



australian  
pharmacy  
council

# Constitution of the Australian Pharmacy Council Limited

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# Constitution of Australian Pharmacy Council Limited

Australian Pharmacy Council Limited

ACN 126 629 785

## 1. PRELIMINARY

### 1.1. Company limited by guarantee

The Company is limited by guarantee and the liability of members is limited as provided in this constitution.

### 1.2. Objects of the Company

The Company is formed with the following objects:

- (a) to devise and arrange the implementation of assessment procedures within the Commonwealth of Australia and overseas, which may be used to determine professional competence;
- (b) to carry out such functions as are necessary for the accreditation of pharmacy education providers and/or courses which may be relied upon for the registration of pharmacists;
- (c) to carry out such functions as are necessary for the accreditation of continuing pharmacy education or professional development providers and/or activities that may be offered to registered pharmacists, which may be relied upon for the re-registration of pharmacists;
- (d) to improve the consistency of the standards of pharmaceutical education, registration and practice, including proposing model legislation, guidelines and codes of conduct;
- (e) to examine issues of national and international importance and relevance and where appropriate make recommendations to governments and other bodies;
- (f) to co-operate with state, national and international associations, authorities and organisations in a manner consistent with the attainment of these purposes;
- (g) to undertake any other functions the Company sees fit.

Nothing in paragraphs (a) to (g) limits the Company from contracting its services to any other body or for any purpose.

### 1.3. Application of income and property

Subject to rules 1.4 and 7, the Company must apply its income solely towards promoting the objects of the Company as stated in rule 1.2. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

#### 1.4. Certain payments allowed

Rule 1.3 does not prevent the payment of reasonable remuneration to any officer or employee of the Company or to any member of the Company or other individual or organisation in return for service rendered to the Company.

#### 1.5. Replaceable rules

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this constitution. Sections referred to throughout the constitution are from the Act.

#### 1.6. Definitions

The following definitions apply in this constitution.

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

**Board** means the Directors acting collectively under this constitution and as a board for the purposes of the Act.

**By-laws** means the by-laws of the Company prescribed, adopted, or amended by the Board from time to time in accordance with rule 23.

**Chair** means a Director appointed as chair of the Company under rule 4.4(a)

**Community Director** means a person who is not current and has never been a registered health practitioner in Australia or elsewhere.

**Company** means the company named at the beginning of this constitution whatever its name is for the time being.

**Deputy Chair** means a Director appointed as deputy chair of the Company under rule 4.4(a)

**Director** means an individual who is, for the time being, a director of the Company.

**Individual Member** means an individual admitted as a member under rule 2.4.

**Member** means an individual or organisation whose name is entered in the Register as a member of the Company.

**Ordinary resolution** means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

**Organisational Member** means an organisation admitted as a member under rule 2.5.

**Register** means the register of members kept as required by sections 168 and 169.

**Secretary** means, during the term of that appointment, an individual appointed as a secretary of the Company in accordance with this constitution.

**Selection Committee** means the committee established by the Board under rule 3.5.

See sections  
168 and 169

## 1.7. Interpretation of this constitution

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.6) which is defined by the Act has the same meaning in this constitution where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.



## 2. MEMBERSHIP

### 2.1. Membership

Subject to rules 2.7 and 2.8, the members of the Company are any individual or organisation that the Board admits as:

- (a) an Individual Member under rule 2.4; or
- (b) an Organisational Member under rule 2.5.

### 2.2. Limited liability of members

If the Company is wound up each member undertakes to contribute to the assets of the Company up to an amount not exceeding \$10 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after an individual or organisation ceases to be a member.

### 2.3. Membership fees, etc

- (a) Subject to rule 2.3(b) members are not required to pay any fee, subscription or other charge for membership of the Company.
- (b) Funds received from members shall be on the basis of a written agreement between the Company and those members.

