PRELIMINARY**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this constitution unless the contrary intention appears:

**'Alternate Director'** means a person appointed as an alternate director under clause 30;

**'Associate Member'** means an organisation admitted as an Associate Member under clause 7.5;

**'Auditor'** means the Company's auditor;

**'Company'** means Diabetes Australia;

**'Company Secretary'** means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries;

**'Constitution'** means the constitution of the Company as amended from time to time;

**'Delegate'** means a person appointed as such under clause 10;

**'Director'** includes the Executive Officers and any other person occupying the position of director of the Company and, where appropriate, includes an Alternate Director;

**'Directors'** means all or some of the Directors acting as a board;

**'Executive Officers'** are the officers referred to in clause 25;

**'Founding Life Members'** means those persons set out in of Schedule 3;

**'Governing Body of the Member Organisation or Special Member'** means the Board of Directors, Council or Board of Trustees or other like body that oversees the affairs of the Member Organisation or Special Member;

**'Honorary Life Members'** means any person, organization or corporation admitted as an Honorary Life Member under clause 7;

**'Law'** means the Corporations Act of Australia;

**'Levy'** means a one-off charge for a specific purpose that is imposed pursuant to clause 8.7;

**'Member'** means a Member Organisation, an Associate Member, a Special Member, a Founding Life Member and Honorary Life Member;

**'Member Organisations'** means those organisations set out in Schedule 1 together with any other organisation admitted as a Member Organisation under clause 7;

**'Office'** means the Company's registered office;

**'Proxy Delegate'** means a proxy for a Delegate appointed pursuant to clause 21.

**'Register'** means the register of Members of the Company;

**'Registered Address'** means the last known address of a Member as noted in the Register;

**'Special Members'** means those organisations named in Schedule 2;

**'Special Resolution'** means a resolution of which notice as set out in paragraph 294L© Corporations Act 2001 has been given, and that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; and

**'Subscription'** means the annual charge for the operation of the Company to be imposed on Members under clause 8.

1.2 In this constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the Law have the same meaning in this constitution;
- (d) headings are for ease of reference only and do not affect the construction of this constitution; and
- (e) a reference to the Law is a reference to the Law as modified or amended from time to time.

1.3 Unless the contrary intention appears in this constitution, an expression in a clause of this constitution has the same meaning as in a provision of the Law that deals with the same matter as the clause.

1.4 To the extent permitted by law, the replaceable rules in the Law do not apply to the Company.

## **2. THE COMPANY**

- 2.1 The company is the national federated body comprised of State and Territory organisations supporting people with diabetes and those professional and research bodies particularly concerned with the treatment and prevention of diabetes.
- 2.2 The Company
- (a) must only pursue charitable pursuits in carrying out its objects, and must apply its income only in promoting those purposes;
  - (b) may not make distributions of profit to its Members nor pay fees to its Directors; and
  - (c) must approve by a resolution of its Directors any other payment to a Director, except as described in clause 6
- 2.3 The Company has all of the capacities and powers conferred by Section 124 of the Law.

## **3. OBJECTS**

The principal objects of the Company are

- (a) To minimise the impact of diabetes in the Australian community through:
  - Promoting research into all aspects of diabetes including its cause/s, treatment, management and complications and the social impact of diabetes;
  - Encouraging and advancing the prevention and early detection of diabetes; and
  - Advocating for and facilitating equitable access to appropriate and effective treatment and management for all people with diabetes.
- (b) To provide a national voice on diabetes on behalf of the Members and people with diabetes, health professionals, and research organisations with an interest in diabetes.
- (c) To liaise with the International Diabetes Federation, World Health Organisation and other country diabetes associations to advance the causes of people with diabetes in both the Western Pacific Region and throughout the world.
- (d) To support the Member Organisations.
- (e) To undertake all necessary activities to achieve the principal objects of the Company.

#### **4. PATRON**

The Company in general meeting may appoint one or more eminent persons as its patrons. The patrons are to be identified on the official correspondence of the Company, and otherwise are to have such recognition and dignities as may be agreed between the patron and the Company.

