



# **Clinical Oncology Society of Australia**

**CONSTITUTION**

**OF**

**CLINICAL ONCOLOGY SOCIETY OF AUSTRALIA LIMITED**

**ABN 97 631 209 452, ACN 164 544 950**

**Version 9**

**Approved by the COSA membership at the AGM held  
14 November 2024**

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# CLINICAL ONCOLOGY SOCIETY OF AUSTRALIA LIMITED

## 1. NAME AND INTERPRETATION

### 1.1 Company Name

The name of the company is Clinical Oncology Society of Australia Limited (COSA).

### 1.2 Type of Company

COSA is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 1.3 Liability

The liability of COSA Individual Members is limited to the contribution (the guarantee) required under sub-clause 6.7.

### 1.4 Definitions

In this Constitution, if not inconsistent with the subject or context, the following words shall have the following meanings:

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

- (a) regulations and any statutory modification of that Act or any statutory provisions substituted for that Act or any other such legislation; and
- (b) any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislations, having application to COSA.

"Affiliated Organisations" means a member of the Company admitted to membership as an Affiliated Organisation in accordance with clause 5.9.

“Annual General Meeting” means the annual general meeting of the company as prescribed under sub-clause 8.1.

“Annual Scientific Meeting” means the conference sponsored by COSA, or by COSA in collaboration with other organisations, and so designated by the Board.

"Associated Organisation" means a member of the Company admitted to membership as an Associated Organisation in accordance with clause 5.9.

“Auditor” means the auditor or Reviewer of the company (as the case may be) as appointed by the Board under clause 17.

"Board" means the board of directors of COSA.

“Chair” means the person appointed to that office under sub-clause 12.5 and, where appropriate, shall extend to a person authorised in writing to act on behalf of the Chair.

“Company” or “COSA” or “company” means Clinical Oncology Society of Australia Limited (CAN 164 544 950).

“Company Limited by Guarantee” means an entity incorporated under the *Corporations Act 2001* (Cth) formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up as described under sub-clause 6.7.

"Constitution" means the constitution of the Company as amended from time to time.

“Co-opted Director” has the meaning given in clause 12.2(d).

"Corporations Act" means the *Corporations Act 2001* (Cth) and regulations and any statutory modification of that Act or any statutory provisions substituted for that Act.

"COSA Council" means the body named in Clause 11.

“COSA Council Elected Director” has the meaning given in clause 12.2(b).

“COSA Group” means a collection of COSA Individual Members with a common interest in a discipline, disease type or area of need formed to discuss issues and develop solutions to shared problems in cancer care, the formation of which is approved as outlined in clause 10.

"COSA Individual Members" means a member of the Company admitted to membership as a COSA Individual Member in accordance with clause 5.9.

"Director" or "director" includes any person occupying the position of director of the Company.

“Directors” means all or some of the Directors acting as the Board.

“General Meeting” means meetings of the Members, other than an Annual General Meeting.

"Group" has the same meaning as “COSA Group” being a collection of COSA Individual Members with a common interest in a discipline, disease type or area of need formed to discuss issues and develop solutions to shared problems in cancer care, the formation of which is approved as outlined in clause 10.

“In Writing” means written or produced by any substitute for writing.

“Member” or “member” means a member of the Company under clause 5 and includes a COSA Individual Member, an Affiliated Organisation and an Associated Organisation, whose membership has not ceased.

“Office Bearers” means those persons holding office as named under sub-clause 13.6.

“Officer” means an individual with the responsibility and authority to contract or otherwise act on behalf of the corporation.

“Person” means natural person.

“President” means the person appointed to the office of President as described under sub-clause 12.3.

“President Elect” means the person appointed to the office of President Elect as described under sub-clause 12.4.

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

“Reviewer” means a reviewer under the ACNC Act.

"Secretary" means any person appointed to perform the duties of the Secretary of COSA and if there are joint secretaries, any one or more of those joint secretaries.

“Society” means the company named in sub-clause 1.1.

“Special Resolution” means a resolution of which notice as required by the ACNC Act has been given and that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

## **1.5 Interpretation**

In this Constitution, except where the context otherwise requires:

- (a) a gender includes all genders;
- (b) the singular includes the plural and conversely;
- (c) headings are for convenience and do not affect the interpretation of the Constitution;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is a reference to Sydney Australia time;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

## **1.6 Reading this Constitution with the Corporations Act**

- (a) The provision of the Corporations Act that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the company.

- (b) For the purposes of this Constitution, if the provisions of the ACNC Act or the Corporations Act conflict with the terms of this Constitution on the same matter, the provisions of the relevant Act prevail to the extent of the conflict.
- (c) In this Constitution, except where the context otherwise requires, a word or expression in a clause of this Constitution that is defined in the Corporations Act has the same meaning as in this Constitution. Where the word or expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that word or expression has the same meaning as in that provision.

## **2. OBJECTS AND POWERS**

### **2.1 Objects of COSA**

The objects for which COSA has been established are to pursue the following charitable purposes:

- (a) to promote excellence in the multidisciplinary care and research relating to cancer – from prevention, diagnosis and treatment to follow-up, palliation and survivorship;
- (b) to encourage multidisciplinary collaboration of all professionals involved in cancer care and research;
- (c) to foster and promote cancer research;
- (d) to support the professional development and educational needs of cancer health professionals in the furtherance of the above objects; and
- (e) to do all things incidental or convenient in relation to the advancement of the objects contained in this clause.

### **2.2 Powers of COSA**

Subject to clause 3, the company has all the powers of a company limited by guarantee granted in section 124(1) of the Corporations Act, which may only be used to carry out and further the objects set out in clause 2.1 and all things incidental or convenient in relation to the exercise of those powers.

## **3. NOT-FOR-PROFIT**

- (a) The income and property of the company will only be applied towards the promotion of the objects of the company set out in clause 2.1.
- (b) The company must not pay or distribute any income or assets directly or indirectly to any member, except as provided in clause 22 and for payments to a member:
  - (i) in return for any goods or services rendered in the ordinary and usual course of business of the company or expenses they have



properly incurred at fair and commercially reasonable rates or rates more favourable to the company, or

- (ii) in carrying out and furtherance of the company's charitable purposes provided that the member is itself a charitable entity registered under the ACNC Act with a similar charitable purpose to the company.