### 2.4. Admission of Individual Members

- (a) The Board must admit at least 16, and may admit up to 24, individuals as Individual Members in accordance with rule 2.6.
- (b) An individual is taken to have been admitted as an Individual Member on the date specified in a notice given by the Board to the individual under rule 2.6(e).

### 2.5. Admission of Organisational Members

- (a) Subject to rule 2.5(b) the Board must admit at least 4, and may admit up to 12, organisations as Organisational Members in accordance with rule 2.6.
- (b) An organisation can only be admitted as an Organisational Member if they are a pharmacist centred national body.
- (c) An organisation is taken to have been admitted as an Organisational Member on the date specified in the notice given by the Board to the organisation under rule 2.6(e).

### 2.6. Admission of members

- (a) The Board may develop criteria, guidelines or processes for inviting individuals or organisations to apply for admission, and for admitting individuals or organisations to membership of the Company as either an Individual Member or an Organisational Member.

- (b) The Board must comply with any criteria, guidelines or processes it has developed when inviting individuals or organisations to apply for admission, and for admitting individuals or organisations to membership of the Company.
- (c) An individual or organisation may apply in writing to the Board to be admitted as a member.
- (d) Upon receiving an application, the Board may admit the individual or organisation to a category of membership if the Board decides that the individual or organisation meets:
  - (i) if the application is from an organisation - the criterion in rule 2.5(b) for admission as an Organisational Member; and
  - (ii) any criteria the Board has developed for admission to that category of membership.
- (e) If the Board decides to admit the individual or organisation to a category of membership, it must give that individual or organisation a notice that specifies:
  - (i) the particular category of membership to which the Board has decided to admit the individual or organisation; and
  - (ii) the date on which the individual or organisation is taken to have been admitted as a member.

## 2.7. Ceasing to be a member

- (a) An Individual Member is admitted for a term of three years, with an option to renew at the end of each term.
- (b) Three months before the expiration of an Individual Member's term, the Board may give a notice to an Individual Member inviting them to exercise an option referred to in rule 2.7(a) and be admitted as an Individual Member for another term.
- (c) Within 14 days after receiving a notice from the Board under rule 2.7(b), an Individual Member may exercise the option by giving the Board a notice stating that it wishes to exercise the option.
- (d) An individual ceases to be an Individual Member on the expiration of any term if either:
  - (i) they do not receive a notice from the Board under rule 2.7(b); or
  - (ii) after receiving a notice from the Board under rule 2.7(b), they do not give the notice referred to in rule 2.7(c).
- (e) A member (whether an Individual Member or an Organisational Member) may resign from the Company by giving 30 days' notice to the Board.

## 2.8. Termination of membership

- (a) The Board may, by resolution, expel from the Company any member:
  - (i) who does not comply with this constitution or any By-laws, rules or regulations of the Company; or
  - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company,and remove that member's name from the Register.

- (b) At least 21 days before the Board holds a meeting to expel a member, the Board must give a notice to the member which states:
  - (i) the allegations against the member or proposed ground under rule 2.8(a) on which the Board proposes to rely;
  - (ii) the proposed resolution for the member's expulsion;
  - (iii) that the member has an opportunity at the meeting to address the allegations or basis for the proposed resolution either orally or in writing; and
  - (iv) that if the member notifies the Secretary in writing at least 48 hours before the meeting, the member may elect to have the question of that member's expulsion dealt with by the Company in general meeting.
- (c) The Company must expel a member and the Board must cause a member's name to be removed from the Register where:
  - (i) a general meeting is held to expel a member; and
  - (ii) a resolution is passed at the meeting by a majority of two thirds of those present and voting for the member to be expelled. The vote must be taken by ballot.

## 2.9. Terminated members' liability

A member whose membership is terminated under rule 2.8 or who resigns under rule 2.7(e):

- (a) is liable for any outstanding payments owing to the Company from the member under any written agreement to provide funds to the Company, which shall be recoverable by the company as a debt due to it; and
- (b) does not have any claim on the Company, its funds or property.