#### **5. INCOME AND PROPERTY OF COMPANY**

- 5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 3.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or the payment of interest on moneys borrowed from any Member, at a rate not exceeding from time to time the Company's overdraft rates of interest paid for moneys borrowed from its bankers.
- 5.3 No employee of the Company or of a Member Organisation, Special Member or Associate Member may be a Delegate, a proxy for a Delegate or a Director. A Founding Life Member or an Honorary Life Member (if a natural person) may be a Delegate a proxy for a Delegate or a Director if appointed in accordance with this constitution.

#### **6. PAYMENTS TO DIRECTORS**

No payment will be made to any Director of the Company except:

- (a) reasonable out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company.
- (b) a payment for any service rendered to the Company by a Director in a professional or technical capacity other than in the capacity as Director, where the provision of the service and the amount payable has the prior approval of the Directors of the Company.;
- (c) a payment relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Law or a contract of insurance permitted by section 199B.

#### **7. ADMISSION OF MEMBERS**

- 7.1 The number of Members of the Company proposed to be registered is unlimited.

- 7.2 The Member Organisations of the Company are:
- (a) those organisations whose names are set out in Schedule 1 to this constitution; and
  - (b) any other corporation or organisation which the Company admits to membership as a Member Organisation.
- 7.3 The Special Members of the Company are:
- (a) those organisations whose names are set out in Schedule 2 to this constitution; and
  - (b) any other corporation or organisation which the Company admits to membership as a Special Member.
- 7.4 The Founding Life Members of the Company are those persons whose names are set out in Schedule 3 to this constitution
- 7.5
- (a) The Associate Members of the Company are those persons or organisations working in a field related or similar to the objects of the Company, or which the Company considers to be one that will assist the Company to further its objects in overcoming the condition of diabetes, its problems and treatment.
  - (b) An Associate Member must pay such entrance fee and subscription as the Directors may from time to time determine.
  - (c) An Associate Member is in that capacity entitled to receive notice of the annual general meeting of the Company and either personally or by a nominated representative to attend thereat but the Associate Member or representative is not entitled to speak except at the invitation of the Chair nor to vote at any such meeting.
- 7.6 The Directors may decide from time to time on the form and contents of the application for membership of any class. Applications for membership of the Company will be in writing, signed by or on behalf of the applicant.
- 7.7
- (a) The Company in general meeting may by a resolution passed by a majority of 75% of the votes cast and otherwise in their absolute discretion approve or reject an application for membership other than for an Honorary Life Member, where clause 7.11 applies.
  - (b) A Member may but only in accordance with this Constitution change its class of membership. A change of class of membership must be approved by the Company in general meeting by a

majority of 75% of the votes cast.

- 7.8 If the Company rejects any application it may not be required to give any explanation for the rejection.
- 7.9 (a) If an application is accepted, the Company Secretary must send the applicant written notice and request payment of the applicant's entrance fee (if any) and first annual subscription (if any).
- (b) An applicant will become a Member of the Company in the category approved by the Company on payment of the amount due under clause 7.9(a), if paid within the time specified by the Directors. If payment is not so made, the Directors may withdraw the offer.
- 7.10 The rights and privileges of every Member will be personal to each Member and are not transferable.
- 7.11 (a) The Company may in general meeting by ordinary resolution and upon the recommendation of the Directors appoint as an Honorary Life Member an organisation or a person who in the opinion of the Company has rendered eminent service to the Company or to the cause of overcoming diabetes, or in supporting the interests of people with diabetes.
- (b) An Honorary Life Member is not liable to pay any annual subscription and shall be entitled to receive notice of the annual general meeting of the Company and to attend thereat (in the case of an organisation, by representative) but is not entitled to speak except at the invitation of the Chair or to vote at any such meeting.

## **8. SUBSCRIPTIONS AND LEVY**

- 8.1 The Directors may from time to time determine the entrance fee (if any), and Subscription payable by each class of Member. Founding Life Members, Honorary Life Members and Special Members are not required to pay any entrance fee or Subscription or Levy.
- 8.2 The Directors may from time to time determine the amount and due dates for payment of the Subscription payable by each Member Organisation and Associate Member. The amount of the Subscription will be payable in accordance with such formula or calculation as the Directors may from time to time resolve, and will be due by such instalments and on such dates as the Directors determine.
- 8.3 If a Member Organisation or Associate Member is admitted to membership during a financial year of the Company the Subscription

for that Member will be such amount and will be payable by such instalments and on such dates as the Directors determine.