#### **4. ESTABLISHMENT AND OPERATION OF GIFT FUND**

##### **4.1 Maintaining the Gift Fund**

COSA may maintain for its principal objects a fund (Gift Fund):

- (a) to which gifts of money or property for those objects are to be made,
- (b) to which contributions described in item 7 or 8 of the table in section 30-15 of the Income and Tax Assessment Act 1997 in relation to a fundraising event held for that purpose are to be made,
- (c) to which any money received by COSA because of those gifts or contributions is to be credited, and
- (d) that does not receive any other money or property.

##### **4.2 Limits on use of Gift Fund**

COSA must use the Gift Fund only for its objects.

##### **4.3 Winding up of the Gift Fund**

- (a) At the first occurrence of:
  - (i) the winding up of the Gift Fund, or
  - (ii) COSA ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act 1997,

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

- (iii) which is charitable at law,
  - (iv) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in clause 3, and
  - (v) gifts to which are deductible under Division 30 of Income Tax Assessment Act 1997 due to it being characterised and endorsed as a charitable institution whose principal activity is to promote the prevention or control of disease in human beings as described in item 1.1.6 of section 30-20 of Income Tax Assessment Act 1997.
- (b) The identity of the institution must be decided by the directors.

## **5. MEMBERSHIP**

### **5.1 Types of Membership**

There shall be three types of membership, as further defined and described in Schedule 1:

- (a) Individual membership, herein referred to as *COSA Individual Members*,
- (b) Organisational membership A, herein referred to as *Affiliated Organisations*, and
- (c) Organisational membership B, herein referred to as *Associated Organisations*.

All types of membership shall be defined and described in Schedule 1 of the Constitution.

### **5.2 Other Types of Membership**

The Board may establish new and/or change existing types of membership.

### **5.3 Qualification for COSA Individual Members**

A person is eligible to be admitted to COSA membership as a COSA Individual Member if the person:

- (a) is a natural person;
- (b) is not an undischarged bankrupt;
- (c) holds a professional qualification that relates to the objects of COSA, and
- (d) is:
  - (i) a cancer health professional (including medical, nursing and allied health or professional in training), or
  - (ii) an epidemiologist, scientist or other professional in the cancer field who devotes a majority of his or her professional activity to cancer patient care and/or research.

### **5.4 Application for COSA Individual Members**

Applications for COSA Individual Members shall be made in writing. The applicant must be endorsed by a COSA Individual Member, and the applicant shall provide details of qualifications, professional status, appointments, and special interests in relation to clinical oncology.

### **5.5 Qualification for Affiliated Organisations**

- (a) Subject to clause 5.5(b), a person is eligible to be admitted to COSA membership as an Affiliated Organisation if the person is a not-for-profit

company, institution or organisation that has similar objects to the Objects of COSA as outlined in sub-clause 2.1.

- (b) The Board shall have the power to extend membership by invitation to a not-for-profit company, institution or organisation it deems worthy of such membership and may appoint such company, institution or organisation to be an Affiliated Organisation, and approve their nomination for representation on COSA Council.

#### **5.6 Form of Application for Affiliated Organisations**

- (a) Applications for Affiliated Organisations shall be made in writing to the Board, signed by a duly recognised officer of the organisation, and shall provide details of the organisation's objects, membership, interests and activities in relation to clinical oncology.
- (b) Affiliated Organisation applications shall nominate one individual to represent that organisation on COSA Council as outlined in clause 11. Such nominees must be COSA Individual Members or agree to join as per sub-clauses 5.3 and 5.4.

#### **5.7 Qualification for Associated Organisations**

- (a) Subject to clause 5.7(b), a person is eligible to be admitted to COSA membership as an Associated Organisation if the person is a not-for-profit company, institution or organisation that has similar objects to the Objects of COSA as outlined in sub-clause 2.1.
- (b) The Board shall have the power to extend membership by invitation to a not-for-profit company, institution or organisation it deems worthy of such membership and may appoint such company, institution or organisation to be an Associated Organisation.

#### **5.8 Form of Application for Associated Organisations**

Applications for Associated Organisations shall be made in writing to the Board, signed by a duly recognised officer of the organisation, and shall provide details of the organisation's objects, membership, interests and activities in relation to clinical oncology.

#### **5.9 Board Determination of Applications**

- (a) At the next meeting of the Board after the receipt of any application for membership of COSA Individual Members, Affiliated Organisations or Associated Organisations, such applications shall be considered by the Board who shall thereupon:
  - (i) determine upon the admission or rejection of the applicant, or
  - (ii) postpone the consideration of the application and request further information to support the application from the applicant.

- (b) If the Board asks for more evidence under clause 5.9(a)(ii), its determination of the application for membership is to be deferred until the evidence is given.

#### **5.10 Board Not Required to Give Reasons for Determinations**

In no case shall the Board be required to give any reason for the rejection of an applicant.

### **6. RIGHTS AND OBLIGATIONS OF COSA INDIVIDUAL MEMBERS, AFFILIATED ORGANISATIONS AND ASSOCIATED ORGANISATIONS**

#### **6.1 Rights of COSA Individual Members**

- (a) Each COSA Individual Member has the right to:
  - (i) Subject to clause 9.11(f), vote at the Annual General Meeting and General Meetings,
  - (ii) Make nominations for the position of COSA President Elect as described in clause 12.4,
  - (iii) Access COSA publications, resources and secure content on the company's website,
  - (iv) Discounted rates at COSA scientific sessions as described in sub-clause 6.1(viii),
  - (v) Apply for COSA grants and awards,
  - (vi) Join and form Groups of COSA as prescribed in clause 10,
  - (vii) Be represented on the COSA Council through COSA Group(s) as prescribed in sub-clause 11(c), and
  - (viii) Register to participate in the COSA Annual Scientific Meeting, and may register to participate in all other COSA conferences, meetings and workshops, subject to participation in any such activity being restricted to certain COSA Groups or where participation is by invitation only, all such restrictions being the prerogative of the Board.
- (b) The rights and privileges of every COSA Individual Member are personal to each COSA Individual Member and are not transferable by the COSA Individual Member's own act or, to the extent permitted by law, by operation of law.