## 3. DIRECTORS

### 3.1. Number of Directors

The Company must have at least six Directors and, until otherwise decided by ordinary resolution, not more than 9 Directors as follows:

- (a) up to two community directors appointed as Directors under rule 3.3.3; and
- (b) up to seven other Directors appointed under rule 3.4.

If at any time the number of Directors falls below the minimum required by this rule 3.1, the Board may appoint, in accordance with rule 3.7, as many individuals as Directors as is necessary to reach that minimum number.

### 3.2. Eligibility

- (a) A Director need not be a member.
- (b) Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.
- (c) An individual who retired from the office of Director under rule 3.8 and who has then served as a Director for two further terms of three years each after the first retirement is not eligible to act as a Director for a period of 12 months following the expiration of the second further term.

### 3.3. Appointment of community directors as Directors

Replaces  
section 201H

- (a) The Board must appoint up to two community directors to become Directors.
- (b) The Board may develop criteria for the Board to consider when appointing the community directors under rule 3.3(a). If the Board develops such criteria, the Board must have regard to those criteria when appointing the community directors as Directors under rule 3.3(a).
- (c) When the Board appoints a community director to become a Director, the Board must give the community director a notice informing them of the appointment. The community director is taken to have been appointed as a Director on and from the date specified in the notice given by the Board.

### 3.4. Appointment of remaining Directors

Replaces  
section 201H

- (a) The Board must appoint the Directors referred to in rule 3.1(b) in accordance with the process set out in this rule 3.4.
- (b) The Board must develop criteria that individuals must meet in order to be appointed as a Director under this rule 3.4.
- (c) The Board must:
  - (i) call for nominations from the members; and
  - (ii) if it considers this to be necessary or desirable, advertise publicly for nominations,for individuals to be considered for appointment by the Board as Directors.
- (d) If a Selection Committee is established under rule 3.5(a), it:
  - (i) must consider the nominations resulting from the Board's calling and advertising for nominations under rule 3.4(c); and
  - (ii) having regard to any criteria developed by the Board under rule 3.4(b), and subject to rule 3.4(h), may recommend to the Board, from those individuals nominated under rule 3.4(c)(i) and, if relevant, under rule 3.4(c)(ii), individuals for appointment by the Board as Directors.
- (e) A Selection Committee (if established under rule 3.5(a)) must not recommend an individual for appointment as a Director unless the individual appears to be suitably qualified for appointment because they meet criteria as developed by the Board under rule 3.4(b).

- (f) A decision of the Selection Committee (if established under rule 3.5(a)) to recommend an individual for appointment under rule 3.4(d) must be agreed to by a majority of members of the Selection Committee.
- (g) If the Selection Committee is established under rule 3.5(a), the chairman of the Selection Committee does not have a casting vote. If an equal number of votes is cast for and against a proposed decision to recommend a nominee for appointment as a Director under rule 3.4(d) by the Selection Committee, the nominee must not be recommended by the Selection Committee.
- (h) The Selection Committee (if established under rule 3.5(a)) may decide that none of the individuals nominated for appointment as a Director is suitable, having regard to the criteria developed by the Board under rule 3.4(b). If the Selection Committee does so, it must notify the Board that it will not be making any recommendations of individuals for appointment as Directors.
- (i) The number of individuals that the Selection Committee (if established under rule 3.5(a)) recommends for appointment as Directors must not exceed the number of Directors permitted under rule 3.1(b).
- (j) The Board must consider the individual(s) recommended by the Selection Committee and may appoint one or more of the individuals as a Director, provided the maximum number of Directors permitted under rule 3.1(b) is not exceeded.
- (k) If no Selection Committee has been established under rule 3.5(a), the Board:
  - (i) must consider the individuals nominated as a result of the Board's calling and, if considered necessary or desirable advertising for nominations under rule 3.4(c); and
  - (ii) having regard to the criteria developed by the Board under rule 3.4(b), may appoint one or more of the individuals as a Director, provided the maximum number of Directors permitted under rule 3.1(b) is not exceeded.
- (l) For the avoidance of doubt, after considering under rule 3.4(j) or rule 3.4(k) the individuals recommended or nominated, the Board may decide not to appoint any of those individuals as Directors.
- (m) If the Board appoints an individual as a Director under either rule 3.4(j) or rule 3.4(k), it must give that individual a notice that:
  - (i) notifies them they have been appointed as a Director of the Company;
  - (ii) specifies the date on which their appointment as a Director commences.
- (n) An individual is taken to have been appointed as a Director on the date specified in the notice referred to in rule 3.4(m).