- 8.4 If a Member does not pay an instalment of their Subscription within 60 days after the portion becomes due the Directors:
- (a) must give the Member notice of that fact; and
  - (b) may resolve that all of the rights of the Member and of any Director nominated by the Member under the constitution are suspended until the payment is made or until the Directors otherwise resolve, whichever is the earlier. Upon the passing of the resolution, the rights of the Member and any Director nominated by it are suspended.
- 8.5 If a Member does not pay an instalment of their Subscription within 120 days after the portion becomes due the Directors may declare that Member's membership forfeited, whereupon the Member ceases to be a member of the Company.
- 8.6 Any portion of a Subscription not paid within 60 days of the due date may be offset against any money owing by the Company to the Member, and the liability of the Company to the Member for such money is reduced by the amount of the unpaid installment with effect from the due date for payment of the Subscription.
- 8.7 The Company may by special resolution in general meeting impose a Levy upon Member Organisations.

## **9. CEASING TO BE A MEMBER**

- 9.1 Membership of the Company will cease:
- (a) on the date six months after the date that the Company Secretary receives written notice of intention of resignation, unless the notice is previously withdrawn with the approval of the Directors;
  - (b) if the Company in general meeting resolves by a majority of 75% of the votes of all Member Organisations and Special Members (whether present or not) to terminate the membership of a Member whose conduct or circumstances in their opinion renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed;

- (c) if membership is forfeited under clause 8.5;
- (d) where the Member is an individual, if the Member:
  - (i) dies;
  - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (iii) is convicted of a serious criminal offence;
- (e) if a Member other than a Founding Life Member or an Honorary Life Member:
  - (i) has a receiver, controller, manager or liquidator appointed to the Member except for the purposes of reconstruction or administration while solvent; or
  - (ii) has an order made by a Court for the winding-up or deregistration of the Member.

9.2 Any Member ceasing to be a Member:

- (a) will not be entitled to a refund of any part of a Subscription; and
- (b) will remain liable to the Company for all Subscriptions and moneys which were due at the date of ceasing to be a Member.

**10. DELEGATES**

10.1 A Member Organisation (other than Australian Diabetes Society) and a Special Member may by written notice to the Company Secretary in accordance with clause 22:

- (a) appoint one natural person to act as its Delegate in all matters connected with the Company as permitted by the Law ; and
- (b) remove and replace its Delegate.

10.2 The Australian Diabetes Society may by written notice to the Company Secretary in accordance with clause 22:

- (a) appoint three natural persons to act as its Delegates in all matters connected with the Company as permitted by the Law; and
- (b) remove and replace any of its Delegates.

- 10.3 A Delegate is entitled to:
- (a) exercise at a general meeting on behalf of that Member all the powers which the Member could exercise if it were a natural person; and
  - (b) be counted towards a quorum on the basis that the Member Organisation or Special Member is to be considered personally present at a general meeting by its Delegate.
- 10.4 A certificate executed in accordance with section 127 of the Law is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Delegate.
- 10.5 The Chair of a general meeting may allow a Delegate to vote on the condition that he or she subsequently establishes his or her status as a Delegate within a period prescribed by and to the satisfaction of the Chair of the general meeting.
- 10.6 The appointment of a Delegate may set out restrictions on the Delegate's powers.

## **11. CALLING GENERAL MEETING**

- 11.1 Any three Directors may, at any time, call a general meeting.
- 11.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Law; and
  - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Law.

## **12. NOTICE OF GENERAL MEETING**

- 12.1 Subject to the provisions of the Corporations Law allowing general meetings to be held with shorter notice, at least 21 days written notice (inclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 12.2 A notice calling a general meeting must:
- (a) specify the place, date and time of the meeting and if the meeting is to be held in two or more places simultaneously, the technology that will be used to facilitate this; and

- (b) state the general nature of the business to be transacted at the meeting and
  - (c) specify a place, facsimile number and electronic address for the purposes of appointing a Delegate.
- 12.3 According to section 250R of the law, a notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the confirmation of Member Organisation Delegates as Directors and the election of Executive Officers as per clause 25 ; or
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 12.4 (a) The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 11.2).
- (b) The Directors must give notice of the postponement or cancellation to all persons referred to in clause 40.1 entitled to receive notices from the Company.
- 12.5 The accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.
- 13. QUORUM**
- 13.1 No business may be transacted at a general meeting unless a quorum of Member Organisations is present, and where the meeting is held in two or more places at once in accordance with technology notified to Members when the meeting proceeds to business.
- 13.2 A quorum of Member Organisations is two thirds of their number as at the date of the meeting.
- 13.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Member Organisations or Special Members, it is automatically dissolved; or

