

Constitution

The Dylan Smith Foundation

To serve and support families of children with life-threatening conditions
including cancer, blood disorders and neonatal complications

S u p p o r t | A d v o c a c y | R e s e a r c h

© 2010 www.dylan-smith.org

1. Nature of company and liability

1.1 Nature of Company

The Company is a public company limited by guarantee.

1.2 Liability of Members and guarantee on winding up

The liability of the Members is limited. Every Member undertakes to contribute \$2 to the assets of the Company if it is wound up while he or she is a Member, or within one year afterwards.

2. Objectives

The Company has the following core objectives:

2.1 Practical Support for Families

The provision of practical support to families of children suffering from cancer and some life-threatening illnesses as follows:

- 2.1.1 The commitment of a moderate, but regular monthly financial stipend to qualifying families for anything from 3 to 24 months;
- 2.1.2 The production of information and educational material to extended family members as well as relevant schools and other institutions;
- 2.1.3 The provision of dedicated online communications resources for each family, to ease the burden of communicating news to friends and family
- 2.1.4 Access to a support network of families who have first-hand experience in dealing with life-threatening childhood illness and loss;
- 2.1.5 Practical support from a network of volunteers who engage in organised activities ranging from beauty treatments to household cleaning, baby-sitting, etc.,

2.2 Preventative Research

To conduct research focused as follows:

- 2.2.1 Gather and analyse lifestyle, environment and migration data from families of children suffering from cancer and some life-threatening illnesses.;

- 2.2.2 Attempt to identify 'clusters' of life-threatening childhood illnesses that may not be easily identified by the current geographic proximity of sufferers, but which may be linked by other factors such as lifestyle, environmental conditions, food and beverage groups and or ingredients including preservatives and other additives, production methods, packaging, promotion and distribution practices;
- 2.2.3 To develop fact-based insights into the lifestyle, economic and environmental influences on the health of affected children

2.3 Advocacy

To advocate for the following:

- 2.3.1 Wider recognition of the fact that families of children struck with life-threatening conditions can and do experience financial hardship that is beyond their ability to control;
- 2.3.2 The review of Government policy in related areas including:
 - 2.3.2.1 Specific means-tested support that responds to the distinctive nature of this particular challenge;
 - 2.3.2.2 Mandatory parental leave that exists on a par with maternity;
 - 2.3.2.3 Other mandatory concessions from employers and financial institutions

2.4 Fundraising

To engage in fundraising:

- 2.4.1 For the benefit of families of children suffering from cancer and some life-threatening illnesses;
- 2.4.2 To secure sufficient funds to further the aims of the Company;
- 2.4.3 To receive any funds and to distribute these funds in a manner that best serves the objectives of the Company.

2.5 General

To co-operate with and assist other organisations with similar or related purposes and to do all such things as are incidental or conducive to the attainment of these objectives of the Company.

3. Membership

The Members of the Company are the initial Members as identified in the notice of registration lodged with the Australian Securities and Investments Commission and

such other persons as the Company admits to membership in accordance with this document.

3.1 Classes of Membership

The membership of the Company will be divided into the following classes:

3.1.1 General Membership

3.1.2 Family Membership

3.1.3 Professional Membership

3.1.4 Corporate Membership

3.1.5 A Member may belong to only one class of membership of the Company.

3.2 Voting entitlements of Members

Each Member shall have one vote.

3.3 Connection with Australia

3.3.1 An individual who applies for membership must be at least 18 years old at the date of application to the Company and have their principal place of residence in Australia.

3.3.2 An entity, other than an individual, who applies for membership must have an office or place of business in Australia

3.4 Obligations of Members

When applying for membership, applicants must pay the relevant membership subscription fee determined by the Directors of the Company from time to time and to maintain membership they must pay the relevant annual renewal.

3.5 Form of application

The Company will take steps to make application forms for membership available at premises of the Company, at relevant treatment centres and via the Company's website and each application for membership shall be:

3.5.1 Signed by the applicant;

3.5.2 Accompanied by such documents or evidence as to qualification for the category of membership applied for as the Directors determine;

3.5.3 Accompanied by the relevant membership subscription fee determined by the Directors

3.6 Admission to membership

- 3.6.1 The Directors are to consider all applications for Membership as soon as practicable after their receipt and determine, in their discretion, the admission or rejection of the applicant.
- 3.6.2 The Directors do not have to give reasons for rejecting an application or granting a particular category of membership.
- 3.6.3 If an application for membership is rejected, any membership subscription received is to be promptly refunded to the applicant.
- 3.6.4 The Company is to maintain a register of applications for memberships that are rejected by the Directors.
- 3.6.5 If an applicant is accepted for membership the Secretary is to notify the applicant of admission in writing and provide a receipt for the membership subscription fee and the name and details of the applicant are to be entered in the Register of Members.