### 3.5. Selection Committee

- (a) If the Board receives nominations of individuals for appointment as a Director following a call or advertisement for nominations under rule 3.4(c) the Board may establish a committee for the purpose of carrying out the functions described in rule 3.4(d) with respect to the individuals so nominated.

- (b) Members of the Selection Committee will be individuals chosen by the Board, having regard to any criteria developed by the Board to assist it identify appropriate individuals for membership of a Selection Committee.
- (c) The Board may appoint an individual to be the chair of a Selection Committee.
- (d) The Board may determine the maximum number of members of a Selection Committee from time to time.
- (e) An individual will be appointed as a member of the Selection Committee for the period notified to that individual in writing by the Board.

### 3.6. Too few Directors – powers of the Board

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

### 3.7. Too few Directors – appointment by the Board

- (a) Subject to this constitution, if the number of Directors falls below the minimum number required under rule 3.1, the Board may appoint, at any time except during a general meeting, as many individuals as Directors as is required to meet that minimum number.
- (b) For the avoidance of doubt, to appoint a Director under this rule 3.7 the Board is not bound to follow the process set out in rule 3.4, but can only appoint as many individuals as is necessary to meet the minimum number of Directors required under rule 3.1.
- (c) Any Director appointed under this rule 3.7 automatically retires at the next annual general meeting and is eligible for re-appointment under this constitution.

Replaces  
section 201H

### 3.8. Retirement of Directors

- (a) A Director must retire from office three years after the day on which the Director was appointed.
- (b) A Director may elect to retire before the time required by rule 3.8(a) provided the Director gives to the Board at least 30 business days (or any other period as the Board may determine) notice of his or her intention to do so. If the Director gives such a notice, the Director must then retire from office on the date specified in the notice.
- (c) A Director who retires under this rule 3.8(a) is eligible for re-nomination and/or re-appointment (whether under the same rule under which the Director was previously appointed or under a different rule) for a maximum of two further terms of three years each.

### 3.9. Cessation of Director's appointment

An individual automatically ceases to be a Director if the individual:

- (a) is not permitted by the Act (or an order made under the Act) to be a Director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend two consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 3.10;
- (g) ceases to be eligible to act as a Director under rule 3.2;
- (h) becomes bankrupt or makes any general arrangement or compromise with his or her creditors;
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to disclose the nature of the interest as required by the Act and rules 5.3 and 5.4; or
- (j) dies.

Rule 1.1(e)  
replaces  
section 203A

### 3.10. Removal from office

- (a) Whether or not a Director's appointment was expressed to be for a specified period, the Company may by ordinary resolution remove a Director from office. The power to remove a Director under this rule is in addition to section 203D.

[Note: Section 203E provides that a resolution by directors to remove a director from office is void.]

## 4. POWERS OF THE BOARD

### 4.1. Powers generally

Replaces  
section 198A

Except as otherwise required by the Act, any other applicable law or this constitution, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company without the involvement in any way of (including, without limitation, any consultation with) the Company in general meeting and the members.

### 4.2. Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 9;  
or
- (b) in accordance with a delegation of the power under rule 5.

### 4.3. Appointment of Chief Executive Officer

The Board may appoint a Chief Executive Officer.