- (b) in any other case:
  - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
  - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

#### **14. CHAIR**

14.1 The President, or in the President's absence a Vice President, will be the Chair at every meeting of Members.

14.2 If:

- (a) there is no President or Vice President; or
- (b) neither the President nor a Vice President is present within 15 minutes after the time appointed for holding the general meeting; or
- (c) if neither the President nor either of the Vice Presidents are willing to act as Chair of the general meeting,

then the Delegates present may elect a Chair of the general meeting of the Members.

14.3 If there is a dispute at a general meeting about a question of procedure, the Chair may determine the question, unless over ruled on a motion of dissent.

#### **15. ADJOURNMENT**

15.1 The Chair of a general meeting at which a quorum is present:

- (a) may adjourn the general meeting with the meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

15.2 An adjourned general meeting may take place at a different venue from the initial general meeting.

- 15.3 The only business that can be transacted at a reconvened general meeting is the unfinished business of the initial general meeting.
- 15.4 Notice of an adjourned general meeting must only be given in accordance with clause 12.1 if a general meeting has been adjourned for more than 21 days.

## **16. DECISION ON QUESTIONS**

- 16.1 Subject to the Law in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 16.2 A resolution put to the vote of a meeting is decided on a show of hands or by other means approved by the Directors, unless a poll is demanded in accordance with the Law.
- 16.3 Unless a poll is demanded:
- (a) a declaration by the Chair that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 16.4 The demand for a poll may be withdrawn by the Delegate who demanded it.
- 16.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## **17. TAKING A POLL**

- 17.1 A poll will be taken when and in the manner that the Chair directs.
- 17.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 17.3 The Chair may determine any dispute about the admission or rejection of a vote.
- 17.4 The Chair's determination, if made in good faith, will be final and conclusive.
- 17.5 A poll demanded on the election of the Chair or the adjournment of a

general meeting must be taken immediately.

- 17.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **18. VOTES OF EXECUTIVE OFFICERS**

- 18.1 The Executive Officers not occupying the Chair (appointed under clause 25) are each entitled to a deliberative vote at general meetings except on a vote on a motion of appointment or removal of an Executive officer.
- 18.2 The Chair has a casting vote only.

## **19. ENTITLEMENT TO VOTE**

- 19.1 A Delegate is not entitled to vote at a general meeting if the Member Organisation or the Special Member's rights are suspended in accordance with clause 8.
- 19.2 Each Delegate entitled to vote has one vote.
- 19.3 Each Executive Officer, with the exception of the Chair, has one vote on every motion other than a motion for appointment or removal of an Executive Officer .
- 19.4 The Member Organisations and Special Members in general meeting may by a special resolution and with the consent of any Member whose Delegate's votes are to be changed, amend the number of votes to which a Delegate is entitled, and after adoption of such a resolution those amended votes shall be substituted for the votes per Delegate in the Schedule, and thereafter be the votes to which a Delegate is entitled on any resolution at a general meeting.

## **20. OBJECTIONS**

- 20.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the vote is tendered.
- 20.2 An objection must be referred to the Chair of the general meeting, whose decision is final.
- 20.3 A vote which the Chair does not disallow because of an objection is valid for all purposes.

## **21. VOTES BY DELEGATES OF MEMBERS**

- 21.1 Members voting at a general meeting may only vote by a Delegate.
- 21.2 If a Delegate is unable to be present at a general meeting, the Member may appoint a proxy Delegate in accordance with clause 5.3 for such period as the Member determines. Notification of such appointment must be given to the Company in the same manner as for a Delegate. A proxy Delegate must be a member of a Member Organisation or Special Member but need not be a member of the appointer.
- 21.3 During such time as the proxy Delegate is appointed, the Delegate may not exercise any powers.

## **22. DOCUMENT APPOINTING A DELEGATE OR PROXY**

- 22.1 An appointment of a Delegate or proxy is valid if it is signed by two members of the governing body of the Member Organisation or Special Member making the appointment and contains the information required by subsection 250A(l) of the Law. The Directors may determine that an appointment of a Delegate or proxy is valid even if it only contains some of the information required by section 250A(l) of the Corporations Law.
- 22.2 For the purposes of clause 22.1, an appointment received at an electronic address will be taken to be signed if the appointment has been verified in any manner approved by the Directors.