#### **6.2 Obligations of COSA Individual Members**

- (a) Membership of the company involves a commitment to the objects of the company and responsibility towards the maintenance of a sustained interest in the affairs and objects of the company.

- (b) Membership of COSA Individual Members to COSA Groups is not mandatory – those members that elect to join COSA Groups agree to undertake active contribution to those Groups.
- (c) Pay the annual membership fee as determined by the Board as prescribed in clause 6.8.
- (d) Notify the Secretary of any change of address and of any additional qualifications or distinctions gained since commencement of membership of COSA.
- (e) Comply with the Constitution as relevant to COSA Individual Members.

### **6.3 Rights of Affiliated Organisations**

- (a) Each Affiliated Organisation has the right to:
  - (i) Representation on COSA Council as prescribed in sub-clause 11(c),
  - (ii) Vote for COSA Council Elected Directors as prescribed in sub-clause 11(f),
  - (iii) Discounted COSA membership for members of Affiliated Organisations,
  - (iv) Provide advice to the COSA Board and Council, and
  - (v) Hold joint meetings with the COSA Annual Scientific Meeting.
- (b) The rights and privileges of every Affiliated Organisation are personal to each Affiliated Organisation and are not transferable by the Affiliated Organisation's own act or, to the extent permitted by law, by operation of law.

### **6.4 Obligations of Affiliated Organisations**

- (a) Affiliated Organisations shall nominate one individual to represent that organisation on COSA Council as outlined in clause 11. Such nominees must be COSA Individual Members or agree to join as per sub-clauses 5.3 and 5.4.
- (b) Attend more than 50% of COSA Council meetings annually.
- (c) For the purposes of attendance at COSA Council meetings, if the nominated individual is unable to attend, a proxy can be nominated in advance. Such proxies must be COSA Individual Members.
- (d) Contribute to strategic advice to the COSA Board.
- (e) Become members of COSA Committees as requested.
- (f) Advise COSA on particular issues as and when requested.

- (g) Actively promote COSA within its organisation and networks.
- (h) Pay the annual membership fee as determined by the Board as prescribed in clause 6.8.
- (i) Notify the Secretary of any change of address.
- (j) Comply with the Constitution as relevant to Affiliated Organisations.

## **6.5 Rights of Associated Organisations**

- (a) Each Associated Organisation has the right to:
  - (i) Discounted COSA membership for members of Associated Organisations.
  - (ii) Access to COSA advocacy agenda, and
  - (iii) Hold joint meetings with the COSA Annual Scientific Meeting.
- (b) The rights and privileges of every Associated Organisation are personal to each Associated Organisation and are not transferable by the Associated Organisation's own act or, to the extent permitted by law, by operation of law.

## **6.6 Obligations of Associated Organisations**

- (a) Become members of COSA Committees as requested.
- (b) Advise COSA on particular issues as and when requested.
- (c) Actively promote COSA within its organisation and networks.
- (d) Pay the annual membership fee as determined by the Board as prescribed in clause 6.8.
- (e) Notify the Secretary of any change of address.
- (f) Comply with the Constitution as relevant to Associated Organisations.

## **6.7 Contribution on Winding up**

If the company is wound up, every COSA Individual Member undertakes to contribute to the property of COSA for the payment of debts and liabilities of COSA, and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, the amount of ten dollars (\$10.00).

## **6.8 Annual Membership Fee**

- (a) Every COSA Individual Member, Affiliated Organisation and Associated Organisation undertakes to pay the annual membership fee, if any, as determined by the Board.

- (b) The Board may determine differing annual membership fees for different members, and/or members of particular categories.
- (c) Changes to annual membership fees, as determined by the Board, will be notified at each Annual General Meeting, providing an opportunity for COSA Individual Members to comment.

## **6.9 Register of all COSA members**

The company must establish and maintain a register of all COSA members (including individuals and organisations), kept by the Secretary and containing:

- (a) for each current member:
  - (i) name,
  - (ii) address,
  - (iii) any alternative address nominated by the member for the service of notices, and
  - (iv) date the member was entered on to the register.
- (b) for each member that stopped being a member in the last seven years:
  - (i) name,
  - (ii) address,
  - (iii) any alternative address nominated by the member for the service of notices, and
  - (iv) date the membership started and ended.

## **7. CESSATION OF MEMBERSHIP**

### **7.1 Ceasing to be a member**

A Member's membership of the company will immediately cease if the Member:

- (a) dies,
- (b) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health,
- (c) resigns, by writing to the Secretary, from date of receipt of that notice by the Secretary
- (d) is wound up or otherwise dissolved or deregistered (applicable to an Affiliated Organisation or Associated Organisation),
- (e) files or is the subject of a petition for bankruptcy,
- (f) is expelled under clause 7.2,

- (g) has not paid the annual membership fee as prescribed in clause 6.8, or
- (h) has not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a member.

## **7.2 Disciplining of COSA Individual Members**

If a majority of the Directors present and voting at a meeting of the Directors are of the opinion that a COSA Individual Member has:

- (a) refused or neglected to comply with the Constitution, or
- (b) acted in a manner inconsistent with the Objects of the company, or
- (c) been engaged in conduct which is unbecoming a Member and which renders it undesirable that the Member continue to be a Member of the company, or
- (d) acted in a manner prejudicial to the interests of the company,

the Board may:

- (e) censure that member and issue notice to that effect, or
- (f) suspend that member from membership of the company for a specified period, or
- (g) expel that member from the company

That Member must be given at least 21 days' notice of the resolution and must have been given the opportunity of giving orally or in writing any explanation or defence the Member may think fit.

## **8. GENERAL MEETINGS**

### **8.1 Annual General Meeting**

An Annual General Meeting of COSA shall be held once every calendar year at such time and place as may be determined by the Directors. All Meetings other than the Annual General Meetings shall be called General Meetings.

### **8.2 Business of an Annual General Meeting**

- (a) The business of any Annual General Meeting may include, even if not referred to in the notice of the meeting:
  - (i) a review of the company's activities,
  - (ii) the consideration of the annual financial report, Auditor's report (if any), and Directors' report, and
  - (iii) the appointment of the auditor (if any).



- (b) The business of an Annual General Meeting may also include any other business which under this Constitution ought to be transacted at an Annual General Meeting.
- (c) The Chair of the Annual General Meeting must allow a reasonable opportunity for COSA Individual Members present at the meeting to ask any questions about or make comments on the agenda business and the management of the Company.