3.7 Register of Members

- 3.7.1 A register of the Members of the Company is to be kept in accordance with the Corporations Act.
- 3.7.2 The following details are to be entered in the Register in respect of each Member:
 - 3.7.2.1 Their full name, address, telephone number and email address
 - 3.7.2.2 Their class or classes of membership
 - 3.7.2.3 The date of their admission to, renewal and cessation of membership
 - 3.7.2.4 The date of their last payment of the membership subscription
 - 3.7.2.5 In the case of a member other than an individual the full name, address and email address of its corporate representative
 - 3.7.2.6 Such other information as the Directors may require
 - 3.7.2.7 Each Member must notify the Secretary in writing of any change in the above information within one month after the change

3.8 Subscription Fees

- 3.8.1 The annual subscription payable by a Member is such sum as the Directors prescribe from time to time in respect of each class of membership.

- 3.8.2 All annual subscriptions are due and payable in advance at the commencement of membership.
- 3.8.3 Family Membership (all of those immediate family members – legal guardians and siblings - of any child diagnosed with a life-threatening condition, including the child themselves) are exempt from the requirement to pay any membership subscription fees.

3.9 Cessation of Membership

3.9.1 Non Renewal

A Member ceases to be entitled to any of the rights or privileges of membership if the annual subscription fee of a Member remains unpaid for two months after it becomes payable and a notice of default is given to the Member pursuant to a resolution of the Directors. However, the rights or privileges of membership may be reinstated on payment of all arrears if the Directors are in agreement on this matter.

3.9.2 Resignation

A Member may resign from membership of the Company by giving written notice to the Secretary. The resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

3.9.3 Change in eligibility

A Member ceases to be a Member if they no longer meet the eligibility requirements for the class of membership and do not, within 30 days of no longer meeting eligibility requirements for that class, apply for approval to transfer to another class of membership. If a Member applies for transfer to another class of Member within the 30 day period and their application is not approved by the Directors, the Member ceases to be a Member from the date of rejection by the Directors of their application to transfer.

3.9.4 Removal from Membership

If a member is no longer considered suitable for membership of the Company by a majority of the Directors then they shall give at least 60 days written notice of their intention to remove the member from the register and invite the member to provide any relevant written representations to the Company as to why their membership should not be terminated.

3.9.4.1 Prior to the first Members Forum and the formation of a Members Committee the Directors shall, at the end of the 60 days notice period, consider the response of the member and any decision of the Directors taken at that time shall then be final and binding on the member.

3.9.4.2 Following the first Members Forum and the formation of a Members Committee:

3.9.4.2.1 If the member fails to subsequently provide any relevant written representations to the Company as to why their membership should not be terminated then any decision of the Directors taken at that time shall then be final and binding on the member.

3.9.4.2.2 If the member does provide any relevant written representations to the Company as to why their membership should not be terminated and the majority of Directors remain convinced that the member is no longer suitable for membership then they shall send a copy of the representations to every member of the Members Committee, together with their recommendation. A simple majority decision of the Members Committee shall be binding on the Directors and the member and conveyed to the Board in the form of a Members Resolution.

3.9.4.2.3 Copies of the representations need not be sent out and the representations need not be submitted to the Members Committee if the Directors are satisfied on reasonable grounds that Member is seeking publicity for defamatory purposes.

3.9.4.3 The Directors do not have to give reasons for recommending the removal of any Member from the Register.

3.9.5 Subsequent Status

Irrespective of whether a Member chooses not to renew, or to resign their Membership, or if the Member is removed by the Member's Committee the Member ceases to enjoy the rights and privileges of being a Member from the date of the notice of default or resignation, or members resolution (whichever is applicable).

4. Not for Profit Warrants

4.1 Transfer of income or property

No income or property of the Company may be distributed to any Member.