## **23. APPOINTMENT AND REMOVAL OF DIRECTORS**

- 23.1 Each Member Organisation may appoint its Delegate (or where it has more than one Delegate, each one of them) as a Director. The people elected as Executive Officers are also Directors.
- 23.2 Each Director, except as detailed in clauses 25.3 and 25.4, must be a Delegate and a member of the Member Organisation making the appointment. If a Director ceases to be a member of the Member Organisation making the appointment, the Director is deemed from the date of the next Directors meeting to have resigned as a Director of the Company.
- 23.3 Special Members and Associate Members have no right to appoint a Director. Founding Life Members and Honorary Life Members may be appointed as Directors by Member Organisations if they are otherwise eligible in accordance with this constitution.

## **24. VACATION OF OFFICE**

- 24.1 The office of a Director immediately becomes vacant if the Director:
- (a) is prohibited by the Law from holding office or continuing as a Director; or
  - (b) has a person appointed under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer their estates, or becomes in the reasonable opinion of the Directors incapable of performing his or her duties; or
  - (c) resigns by notice in writing to the Company; or
  - (d) is removed by a resolution of the Company; or
  - (e) is absent from two consecutive Directors' meetings without leave of absence from the Directors; or
  - (f) is directly or indirectly interested in any material contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Law; or
  - (g) is appointed by a Member, whose membership ceases under clauses 8; or
  - (h) ceases to be a Director in accordance with clause 23.2.
- 24.2 The right of a Director to attend and vote at Director's meetings or to exercise any of the other powers of a Director of the Company are suspended during such time as the Member Organisation appointing that Director is suspended under clause 8.

## **25. PRESIDENT**

- 25.1 From the date this clause 25 is inserted into this Constitution ("**21<sup>st</sup> March 2010**"), this clause 25 applies notwithstanding any other provision of this Constitution, and prevails over any other provision of this Constitution to the extent of any inconsistency.
- 25.2 When a vacancy in the office of the President of the Company arises or is expected to arise, the Directors must appoint a nomination committee consisting of three Directors ("**Nomination Committee**"). The Nomination Committee must nominate a candidate for appointment as President by the Directors. A candidate nominated for appointment as President must be a person who is neither:

- a member of any Member Organisation; nor
  - a current or past director of any Member Organisation
- 25.3 A candidate nominated by the Nomination Committee under clause 25.2 may only be appointed as President by a resolution of the Directors passed by at least 75% of the Directors holding office at that time.
- 25.4 The President is a Director of the Company. Subject to clause 25.5, on any matter on which Directors are entitled to vote, the President (or any other person appointed to act as Chair under clause 25.6) has one deliberative vote only and does not have a casting vote.
- 25.5 The President may not vote on a resolution to appoint, re-appoint or remove the President.
- 25.6 The President shall act as Chair of all meetings of Members or Directors convened under this Constitution. In the event that:
- (a) there is no President at the time appointed for holding a meeting; or
  - (b) the President is not present within 15 minutes after the time appointed for holding a meeting; or
  - (c) the President is not willing to act as Chair of a meeting, then the Delegates present at the meeting of Members or the Directors present at a meeting of Directors (as applicable) may elect a Chair for the purposes of that meeting.
- 25.7 The first President appointed on or after the Effective Date will be appointed for a term of one year.
- 25.8 A President may be re-appointed for further terms of one year by resolution of Directors passed by at least 75% of Directors holding office at that time, provided that no person is appointed as President for more than four consecutive terms.
- 25.9 The gross remuneration package payable by the Company to the first President appointed on or after the Effective Date is \$30,000 per annum.”

## **26. POWERS AND DUTIES OF DIRECTORS**

- 26.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this constitution and the Law do not require to be exercised by the Company in general meeting.
- 26.2 The Directors may exercise all the powers of the Company:
- (a) to borrow money;

- (b) to charge any property or business of the Company;
- (c) to issue debentures or give any other security for a debt; liability or obligation of the Company or of any other person;
- (d) to guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person; and
- (d) to make by laws for the conduct of the Company's affairs, such by laws to be consistent with and subject to this constitution;

and all other powers of the Company except those which by the Act or this constitution must be exercised in general meeting.