### 4.4. Appointment of Directors as Chair and Deputy Chair

- (a) Subject to this rule 4.4, the Board may appoint a Director to be Chair and a Director to be a Deputy Chair of the Company.
- (b) The Board can only appoint a Director to be Chair and a Director to be a Deputy Chair:
- (i) if that individual's principal place of residence is in Australia; and
- (ii) for a term of 2 years.
- (c) A Director may be appointed as Chair and a Director as a Deputy Chair for a maximum of three terms.



## 5. DELEGATION OF BOARD POWERS AND ESTABLISHMENT OF COMMITTEES

### 5.1. Power to delegate

The Board may delegate any of its powers:

- (a) as permitted by section 198D; and
- (b) to a committee consisting of Directors, other persons, or any combination of the two.

### 5.2. Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

### 5.3. Terms of delegation

A delegation of powers under rule 5.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

### 5.4. Proceedings of committees

Unless a By-law for a committee specifies the manner in which that committee will conduct its meetings and proceedings, then the meetings and proceedings of that committee are, to the greatest extent practical, to be governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

### 5.5. Establishment of the Finance, Audit, and Risk Monitoring Committee

Without limiting the Board's power to establish other committees, the Board must establish and maintain the Finance, Audit, and Risk Monitoring Committee, the purpose of which is to monitor the Company's financial and compliance risks.

## 6. DIRECTORS' DUTIES AND INTERESTS

### 6.1. Compliance with duties under the Act and general law

Each Director must comply with his or her duties under the Act and under the general law.

### 6.2. Director can hold other offices etc

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

### 6.3. Disclosure of interests

Each Director must comply with the general law in respect of disclosure of conflicts of interest and with section 191 in respect of disclosure of material personal interests.

### 6.4. Director interested in a matter

- (a) Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest.

[Note: Section 195(1) provides that a director who has a material personal interest in a matter being considered at a directors' meeting must not be present while the matter is being considered, and must not vote on the matter. Sections 195(1A) and 195(2) allow the other directors (ie those who do not have a material personal interest in the matter) to pass a resolution stating they are satisfied the director's interest should not disqualify the director from voting or being present.]

- (b) Subject to section 195:
  - (i) if the other Directors pass a resolution stating that the material personal interest should not disqualify the Director from voting or being present, a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
  - (ii) the Company may proceed with any transaction that relates to the material personal interest and, if the other Directors pass a resolution permitting it, a Director with the interest may participate in the execution of any relevant document by or on behalf of the Company;
  - (iii) subject to rule 6.4(c), the Director may retain benefits under the transaction even though the Director has the interest; and
  - (iv) the Company cannot avoid the transaction merely because of the existence of the interest.

- (c) If the interest is required to be disclosed under section 191, paragraph (iii) applies only if the interest is disclosed before the transaction is entered into and only if the other Directors pass a resolution permitting the Director to retain benefits.

## 6.5. Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

## 6.6. Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other individual or organisation engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

[Note: The Act places a number of legally enforceable obligations on directors of companies, including that directors must exercise their powers and discharge their duties in good faith in the best interests of the company (as a whole) and for a proper purpose (see section 181(1)). If a director were to prefer the interests of their appointing member, this may conflict with the statutory duty to act in the interests of the Company as a whole. A breach of these statutory obligations can result in civil or criminal penalties being imposed on the Director personally.]

## 7. PAYMENTS TO DIRECTORS

With the approval of the Board the Company may pay to a Director:

- (a) reasonable remuneration in the amount and in the form determined by the Board for services rendered to the Company by the Director as a Director;
- (b) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (c) reasonable remuneration for any service rendered by the Director to the Company; and
- (d) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board.

Replaces  
section 202A

## 8. OFFICERS' INDEMNITY AND INSURANCE

### 8.1. Indemnity

Subject to and so far as permitted by the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

- (a) the Company must, to the extent the individual or organisation is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to an individual or organisation (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

### 8.2. Insurance

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any individual or organisation.

### 8.3. Former officers

The indemnity in favour of officers under rule 8.1 is a continuing indemnity. It applies in respect of all acts done by an individual while an officer of the Company or one of its wholly owned subsidiaries even though the individual is not an officer at the time the claim is made.