4.2 Grants to Members

Nothing in this clause prevents the payment in good faith of a grant to a Member for the purposes of advancing the objectiveness of the Company, provided that:

- 4.2.1 The terms of the grant require that the funds may only be used for a purpose consistent with advancing the objectives of the Company; and
- 4.2.2 The award and terms of the grant are approved by a simple majority of the Board; and
- 4.2.3 The grant qualifies under clause 2.1.1 and is listed in the annual report and financial statements of the Company.

4.3 Payments, Services and Information

Nothing in this clause prevents the payment in good faith of any of the following:

- 4.3.1 Remuneration to any officers or employees of the Company for services rendered to the Company;
- 4.3.2 An amount to any Member in return for any services rendered to the Company or for goods supplied in the ordinary and usual course of business;
- 4.3.3 Reasonable and proper interest on money borrowed from any Member;
- 4.3.4 Reasonable and proper rent for premises let from any Member to the Company;
- 4.3.5 The distribution of Government or other grant monies to Members where the grant is expressly provided for the benefit of persons including Members;
- 4.3.6 Nothing in this clause prevents the Company from providing services or information to the Members on terms which are different from the terms on which services or information are provided to persons who are not Members.

5. Meetings

5.1 Convening of meetings by Directors

The Board may convene a General Meeting.

5.2 Convening of Meetings by Members

The Directors are to:

- 5.2.1 Call and arrange to hold a General Meeting if required to do so under the Corporations Act.

- 5.2.2 Call the first Annual General Meeting of the Company;
- 5.2.3 Call subsequent Annual General Meetings by no later than 30 July in each following year.

5.3 Business of General Meeting

Subject to the Corporations Act, only the following types of business may be considered at a General Meeting:

- 5.3.1 Consideration of the annual Financial, Directors and Auditor's reports;
- 5.3.2 Appointment and removal of Directors;
- 5.3.3 Appointment of the auditor and the approval of auditor's remuneration;
- 5.3.4 Amendment of the Company's name and/or this here Constitution;
- 5.3.5 Business proposed by the Directors;
- 5.3.6 Resolutions proposed by the Members Forum, which shall be noted by the Directors but shall not be binding on the Directors.

5.4 Annual General Meeting

The Company must hold its first Annual General Meeting by no later than 30 July 2010.

5.5 Notice of General Meeting

- 5.5.1 Written notice of a general meeting must specify the place, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.
- 5.5.2 A notice of a general meeting may be given by any form of communication permitted by the Corporations Act.
- 5.5.3 The accidental omission to give notice of any general meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

5.6 Cancellation of General Meetings

- 5.6.1 The Directors may cancel a general meeting, other than a general meeting which they are required to convene and hold under the Corporations Act.

- 5.6.2 A meeting may only be cancelled if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in the notice of meeting.

5.7 Quorum at General Meetings

Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business, except as may otherwise be set out in this document. Members of any class of Member present in person or by representative, is a quorum. If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:

- 5.7.1 If the meeting was convened by or on the requisition of Members, it must be dissolved, otherwise
- 5.7.2 It must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors
- 5.7.3 If a meeting has been adjourned to another time and place determined by the Directors, not less than seven days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

5.8 Quorum at Adjourned General Meetings

At the adjourned meeting 3 Members present is a quorum but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting shall be dissolved.

5.9 Appointment of chairperson

- 5.9.1 If the Directors have elected one of their number as chairperson of their meetings, that person is entitled to preside as chairperson at every general meeting.
- 5.9.2 The Directors present at a general meeting must elect one of their number to chair the meeting if either of the following applies:
- 5.9.2.1 A Director has not been elected as the chairperson of Directors meetings
- 5.9.2.2 The chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.
- 5.9.3 If there are no Directors present within 15 minutes after the time appointed for the holding of the meeting or all Directors present decline to take the chair the Members present at a general meeting must elect one of their number to chair the meeting.

5.10 Chairperson's powers

- 5.10.1 Subject to the terms of this document dealing with adjournment of meetings, the ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted without the support of a majority of members present at the meeting.
- 5.10.2 The chairperson, in their discretion may expel any Member or Director from a general meeting if the chairperson reasonably considers that the Member or Director's conduct is inappropriate behaviour. Any of the following conduct may be considered inappropriate in a general meeting:
 - 5.10.2.1 The use of offensive or abusive language which is directed to any person, object or thing;
 - 5.10.2.2 Attendance at the meeting while under the influence of any kind of drug including alcohol

5.11 Adjournment of meetings

- 5.11.1 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- 5.11.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- 5.11.3 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- 5.11.4 Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

5.12 Voting on show of hands

- 5.12.1 At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.