## **27. DIRECTORS' MEETINGS**

- 27.1 (a) A Director may at any time, and the Company Secretary must on the request of a Director, call a Directors' meeting.
- (b) A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.
- 27.3 (a) Subject to the Law, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to communicate with each other and to participate in discussion.
- (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- (c) Subject to clause 30, a Director who participates in a meeting held in accordance with this constitution is taken to be present and entitled to vote at the meeting.
- 27.4 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 27.5 A quorum is two thirds of the Directors in office at the date of the meeting.
- 27.6 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the Chair may call a general meeting of Members to deal with the matter.
- 27.7 Notice of a meeting of Directors may be given in writing, or the

meeting may be otherwise called using any technology consented to by all the Directors.

## **28. VOTING AT DIRECTORS MEETINGS**

- 28.1 Subject to this constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting.
- 28.2 On any motion each Director and each Executive Officer not holding the Chair may exercise one vote each.
- 28.3 The Chair of a meeting may exercise a casting vote only.

## **29. DIRECTORS' INTERESTS**

- 29.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way materially interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office, providing that the terms of the contract or arrangement or the particulars of the interest are disclosed to and approved by the Directors.
- 29.2 A Director who has a material personal interest in a matter that is being resolved at a Directors' meeting must declare that interest at the meeting and must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless permitted by the Law to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

29.3 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

### **30. ALTERNATE DIRECTORS**

30.1 A Member Organisation may appoint any person who is a member of a Member Organisation as an Alternate Director for a period determined by the first Member Organisation.

30.2 An Alternate Director is not entitled to separate notice of Directors' meetings. The Company is only required to give notice to the Director, who is responsible for notifying the Alternate Director. If the Director is not present at a meeting, the Alternate Director is entitled to attend, be counted in a quorum and vote as a Director. A person may be appointed as alternate for more than one Director.

30.3 Except where specifically provided, the provisions of this constitution, which apply to Directors, also apply to Alternate Directors.

30.4 (a) The appointment of an Alternate Director may be revoked at any time by the appointer.

(b) An Alternate Director's appointment ends automatically when the appointee of a Member Organisation as Delegate and Director ceases to hold office.

30.5 Any appointment or revocation under this clause must be notified in writing to the Company Secretary.

### **31. REMAINING DIRECTORS**

31.1 The Directors may act even if there are vacancies on the board.

31.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to call a general meeting.

### **32. DELEGATION**

32.1 The Directors may delegate any of their powers, other than those, which by law must be dealt with by the Directors as a board, to a person or a committee or committees and may at any time revoke any

delegation.

- 32.2 Subject to any direction by the Directors, a committee may regulate its proceedings as it sees fit.

### **33. WRITTEN RESOLUTIONS**

- 33.1 The Directors may pass a written resolution under this clause only where the subject matter of the resolution has been discussed previously at a meeting of Directors.
- 33.2 The Directors may pass a resolution in accordance with the previous sub clause without a Director's meeting being held if the majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 33.3 Separate copies of a document may be used for signing by Directors and may be in the form of a facsimile or electronic transmission.
- 33.4 All Directors must be provided with the document setting out the resolution and given the opportunity to cast a vote. The resolution is passed when the Director who completes the majority signs the document and returns a copy to the Company.

### **34. VALIDITY OF ACTS OF DIRECTORS**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

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

### **35. MINUTES AND REGISTERS**

- 35.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
  - (b) all proceedings and resolutions of general meetings,

Directors' meetings and meetings of Directors' committees;

- (c) all resolutions passed by Directors in accordance with clause 33;
- (d) all appointments and resignations of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 29.

35.2 Minutes must be signed by the Chair of the meeting or by the Chair of the next meeting of the relevant body.

### **36. COMPANY SECRETARY**

36.1 There must be at least one Company Secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.

36.2 The Company Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.

36.3 The Directors may, subject to the terms of the Company Secretary's employment contract, suspend, remove or dismiss the Company Secretary.

### **37. INSPECTION OF RECORDS**

37.1 Except as otherwise required by the Law, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members or Delegates other than Directors.

37.2 A Member or Delegate other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member or Delegate is authorised to do so by a court order or a resolution of the Directors.