### **8.3 Notice of General Meetings**

- (a) Notice of any General Meeting must be given to:
  - (i) each member entitled to vote at the meeting,
  - (ii) each director, and
  - (iii) the Auditor.
- (b) Subject to clause 8.3(c), notice of any General Meeting must be provided in writing (by email) at least 21 days before the meeting (exclusive of the day on which the notice is served or deemed to be served and of the day which notice is given).
- (c) Notice of a General Meeting may be provided less than 21 days before the meeting if:
  - (i) for an Annual General Meeting, all members entitled to vote at the Annual General Meeting agree beforehand, or
  - (ii) for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand,

except if a resolution is to be moved at such Annual General Meeting or other General Meeting to:

  - (iii) remove a director,
  - (iv) appoint a director in order to replace a director who was removed, or
  - (v) remove the Auditor,

in which case at least 21 days' notice is required.
- (d) A notice calling a General Meeting must specify:
  - (i) the place, date and time for the Meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this:
  - (ii) the general nature of the business to be transacted at the meeting;

- (iii) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
- (iv) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - A. the proxy does not need to be a member of the company,
  - B. the proxy form must be delivered to the company at its registered address (including an electronic address) specified in the notice of the meeting, and
  - C. the proxy form must be delivered to the company at least 48 hours before the meeting.
- (e) If a General Meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

#### **8.4 General Meetings Called by Directors**

- (a) Any three directors may, whenever they think fit, convene a General Meeting.
- (b) If COSA Individual Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the company of a General Meeting to be held, the directors must:
  - (i) within 21 days of the members' request, give all members notice of the General Meeting, and
  - (ii) hold the General Meeting within 2 months of the members' request.
- (c) The percentage of votes that members have (in clause 8.4(b)) is to be worked out as at midnight (Australian Eastern Time) before the members request the meeting
- (d) Any member who makes a request for a General Meeting must:
  - (i) state in the request any resolution to be proposed at the meeting,
  - (ii) sign the request, and
  - (iii) give the request to the company.
- (e) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

## **8.5 General Meeting called by COSA Individual Members**

- (a) If the directors do not call the meeting within 21 days of being requested under clause 8.4(b), 40% or more members who made the request may call and arrange to hold a General Meeting
- (b) To call and hold a meeting under clause 8.5(a) the members must:
  - (i) as far as possible, follow the procedures for General Meetings set out in this Constitution,
  - (ii) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost, and
  - (iii) hold the General Meeting within three months after the request was given to the company.
- (c) The company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

## **9. PROCEEDINGS AT GENERAL MEETINGS**

### **9.1 Quorum Required**

No business shall be transacted at any Annual General Meeting or General Meeting unless a quorum of thirty (30) COSA Individual Members is present at the time when the meeting proceeds to business. For the purpose of this Clause "Member" includes a person attending as a proxy.

### **9.2 Effect on Meeting if Quorum not Present**

- (a) If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the Chair specifies. If the Chair does not specify one of more of those things, the meeting is adjourned to:
  - (i) if the date is not specified – the same day in the next week,
  - (ii) if the time is not specified – the same time, and
  - (iii) if the place is not specified – the same place.
- (b) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is automatically dissolved.

### **9.3 President to Chair General Meetings**

The President shall chair every Annual General Meeting and General Meeting of COSA, or if the President is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, then the Members present shall elect one of their number to be Chair of the meeting.

#### **9.4 Chair may Adjourn Meeting**

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

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

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

- (a) by the Chair, or
- (b) by at least (3) COSA Individual Members present in person or by proxy.

#### **9.6 When a poll may be demanded**

A poll may be demanded:

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

#### **9.7 Chair may declare resolution on show of hands**

Unless a poll is so demanded a declaration by a Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of COSA shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

#### **9.8 Chair to Inform Meeting about Proxies**

Before a vote is taken the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are cast.

#### **9.9 Poll**

If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chair or on a question of adjournment shall be taken forthwith.

### **9.10 Chair to have Casting Vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

### **9.11 Entitlement to Vote**

- (a) COSA Individual Members are entitled to cast a vote at Annual General Meetings and General Meetings.
- (b) Each COSA Individual Member who is a member of a COSA Group is entitled to attend and vote at Annual General Meetings and General Meetings and participate in election procedures of the Group.
- (c) Affiliated Organisations are not entitled to vote at Annual General Meetings and General Meetings.
- (d) Associated Organisations are not entitled to vote at Annual General Meetings and General Meetings.
- (e) Affiliated Organisations are entitled to vote at COSA Council meetings.
- (f) Notwithstanding sub-paragraphs (a) and (b) above, Overseas and Student members are not entitled to a vote at Annual General Meetings and General Meetings.

### **9.12 Member may vote in person or by proxy**

A COSA Individual Member may vote in person or by proxy, and on a show of hands every person present who is a member or a representative of a member shall have one vote and on a poll every member present in person or by proxy shall have one vote.

### **9.13 Appointment of proxy**

- (a) A COSA Individual Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- (b) A proxy does not need to be a member.
- (c) A proxy appointed to attend and vote for a member has the same rights as the member to:
  - (i) speak at the meeting,
  - (ii) vote in a vote in writing or abstain (but only to the extent allowed by the appointment). If the proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed,
  - (iii) demand or join in demanding a poll, and
  - (iv) vote on a poll.

- (d) An appointment of proxy (proxy form) is valid if it is signed by the Member appointing the proxy and contains:
  - (i) the member's name and address,
  - (ii) the company's name,
  - (iii) the proxy's name or the name of the office held by the proxy,  
and
  - (iv) the meeting(s) at which the appointment may be used.
- (e) A proxy or attorney may be appointed for all General Meetings or for any number of General Meetings or for a particular purpose. A proxy appointment may be standing (ie ongoing).
- (f) Proxy forms must be received by the company at the address stated in the notice under clause 8.3(d) or at the company's registered address at least 48 hours before a meeting (unless otherwise specified in the notice of meeting to which the proxy relates).
- (g) A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- (h) Unless the company receives written notice before the start of, or the resumption of, a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
  - (i) dies,
  - (ii) is mentally incapacitated,
  - (iii) revokes the proxy's appointment or power, or
  - (iv) revokes the authority of a representative or agent who appointed the proxy.
- (i) A proxy appointment may specify the way the proxy must vote on a particular resolution.
- (j) Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
  - (i) to vote on:
    - A. any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - B. any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and

- (ii) to vote on any motion before the General Meeting whether or not the motion is referred to in the appointment.