### 8.4. Deeds

Subject to the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, without limiting an individual's rights under this rule 9 enter into an agreement with an individual who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the individual under this rule 9 on any terms and conditions that the Board thinks fit.

## 9. BOARD MEETINGS

### 9.1. Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

Replaces  
section 248C

### 9.2. Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director, and
- (b) may give notice in any way permitted by rule 23.1,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### 9.3. Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

### 9.4. Chairing Board meetings

- (a) If the Board has appointed a Director as Chair, the Chair will chair its meetings.
- (b) If there is no Chair present, the Deputy Chair will chair its meetings
- (c) If there is no Chair or Deputy Chair, or the Chair or Deputy Chair is not present within one hour after the time for which a Board meeting is called or is unwilling to act, the Directors present must appoint a Director present to chair the meeting.

Replaces  
section 248E

### 9.5. Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is 50 per cent of the Directors at the relevant time plus one Director and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

Replaces  
section 248F

### 9.6. Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chairman of a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

Replaces  
section 248G

## 9.7. Procedural rules

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

## 9.8. Written resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document (including by scanned or email signature) or send an email containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs the document or sends an email containing a statement in favour of the resolution.

Replaces  
section 248A

## 9.9. Additional provisions concerning written resolutions

For the purpose of rule 9.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) an electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

## 9.10. Valid proceedings

Each resolution passed or thing done by, or with the participation of, an individual acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the individual; or
- (b) the individual was disqualified from continuing in office, voting on the resolution or doing the thing.

# 10. MEETINGS OF MEMBERS

The Company must hold an annual general meeting as required by section 250N.

## 10.1. Calling meetings of members

A meeting of members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

[Note: Section 249D requires directors to call a general meeting if members (with 5 per cent of votes able to be cast at the meeting) request that a general meeting be called. Section 249G provides for members to seek a court order regarding a general meeting.]

Rule 10.1(a)  
replaces  
section 249C

## 10.2. Notice of meeting

Subject to rule 10.3, at least 21 days' notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3) or section 249J(3A). A notice of meeting may be given to a member by sending it electronically to the electronic address (if any) nominated by that member.

## 10.3. Short notice

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

## 10.4. Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by notice given individually to each individual or organisation entitled to be given notice of the meeting.

## 10.5. Fresh notice

If a meeting of members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

Replaces  
section 249M

## 10.6. Technology

- (a) The Company may hold a meeting of members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
- (b) For the purposes of meetings of the Company, a "reasonable opportunity to participate" means that each member attending the meeting can hear and be heard by each other member attending the meeting.

See section  
249S

- (c) A meeting of members held solely or partly by technology is treated as held at the place at which the greatest number of the members present at the meeting is located or, if an equal number of members is located in each of two or more places, at the place where the chairman of the meeting is located

## 10.7. Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

# 11. PROCEEDINGS AT MEETINGS OF MEMBERS

## 11.1. Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is an organisation) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

## 11.2. Quorum

Replaces  
sections 249T(1)  
and (2)

- (a) The quorum for a meeting of members is 8 members and the quorum must be present at all times during the meeting.
- (b) Each individual present (whether as an Individual Member or as a representative of an Organisational Member) may only be counted once toward a quorum. If a member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

## 11.3. Quorum not present

If a quorum is not present within one hour after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
- (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
- (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

## 11.4. Chairing meetings of members

Replaces  
sections  
249U(1) to (3)

- (a) If the Board has appointed a Director as Chair, the Chair will chair meetings of members.
- (b) If there is no Chair present, the Deputy Chair will chair its meetings
- (c) If there is no Chair or Deputy Chair, or the Chair or Deputy Chair is not present within one hour after the time for which a Board meeting is called or is not willing to chair the meeting, the members present must elect a member or Director present to chair the meeting.