### **38. SERVICE OF NOTICES**

38.1 Notice may be given by the Company to any person who is entitled to notice under this constitution:

- (a) by serving it on the person; or

- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

38.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying (if overseas by air mail) and posting a letter containing the notice; and
- (b) in Australia, on the third day after the day on which it was posted.

38.3 A notice sent by facsimile transmission or electronic notification is taken to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (b) on the day after its dispatch.

38.4 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.

## **39. PERSONS ENTITLED TO NOTICE**

39.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director; and
- (c) the Auditor.

39.2 No other person is entitled to receive notice of a general meeting.

## **40. AUDIT AND ACCOUNTS**

40.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Law.

40.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Law.

## **41. WINDING UP**

41.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to a person who has ceased to be a Member, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (c) adjustment of the rights of the contributories amongst themselves,

such amount as may be required, not exceeding \$50.00.

41.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to one or more corporations which, by their constitution, are:

- (a) required to apply profits (if any) or other income in promoting its objects; and
- (b) prohibited from making any distribution to its members,

such corporations to be determined by the Member Organisations and Special Members in general meeting at or before the winding up and in default, by application to the Supreme Court for determination.

## **42. INDEMNITY**

42.1 To the extent permitted by law and subject to the restrictions in section 199A of the Law the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

42.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Law the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability

incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

42.3 For the purposes of this clause 43, 'officer' means:

- (a) a Director; or
- (b) a Company Secretary.

#### **43. TRANSITIONAL PROVISION**

- (a) This constitution will come into effect and govern the affairs of the Company, with effect from the date and time of the commencement of the Annual General Meeting of the Company to be held in 2002. ("Operative Point")
- (b) The person who was the President of the Company prior to the Operative Point is entitled to Chair the Annual General Meeting in 2002 unless unable or unwilling to act, in which case the Delegates present must elect one of their number to Chair the meeting.
- (c) Prior to the Operative Point, each Member Organisation must in accordance with Clause 9 of this constitution nominate its Delegates and Directors and each Special Member must nominate a Delegate. Those Delegates are entitled to exercise all of the rights and powers of the Delegates at the Annual General Meeting in 2002, and thereafter while in office.
- (d) Where a person has held office as President under the constitution of the Company that applied prior to the Operative Point, that period of service as President is to be included for the purposes of clause 25.5.

## Diabetes Australia

### Constitution

#### *Schedule 1*

<u>Name of Member</u>	<u>Number of Delegates</u>	<u>Number of Votes</u>
Diabetes Australia New South Wales	1	one per delegate
Diabetes Australia Victoria	1	"
Diabetic Association Of Queensland	1	"
The Diabetic Association of South Australia Inc	1	"
Diabetes Association of Western Australia Inc	1	"
Diabetes Australia Tasmania	1	"
Diabetes Association of the Northern Territory Inc	1	"
Diabetes Australia Australian Capital Territory Inc	1	"
Australian Diabetes Society Ltd	3	"
Australian Diabetes Educators Association Ltd	1	"
The Diabetes Research Foundation of WA Inc	1	"
Kellion Diabetes Foundation Ltd	1	"

**Diabetes Australia**

**Constitution**

***Schedule 2***

**Special Members**

Name

Number of votes at  
a general meeting.

**Diabetes Australia**

**Constitution**

***Schedule 3***

*Founding Life Members*

Mr John W August  
Mr Mick Bacash  
Mr Edward F Billson  
Dr Hal D Breidahl  
Prof Don J Chisholm AO  
Mr Stanley Clark OAM  
Prof Gerard W Crock AO  
Mr Allan T Harris OBE  
Mrs Lorna Mellor AM  
Mr Brian Mellor  
Mr Ian S McEwen AM  
Mrs Jo McEwen  
Mr A B MacDougall  
Mr Harry Macknamara  
Mr Alan R Moyes  
Mrs Janet L Raby  
Mr Bill A Raby OBE  
Dr Gordon B Senator  
Dr Alan E Stocks AM  
Mr Don J C Sutherland  
Mrs Helen Townend  
Mr John Townend AM  
Dr Tim A Welborn AO  
Mr Arthur White  
Prof Paul Z Zimmet AO

Boehringer Mannheim Australia Pty Limited  
Kottrell Pty Limited  
Miles Laboratories Australia Pty Limited