#### **9.14 Using technology to hold meetings**

- (a) The company may hold a General Meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person and at the meeting.

#### **9.15 Members' Resolutions and Statements**

- (a) COSA Individual Members with at least 5% of the votes that may cast on a resolution may give:
  - (i) A written notice to the company of a resolution they propose to move at a General Meeting (members' resolution), and/or
  - (ii) A written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (members' statement).
- (b) A notice of a COSA Individual Members' resolution must set out the wording of the proposed resolution and be signed by the COSA Individual Members proposing the resolution.
- (c) A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- (d) Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- (e) The percentage of votes that members have (as described in clause 9.15(a)) is to be worked out at midnight (Australian Eastern Time) before the request or notice is given to the company.
- (f) If the company has been given notice of a members' resolution under clause 9.15(a) the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- (g) This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

## **10. GROUPS OF THE COMPANY**

### **10.1 Groups Approved by the Board**

- (a) The Board must constitute Groups of the Company, based primarily on the interests and objects of the Company, in which COSA Individual Members are involved.
- (b) Where there is duplication between a COSA Group and an independent professional organisation, on advice of the COSA Council, the Board may elect that the professional organisation assumes the role of the COSA Group subject to that organisation being an Affiliated Organisation of COSA as prescribed in sub-clause 5.5.
- (c) A new Group may be formed, subject to the approval of the Board, on the proposal of at least thirty (30) COSA Individual Members.

### **10.2 Membership of Groups**

Each COSA Individual Member shall make application for membership to the appropriate Group(s).

### **10.3 Proceedings of Groups**

- (a) Each COSA Group will have terms of reference approved by COSA Council. Such terms of reference will include agreed objectives, the establishment of an Executive Committee voted by the Group membership.
- (b) Groups and their activities will be based primarily on the objects of COSA as prescribed in sub-clause 2.1.
- (c) The Group Chair will sit on COSA Council during their elected term.
- (d) Groups may hold an annual general meeting, preferably at the COSA Annual Scientific Meeting.
- (e) Each Group is responsible to, and may be directed by the Board or their delegate as set out in accordance with the terms of reference.
- (f) Groups are required to submit to the COSA Board an annual plan outlining their planned activities and/or priorities, and support or resourcing requests from the COSA office.
- (g) An annual review of COSA Group activities and structure will be conducted as a part of good governance and Groups that are in abeyance may be dissolved at the discretion of the Board on the advice of Council.
- (h) COSA Council may disband a Group if the registered membership falls below thirty (30) COSA Individual Members.



## **11. COSA COUNCIL**

- (a) COSA Council is the main scientific and advisory body representing all COSA Individual Members, COSA Groups and Affiliated Organisations.
- (b) COSA Council fulfils a role of providing advice and counsel to the Board about the manner in which the Board carries out its responsibilities on behalf of the COSA membership and is not involved directly in matters of COSA governance.
- (c) The Chair of each COSA Group and the nominee of each Affiliated Organisation will be a member of COSA Council.
- (d) The President and President Elect will be members of COSA Council.
- (e) COSA Council members act as scientific and medical advisors to Cancer Council Australia on behalf of COSA.
- (f) The COSA Council will be responsible for electing COSA Council Elected Directors as described in sub-clause 12.7.
- (g) Affiliated Organisations will at no time hold more than 49% of the positions on COSA Council, or such other percentage that the Board determines.

## **12. BOARD**

### **12.1 Number of Directors**

Until the company resolves otherwise, the Company must have at least eight and no more than eleven Directors, who will comprise the Board.

### **12.2 Composition of Board**

The Board of COSA shall comprise:

- (a) the incumbent President and President Elect;
- (b) six (6) directors elected by the COSA Council from within its current or previous membership (being “COSA Council Elected Directors”); and
- (c) up to three (3) directors who may be co-opted by the non-co-opted directors as required (being “Co-opted Directors”).

### **12.3 President**

- (a) The President will take office having completed two years as President Elect as prescribed in sub-clause 12.4.
- (b) The President will hold office for two years.
- (c) The President will fulfil the role of Chair of the Board.

## **12.4 President Elect**

- (a) Once every two years the Chief Executive Officer shall conduct a call for nominations for the position of President Elect.
- (b) Nominees must be existing COSA Council elected directors or members of COSA Council or have served as either in the ten years prior to the close of nominations.
- (c) Each nomination shall be signed by the candidate, signifying his/her consent to the nomination, and by a proposer and seconder who shall both be COSA Individual Members.
- (d) In the event of there being more than one nomination the Chief Executive Officer shall conduct a ballot at which all COSA Individual Members may vote. The results of the ballot shall be recorded in the Minutes of the next scheduled COSA Council Meeting and upon such recording the ballot papers shall be destroyed and such record shall be deemed to be sufficient evidence of the results of the election.
- (e) From the date of assumption of office, if the newly elected President Elect holds other office within COSA, such as Chair of a COSA Group, they shall resign from this position and the vacancy so caused shall be filled as a casual vacancy.
- (f) The President Elect will hold office for up to two years.
- (g) The President Elect will fulfil the role of Deputy Chair of the Board.

## **12.5 Role of the Chair**

- (a) The Chair (and the Deputy Chair subject to sub-clause 12.5(c)) shall:
  - (i) Be the spokespersons for the company unless a meeting of the Board resolves otherwise,
  - (ii) Preside at and preserve the order of all General Meetings (including Annual General Meetings) subject to sub-clause 12.5(b) and ensure that all such meetings are conducted in accordance with the Constitution,
  - (iii) Preside at and preserve the order of all meetings of the Board subject to sub-clause 12.5(b) and ensure that all such meetings are conducted in accordance with the Constitution, and
  - (iv) Perform other roles and functions as may, by resolution and by instrument in writing, be determined by the Board.
- (b) Should the Chair be absent from any meetings of the Board, the Deputy-Chair (or if he/she is also absent, one of the remaining Directors chosen by the Directors present) shall perform the functions of the Chair to which sub-clause 12.5(a) refers.