5.12.2 If a poll is not duly demanded, a declaration by the chairperson 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 record of the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

5.13 Demand for a poll

5.13.1 A poll may be demanded by either:

5.13.1.1 The chairperson;

5.13.1.2 At least five Members entitled to vote on the resolution.

5.13.2 The demand for a poll may be withdrawn.

5.13.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.

5.13.4 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.

5.13.5 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

5.14 Voting rights of Members

5.14.1 On a show of hands every person present who is a Member or who represents a corporation who is a Member has one vote.

5.14.2 On a poll every Member present in person or by proxy, attorney or representative has one vote.

5.15 Vote of the Chairperson at General Meetings

The chairperson of a general meeting is entitled to a second or casting vote.

5.16 Objections to voter qualification

5.16.1 No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.

5.16.2 An objection to the qualification of a voter must be referred to the chairperson, whose decision is final.

5.16.3 A vote not disallowed according to an objection as provided in this document is valid for all purposes.

5.17 Mode of meeting for Members

A general meeting may be called or held using any technology consented to by all the Members. The consent may be a standing one. A Member may only withdraw their consent within a reasonable period before the meeting. The Members may otherwise regulate their meetings as they agree to decide.

5.18 Resolution in writing

A resolution in writing signed by all Members, excluding Members who have been given leave of absence, is to be treated as a determination of the Members passed at a meeting of the Members duly convened and held.

5.19 Form of resolution in writing

5.19.1 A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.

5.19.2 If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.

5.19.3 In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

5.20 Special resolutions

5.20.1 A special resolution proposing an amendment of the Company's constitution, change of name of the Company and/or voluntary winding up of the Company must be approved by the Directors and the Members Assembly before its submission to the Members for approval.

5.21 Proxies and representatives of Members

5.21.1 At meetings of Members each Member entitled to vote may vote in person or by proxy or by attorney. A Member which is a corporation may appoint an individual as a representative.

5.21.2 Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Member, or as representing a corporation which is a Member has all the powers of a Member, except where expressly stated to the contrary.

5.22 Appointment of proxies

5.22.1 A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be a Member.

5.22.2 A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed by the Member making the appointment.

5.23 Authority of proxies

5.23.1 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.

5.23.2 Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting.

5.24 Verification of proxies

5.24.1 Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company:

5.24.1.1 The document appointing the proxy

5.24.1.2 If the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority

5.24.2 Those documents must be either:

5.24.2.1 Received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than 24 hours before the time for holding the meeting.

5.24.2.2 Produced to the chairperson of the meeting before the proxy votes.

5.24.3 If a general meeting has been adjourned, an appointment and any authority received by the Company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

5.25 Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this document.

5.26 Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

5.26.1 The previous death or unsoundness of mind of the principal

5.26.2 The revocation of the instrument or of the authority under which the instrument was executed

6. Members Forum

6.1 Establishment

Following registration of the Company by the Australian Securities and Investments Commission the Directors are to arrange and host a Members Forum, which is an event to be held every 12 months on the same day of the Annual General Meeting -.

6.2 Nature

6.2.1 Initially the Members Forums shall be convened on a national basis, but these events may eventually be staged on a regional basis as the Company achieves the necessary milestones to implement regional representation of the Company.

6.2.2 It is the intention of this constitution to ensure that as the number of Members grows, so:

6.2.2.1 The Board of the Company shall become increasingly accountable to the members;

6.2.2.2 The members shall enjoy more influence over the composition of the Board of the Company.

6.2.3 At each of the Annual General Meetings called during the early years following registration of the Company by the Australian Securities and Investments Commission, the Directors shall table a resolution to be voted on by the Members in General Meeting, to award the right to formally nominate and elect an additional Director of the Company, to a particular class of members who do not yet have this right, so that within 5 years each class of membership has one representative on the Board of the Company.

- 6.2.4 The formal processes and procedures for all classes of membership to nominate, rotate and or replace their nominated Directors shall be tabled for discussion at the first Members Forum and then later brought to the first Annual General Meeting of the Company in the form of a special resolution setting out the necessary amendments to this document to incorporate the most appropriate nomination and election procedures.