## 11.5. Attendance at general meetings

- (a) Every member has the right to attend and speak at all meetings of members.
- (b) Every Director has the right to attend and speak at all meetings of members.
- (c) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

See  
section 249V

## 11.6. Adjournment

Replaces  
section 249U(4)

Subject to rule 10.5, the Chair of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

## 11.7. Business at adjourned meetings

Replaces  
section  
249W(2)

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

# 12. PROXIES AND REPRESENTATIVES

## 12.1. Appointment of proxies

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of a proxy must be made by notice to the Company:

- (a) that complies with section 250A(1); or
- (b) in any other form and mode and signed or otherwise authenticated by the member in a manner, that is satisfactory to the Board. The appointment of the proxy will be valid if it is made in a form that is satisfactory to the Board, even if that form does not contain all the information in section 250A(1).

[Note: section 25A(1) requires an appointment of proxy to contain: the member's name and address; the Company's name; the proxy's name or the name of the office held by the proxy; the meetings at which the appointment may be used.]

## 12.2. Deposit of proxy appointment forms and proxy appointment authorities

An appointment of a proxy is not effective for a particular meeting of members unless:

- (a) the proxy appointment form; and
- (b) if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it,

are received by the Company in accordance with section 250B(3) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

See section  
249X

[Note: Section 250B(3) allows the documents to be received by email address specified in the notice of meeting; or by any other electronic means specified in the notice of meeting.]

### 12.3. Corporate representatives

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

### 12.4. Appointment for particular meeting, standing appointment and revocation

A member may appoint a proxy or a representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy or representative may, but need not, be a member.

### 12.5. Position of proxy if member present

The appointment of a proxy is not revoked by the member attending and taking part in the general meeting, but if the member votes on a resolution, the proxy is not entitled to vote, and must not vote, as the member's proxy on the resolution.

### 12.6. Priority of conflicting appointments of representative

If more than one representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) a representative appointed to act at that particular meeting may act to the exclusion of a representative appointed under a standing appointment; and
- (b) subject to rule 12.6(a), a representative appointed under a more recent appointment may act to the exclusion of a representative appointed earlier in time.

### 12.7. More than one current proxy appointments

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than one proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

### 12.8. Continuing authority

An act done at a meeting of members by a proxy or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

Replaces  
section 250C(2)

unless the Company has received notice of the matter before the start or resumption of the meeting at which the vote is cast.

## 13. ENTITLEMENT TO VOTE AT MEMBERS' MEETING

### 13.1. Number of votes at members' meetings

Replaces  
section 250E(2)

- (a) Each member has one vote on a show of hands or a verbal vote or a poll.
- (b) A member who is present and entitled to vote and is also a proxy, attorney or representative of another member has one vote on a show of hands or verbal vote.

### 13.2. Casting vote of chairman at members' meetings

The chairman of a meeting of members does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

### 13.3. Decision on right to vote at members' meetings

Replaces  
section 250G

A member or Director may challenge the right of an individual or organisation to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

## 14. HOW VOTING IS CARRIED OUT

### 14.1. Method of voting

Replaces  
sections  
250J(1) and (2)

- (a) A resolution put to the vote at a meeting of members must be decided by a voting method determined by the chairman of the meeting unless a poll is demanded under rule 14.2 either before or on declaration of the result of the vote on the resolution. Unless a poll is demanded, the chairman's declaration of a decision based on the voting method determined by the chairman is final.
- (b) For the avoidance of doubt, the voting method determined by the chairman under rule 14.1(a) may include an electronic method of voting.

### 14.2. Demand for a poll

See section  
250L

A poll may be demanded on any resolution (except a resolution concerning the election of the chairman of a meeting) by:

- (a) one or more members entitled to vote on the resolution; or
- (b) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

### 14.3. When and how polls must be taken

Replaces  
section 250M

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the meeting directs. For the avoidance of doubt, the chairman can direct that the manner in which the poll will be taken will involve the use of electronic technology;
- (c) an individual or organisation voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (d) the result of the poll is the resolution of the meeting at which the poll was demanded.