- (c) The Deputy-Chair shall undertake Chair duties during a vacancy of Chair, or when a Chair is unable to perform the duties of office as provided for in this Constitution.

## **12.6 Nomination of COSA Council Elected Directors**

A person is eligible for nomination as a COSA Council Elected Director of the Company if they:

- (a) are a current COSA Individual Member,
- (b) are an existing member of COSA Council (as specified in clause 11(c)) or have been such in the ten years prior to the close of nominations,
- (c) are nominated by two COSA Individual Members (a proposer and a seconder),
- (d) give their signed consent to the nomination, and
- (e) are not ineligible to be a director under the Corporations Act or the ACNC Act.

## **12.7 Election of COSA Council Elected Directors**

- (a) Subject to clause 12.7(b) the Secretary will conduct an annual call for nominations for COSA Council Elected Directors each May, whereby all COSA Individual Members are eligible to put forward nominations.
- (b) In the event there are no vacancies to fill, no call for nominations will be conducted.
- (c) In the event a COSA Council Elected Director resigns prior to the end of their term, the Board may agree to conduct a call for nominations to fill the vacancy.
- (d) Upon receipt of nominations for COSA Council Elected Directors, the Secretary will conduct an anonymous election of COSA Council members to vote on.
- (e) The nomination receiving the highest number of votes will be considered the preferred candidate.
- (f) In the instance where multiple COSA Council Elected Director vacancies exist, the nomination receiving the second highest number of votes will be considered the second preferred candidate, and so on.
- (g) Nominees are informed of their success or otherwise by the Board Chair.

## **12.8 Term of Office**

- (a) COSA Council Elected Directors and Co-opted Directors shall hold office for two years.

- (b) COSA Council Elected Directors will be eligible for re-election for two further terms, the process for which is described in clause 12.9.
- (c) Co-opted Directors will be eligible for re-election for a number of terms as deemed appropriate by the Board.

## **12.9 Re-election of COSA Council Elected and Co-opted Directors**

- (a) The process for re-election of COSA Council Elected Directors is as follows:
  - (i) At the end of their first term, each COSA Council Elected Director will be invited by the Chair to stand for another term; likewise at the end of their second term, COSA Council Elected Directors will be invited to stand for a third and final term.
  - (ii) COSA Council Elected Directors standing for re-election will be added to the pool of new Director nominations for the anonymous election as outlined in clause 12.7.
- (b) The process for re-appointment of Co-opted Directors is as follows:
  - (i) At the end of each two-year term, each Co-opted Director will be invited by the Chair to stand for further terms.
  - (ii) Applications for Co-opted Directors offering themselves for re-appointment will be considered, and approved if appropriate, by the Directors (other than the Co-opted Directors).

## **12.10 Effective Date of Appointment for Directors**

- (a) The President and President Elect shall take office from the Annual General Meeting in the year of the election of the President Elect.
- (b) The appointment of a COSA Council Elected Director and/or Co-opted Director will take effect when a signed consent to act as a director is provided by that person to the company. Their appointment as a director will take effect on the date of the signed consent.

## **12.11 Effect of Retirement**

On retirement from membership of the Board a director shall not be eligible to serve on the Board again until four years have elapsed from the date of such retirement, unless elected as President Elect.

## **12.12 Filling Casual Vacancies**

The Board shall have power at any time, and from time to time, to appoint any person to the Board, either to fill a casual vacancy so that the total number of directors shall not at any time fall below or exceed the number fixed in accordance with this Constitution. Any director so appointed shall hold office only until the next following Annual General Meeting.

### **12.13 Removal of Director by Resolution**

- (a) If the conduct or position of an appointed director is such that continuance in office appears to the majority of the directors to be prejudicial to the interests of the company, a majority of directors at a meeting of the directors specifically called for that purpose may remove that director.
- (b) If the conduct or position of an elected director is such that continuance in office appears to the majority of the directors to be prejudicial to the interests of the company, a majority of directors at a meeting of the directors specifically called for that purpose may suspend that director. Within 21 days of the suspension, the directors must call a General Meeting, at which the Members may either confirm the suspension and remove the director from office or annul the suspension and reinstate the director.
- (c) The company in General Meeting may by resolution, subject to the Corporations Act or the ACNC Act, remove any director from the office of director before the end of the director's term of office.

### **12.14 Vacancy**

A person immediately ceases to be a director, and the office of a director shall become vacant, if he/she:

- (a) resigns their office by notice in writing to COSA,
- (b) dies,
- (c) is removed as a director by a resolution of COSA Individual Members,
- (d) ceases to be a director of the company by virtue of, or is prohibited from holding or is removed from the office of director by an order made under, the Corporations Act or, while the company is a Registered Entity becomes ineligible to be a director under the ACNC Act,
- (e) becomes of unsound mind to the extent that their affairs come under protective jurisdiction or whose person or estate is liable to be dealt with in any way under the law relating to mental health or possesses any medical conditions which, in the opinion of the directors, precludes the director from fulfilling his/her duties as a director,
- (f) is absent for more than 50% of meetings held in a calendar year, unless the director obtains the Chair's prior approval for a leave of absence,
- (g) holds any office of profit under COSA,
- (h) is guilty of any conduct which in the opinion of the Board is unbecoming of a director or prejudicial to the interests of COSA pursuant to sub-clause 12.13, or
- (i) is directly or indirectly interested in any contract or proposed contract with COSA or has a material personal interest in a matter that relates to the

affairs of the company and fails to declare the nature of the interest in the manner required by the Corporations Act.

PROVIDED ALWAYS THAT nothing in this Clause shall affect the operation of Clause 3 of the Constitution of COSA.

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

#### **13.1 Powers of Directors**

- (a) The directors are responsible for managing and directing the activities of the company.
- (b) The directors may use all of the powers of the company except for powers that, under the Corporations Act or this Constitution, may only be used by COSA Individual Members at General Meetings.
- (c) The directors must decide on the responsible financial management of the company including any suitable delegation of powers under clause 13.2.
- (d) The directors are responsible for the appointment of the Chief Executive Officer as defined in clause 13.5.

#### **13.2 Delegation of Directors' Powers**

- (a) The directors must not delegate any of the duties imposed on the directors of the company by the Corporations Act or the general law or this power of delegation.
- (b) The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as the Chief Executive Officer) or any other person, as they consider appropriate.
- (c) The directors may not delegate the following powers and functions:
  - (i) establishment and membership of committees of the Board; and
  - (ii) appointment of the Chief Executive Officer and selection panels for appointment of the Chief Executive Officer.
- (d) Subject to clause 13.2(c) the directors may delegate any of its powers to committees and:
  - (i) any committee so formed must comply with any direction that may be given by the board; and
  - (ii) each committee shall have the power to co-opt any person to advise and assist the committee in the discharge of its function.

#### **13.3 Duties of Directors**

The directors must comply with their duties as directors under legislation and common law (judge-made law), and at all times while the company is a Registered Entity, with the

duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company,
- (b) to act in good faith in the best interests of the company and to further the charitable purposes of the company set out in clause 2.1,
- (c) not to misuse their position as a director,
- (d) not to misuse information they gain in their role as a director,
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 14.3,
- (f) to ensure that the financial affairs of the company are managed responsibly, and
- (g) not to allow the company to operate while it is insolvent.

#### **13.4 COSA Affairs to be Managed by the Board**

- (a) All acts done by any meeting of the Board (or of a committee, a delegate or by any person acting authoritatively as a director) are valid and effective even if it is afterwards discovered that there was some defect in the appointment, election or qualification of any of them or that any of them were disqualified or had vacated office or the continuance of the appointment of the director is invalid because the company, the Board, committee, delegate or director did not comply with the Constitution any provision of the Corporations Act or the ACNC Act or Board sanctioned regulation or by-law.
- (b) Any COSA Individual Member(s) shall, by written submission addressed to the Chair through the Secretary, be permitted to submit advice, counsel, comments, feedback and express opinions regarding any governance control and strategic direction policy matters dealt with by the Board.

#### **13.5 COSA Chief Executive Officer**

- (a) The Board shall appoint a Chief Executive Officer who shall at all times be responsible to and shall report to the Board.
- (b) The Board may give the Chief Executive Officer any of the powers conferred on it by this Constitution, subject to the Board's discretion, to any time period, specific purposes and any other terms and restrictions.
  - (i) The terms and conditions of the employment, delegated authorities, responsibilities, specific duties and restrictions of the Chief Executive Officer shall be determined, outlined, and when required, reviewed by its resolution and by instrument in writing by the Board.

- (ii) All or any of these powers may be given collaterally with, or to the exclusion of the powers of Board and may be revoked or varied by the Board.
- (c) The Chief Executive Officer shall:
  - (i) be entitled to attend all meetings of the company and to attend all Board meetings (pursuant to clause 14), excluding in camera sessions unless requested to be present, and to participate in any discussions relating to any question or motion before such meetings, but shall not be entitled to vote on any Board motion,
  - (ii) have access to all Board documents and minutes, excluding minutes of in camera sessions unless provided by the Board, and shall receive notices of all Board meetings,
  - (iii) not be a director, and
  - (iv) not be entitled to vote at General Meetings.

### **13.6 COSA Office Bearers**

The office bearers of the company are:

- (a) the President,
- (b) the President-Elect,
- (c) the Secretary, and
- (d) the Chief Executive Officer.

### **13.7 Minutes to be Kept**

The Board shall cause minutes to be made of:

- (a) the names of directors present at all meetings of COSA and of the Board, and
- (b) all proceedings at all meetings of COSA and of the Board.

### **13.8 Minutes to be Signed by Chair**

Such minutes shall be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting, or if the minutes are unavailable at the next meeting then at the earliest opportunity afforded by a subsequent meeting.

## **14. PROCEEDINGS OF THE BOARD**

### **14.1 Board Meetings**

- (a) The Board shall hold all Board meetings as “in camera sessions” (private), but may invite, at their own discretion, any persons to attend any part of



the Board meeting and be invited to speak on agenda items by permission of the Chair to provide reports, advice, counsel and information on matters as requested by directors.

- (b) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A director may at any time and the Secretary shall on the requisition of a director summon a meeting of the Board. The Board may meet personally or through any available means of electronic communication means as the Board may determine.
- (c) The Board shall meet a minimum of 5 times per year, or as otherwise frequently as the Board sees fit for the proper and dutiful conduct of business.

#### **14.2 Board to Decide by Majority**

Questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the directors shall for all purposes be deemed a determination of the Board. In case of an equality of votes the Chair of the meeting shall have a second or casting vote.

#### **14.3 Conflict of Interest**

- (a) A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the directors (or that is proposed in a circular resolution):
  - (i) to the other directors, or
  - (ii) if all the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest must be recorded in the minutes of the meeting.
- (c) Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 14.3(d):
  - (i) be present at the meeting while the matter is being discussed, or
  - (ii) vote on the matter.
- (d) A director may still be present and vote if:
  - (i) their interest arises because they are a member of the company, and the other members have the same interest,
  - (ii) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 19.6),

- (iii) their interest relates to a payment by the company under clause 19.2 (indemnity), or any contract relating to indemnity that is allowed under the Corporations Act,
- (iv) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (v) the directors who do not have material personal interest in the matter pass a resolution that:
  - A. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
  - B. says that those directors are satisfied that the interest should not stop the director from voting or being present.

#### **14.4 Quorum for Board Meetings**

The quorum necessary for the transaction of the business of the Board shall be a majority of directors. If at the time of a Board meeting the current membership is an even number, the quorum will be half the number of directors plus one.

#### **14.5 Board may continue to act notwithstanding a vacancy**

The continuing directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to these regulations as the necessary quorum of the Board, the continuing director or directors may act for the purpose of increasing the number of directors to that number or summoning a General Meeting of COSA but for no other purpose.

#### **14.6 Chair of Meetings**

The Chair shall preside at every meeting of the Board, or if there is no Chair or if at any meeting he is not present within ten (10) minutes after the time appointed for holding the meeting, the Deputy Chair shall be Chair. If the Deputy Chair is not present at the meeting then the directors may choose one of their number to be Chair of the meeting.

#### **14.7 Validation of Acts**

All acts done by any meeting of the Board or of a Committee or by any person acting as a director or member of a Committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or member of a Committee or person acting as aforesaid or that the directors or members of a Committee or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director or member of a Committee as the case may be.