## 15. SECRETARY

### 15.1. Appointment of Secretary

See section  
204D

The Board:

- (a) must appoint at least one individual; and
- (b) may appoint more than one individual,  
to be a Secretary either for a specified term or without specifying a term.

### 15.2. Terms and conditions of office

Replaces  
section 204F

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

### 15.3. Cessation of Secretary's appointment

The individual automatically ceases to be a Secretary if the individual:

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 15.4.

### 15.4. Removal from office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## 16. MINUTES

### 16.1. Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 5);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A.

### 16.2. Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

### 16.3. Inspection of minute books

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

## 17. EXECUTION OF DOCUMENTS

### 17.1. Execution of Documents

For a document to be validly executed by the Company, it must be signed by:

- (a) two Directors;
- (b) one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of scanned signatures) authorised by the Board.

### 17.2. Execution of Deeds

A Deed may be executed by the Company if the document is expressed to be executed as a deed and is executed in accordance with rule 17.1.

## 18. EXECUTION OF NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of scanned signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

Replaces  
section 198B

## 19. FINANCIAL REPORTS AND AUDIT

### 19.1. Company must keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the auditor to inspect those records at all reasonable times.

### 19.2. Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 no later than the deadline set by section 315.

### 19.3. Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

### 19.4. Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within three months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

### 19.5. Inspection of financial records and books

Subject to rule 16.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

Replaces  
section 247D

## 20. REGISTER OF MEMBERS

The Company must set up and maintain a register of members.

In accordance with section 169, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the name and details of each individual or organisation who stopped being a member within the last seven years;
- (d) the date on which the individual or organisation stopped being a member; and
- (e) an index of members' names if the Company has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

## 21. WINDING UP

In the event of the organisation being dissolved, all assets that remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes, which is charitable at law and which has rules prohibiting the distribution of its assets and income to its members.

## 22. NOTICES

### 22.1. Notices by Company

A notice is properly given by the Company to an individual or organisation if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the individual or organisation to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that individual's or organisation's address; or
- (iii) sent by electronic message to the electronic address (if any) nominated by that individual or organisation.

### 22.2. When notice is given

A notice to an individual or organisation by the Company is regarded as given and received:

- (a) if it is delivered personally:
  - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;

- (b) if it is sent by electronic message or other electronic means:
  - (i) by 5.00 pm (local time in the place from which it is sent or given) on a business day – on that day; or
  - (ii) after 5.00 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
- (c) if it is sent by mail:
  - (i) within Australia - one business day after posting; or
  - (ii) to a place outside Australia - three business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

### 22.3. Business days

For the purposes of rule 22.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

### 22.4. Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

### 22.5. Notices to "lost" members

If:

- (a) on two or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register,

the Company may give effective notice to that member by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the member gives the Company notice of a new address.

## 23. BY-LAWS

### 23.1. Prescription of By-laws

The Directors may from time to time prescribe By-laws of the Company on such matters considered necessary or expedient to give effect to this constitution, to carry out the purposes of the Company, or for the regulation, management and control of the Company's affairs. By-laws made in accordance with this rule 23 will be binding on the Company's Directors and members.



## 23.2. Board resolution

- (a) By-laws shall be prescribed, amended, repealed or adopted by the Board by resolution in accordance with rule 9.
- (b) The members can also, by ordinary resolution, repeal any By-law to the extent that it is inconsistent with the objects of the Company or this Constitution.

## 23.3. Constitution prevails

In the event of any inconsistency between this constitution and the By-laws, this constitution prevails.



australian  
pharmacy  
council

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[w pharmacycouncil.org.au](http://www.pharmacycouncil.org.au) | [e admin@pharmacycouncil.org.au](mailto:admin@pharmacycouncil.org.au) | [p + 61 2 6188 4288](tel:+61261884288)

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Level 1  
15 Lancaster Place  
Majura Park,  
Canberra Airport ACT 2609

ABN 45 568 153 354

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