#### **14.8 Flying, Circular or Written Resolutions**

A resolution in writing signed by all the directors for the time being entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it had been passed

at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors.

## **15. SECRETARY**

- (a) The Secretary shall be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit and any Secretary so appointed may be removed by it.
- (b) The Secretary shall not be a director of the company.

## **16. FINANCIAL AND RELATED RECORDS**

### **16.1 Company's Financial Year**

The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

### **16.2 Proper Records to be Kept**

- (a) The company must make and keep financial records that:
  - (i) correctly record and explain its transactions and financial position and performance, and
  - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The company must also keep written records that correctly record its operations.
- (c) The company must retain its records for at least 7 years.
- (d) The directors must take reasonable steps to ensure that the company's records are kept safe.

### **16.3 Members' Access to Records**

- (a) The company must give a COSA Individual Member access to the records set out in clause 16.2, and
- (b) The directors may authorise a COSA Individual Member to inspect other records of the company, including records referred to in clause 13.7 and 16.2.

### **16.4 Directors' Access to Records**

- (a) A director has a right of access to the financial records of the company at all reasonable times.
- (b) If the directors agree, the company must give a director or former director access to:

- (i) certain documents, including documents provided for or available to the directors, and
- (ii) any other documents referred to in those documents.

## **17. AUDIT**

A properly qualified Auditor or Auditors shall be appointed in accordance with the ACNC Act and this Constitution.

## **18. EXECUTION OF DOCUMENTS**

The company may execute a document without using a common seal if the document is signed by:

- (a) two directors of the company; or
- (b) a director and the Secretary.

## **19. INDEMNITY AND INSURANCE**

### **19.1 Persons to whom sub-clauses 19.2 and 19.6 apply**

Sub-clauses 19.2 and 19.6 apply to:

- (a) each person who is or has been a director or Secretary of COSA; and
- (b) any other officers or former officers of COSA or of its related bodies corporate that the directors decide in each case.

### **19.2 Indemnity**

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act and any other applicable statutory restrictions, COSA must

- (a) indemnify; and
- (b) if requested by a person to whom this sub-clause 19.2 applies, enter into a deed indemnifying,

on a full indemnity basis each person to whom sub-clause 19.2 applies against:

- (c) any and all reasonable legal costs incurred by that person as an officer of the company,
- (d) any and all reasonable legal costs incurred by that person in defending an action for a liability incurred by that person as an officer of the company, and
- (e) any and all losses or liabilities (other than for legal costs) incurred by the person as an officer of COSA or of a related body corporate including, but not limited to, a liability for negligence.

### **19.3 Advance**

- (a) Subject to the Corporations Act and any other applicable statutory restrictions, the company may advance, and may agree (by deed or otherwise) to advance, to a person who is or has been an officer of the company an amount that it might become liable to pay to the person under this clause 19, on such terms and conditions as the directors decide, before the outcome of any claim or proceedings to which the amount relates (and whether the company is in fact liable to indemnify the person under this clause 19 in respect of the amount) is known. If, after the company makes any such advance, the directors form the view that the company is not liable to indemnify the person for the relevant amount, the directors may recover any advance from the person as a debt due by the person to the company.

### **19.4 Deed of access**

- (a) Subject to the Corporations Act and without limiting a person's rights under this clause 19, the company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the company to give effect to the rights of the person under this clause 19, or to the exercise of a discretion under this clause 19, on any terms and conditions that the directors think fit. Any such agreement may also give the person rights to inspect and obtain copies of the books of the company for the purposes, and on such other terms and conditions, as the directors decide.
- (b) For the avoidance of doubt, the directors may authorise the company to enter into any agreement (including a deed) permitted by this clause 19.

### **19.5 Extent of Indemnity**

The indemnity in sub-clause 19.2:

- (a) is a continuing obligation and is enforceable by a person to whom sub-clause 19.2 applies even though that person has ceased to be an officer of COSA or of a related body corporate; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **19.6 Insurance**

The company may, to the extent permitted by law:

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

for any person to whom this sub-clause 19.6 applies against any liability incurred by the person as an officer of COSA or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

## **19.7 Savings**

Nothing in sub-clauses 19.2 or 19.6:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of COSA to indemnify or provide insurance for any person to whom those clauses do not apply.

## **20. RULES, REGULATIONS AND BY LAWS**

The Board may by resolution make and or prescribe (and revoke, amend and add to) any policies, regulations, rules, by laws or standing orders with respect to any matter that is necessary or convenient for the carrying out of its powers or the furtherance of the objects of COSA as delegated under this Constitution.

## **21. GOVERNANCE REVIEW**

The Board shall carry out an independent review of this Constitution and governance processes of the Board at least once every five years or otherwise as and when deemed necessary for the purpose of ensuring that the governance system meets contemporary standards and the strategic needs of the organisation.

## **22. WINDING UP**

### **22.1 Limit on Distribution of Surplus**

If, on the winding up or dissolution of COSA, any surplus property remains after satisfaction of all its debts and liabilities, the surplus will not be paid to or distributed among Members, but will be given or transferred to a corporation or institution:

- (a) which is charitable at law; and
- (b) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in clause 3; and
- (c) gifts to which can be deducted under Division 30 of the Income Tax Assessment Act 1997 due to it being characterised and endorsed as a charitable institution whose principal activity is to promote the prevention or control of disease in human beings as described in item 1.1.6 of section 30-20 of Income Tax Assessment Act 1997.

### **22.2 Institution to be determined by COSA**

The identity of the institution referred to in sub-clause 22.1 must be decided by the Board at or before the time of winding up or dissolution of COSA and, if the Board cannot decide, by the Supreme Court of the State.

## **23. ALTERING THIS CONSTITUTION**

Subject to the provisions of the ACNC Act and the Corporations Act, the Constitution may be altered, rescinded or added to only by a special resolution of the company at a General Meeting. Such amendments must then be appropriately submitted to the ACNC.

## **24. APPLICABLE NOT-FOR-PROFIT LAWS**

COSA will comply with all laws relating to the regulation or operation of charities or not-for-profit entities including the ACNC Act and the Income Tax Assessment Act 1997, and any rulings or requirements of the Commissioner of the Australian Charities and Not-for-Profits Commission or the Commissioner of Taxation, having application to COSA.