6.3 Functions

The Members Forum has the following functions:

- 6.3.1 To provide suggestions, feedback and advice and to broadly represent the views of Members to the Directors;
- 6.3.2 To table, discuss and share relevant information as well as ideas and to propose initiatives that serve the objectives of the Company;
- 6.3.3 To establish special initiative groups comprised of members and Directors to research and or develop specific initiatives;
- 6.3.4 To nominate members to serve on a national Members Committee;
- 6.3.5 The nomination of Directors in accordance as provided for in this Constitution;
- 6.3.6 Such other functions delegated to the Members Forum by the Directors.

6.4 Composition of the Members Forum

All Members shall be entitled and encouraged to attend and participate in the Members Forums.

6.5 Members Forum Meetings

- 6.5.1 Persons entitled to receive notice of a Members Forum meeting
Reasonable notice at least 30 days in advance of every meeting of the Members Forum shall be given via email to all of the following persons:
 - 6.5.1.1 Every member
 - 6.5.1.2 Every Director
 - 6.5.1.3 The auditor for the time being of the Company (if any)
- 6.5.2 Chairperson of Members Forum meeting
 - 6.5.2.1 The Directors shall nominate a Chairperson prior to each Members Forum meeting;

6.5.2.2 If the chairperson is not present within 15 minutes after the time appointed for the start of the meeting or if for any reason the chairperson declines to chair the meeting, the members present at a Members Forum meeting shall have the right to elect one of their numbers to chair the meeting.

6.5.3 Quorum

6.5.3.1 Until such time as one or more membership classes are formally empowered with the right to nominate and elect Directors to the Board of the Company, as provided for herein, no formal quorum is required for a Members Forum meeting, except that at least two Directors of the Company must be present for the duration of the meeting.

6.5.3.2 In the event that fewer than two Directors of the Company are present, those members present may decide to proceed to hold a meeting based on a simple majority show of hands from all members present, which must minutes must be recorded but this event shall not be formally recognised as a Members Forum meeting and the Directors shall reschedule a Members Forum meeting and give formal notice of same as prescribed in this document.

6.5.4 General conduct of meetings of the Members Forum

Subject to any contrary provision of contained herein, the provisions of the relevant clauses under 'Meetings' previously described herein shall apply to Members Forum meetings in so far as they are applicable to such meetings.

6.5.5 Proxies

Proxies and/or alternates may not act for members at the Members Forum meeting.

6.6 Composition of the Members Committee

6.6.1 The Members Committee shall be formed when:

6.6.1.1 2 Directors have been nominated by the Board to serve on the Members Committee, and

6.6.1.2 At least 3 and no more than 7 members have accepted nomination by the Members Forum to serve on the Members Committee;

- 6.6.2 Members of the Members Committee who are newly appointed to serve on the committee serve until the next Members Forum, which is considered one term;
- 6.6.3 If a serving member of the committee is re-elected to the committee, that member shall serve for a maximum of two terms after which they shall require re-election by the Members Forum and in any event, no member shall serve more than 10 consecutive terms without taking a break of at least one term;
- 6.6.4 Only members whose subscription fees (where relevant) remain up to date and not in arrears shall be authorised to serve on the Members Committee;
- 6.6.5 The Members Committee shall nominate one of its members to serve as chairperson of the Members Committee for the following term;
- 6.6.6 The chairperson of the Members Committee shall have a casting vote and shall not serve more than 2 consecutive terms as chairperson but may be re-elected to the chair after a break of one term.
- 6.6.7 Nominated and elected members of the Members Committee may resign from the committee by providing each member of the Members Committee and the Board of Directors of the Company with written notice of their resignation, which shall be effective immediately.
- 6.6.8 In the event that a committee member resigns mid-term, the Directors shall have the choice of nominating one of the Directors to serve as an interim committee member or to leave the position vacant until the next Members Forum, when the composition of the Members Committee shall be routinely reviewed and vacancies shall subject to nomination and election by the members present.

6.7 Members Committee Meetings

- 6.7.1 The Members Committee shall meet at least once every 3 months, at a time and place that is agreed between them but as often as the committee feels that it is necessary for them to meet;

- 6.7.2 Any meetings of the committee which fall in between Members Forums may employ technology, such as video-conferencing and or other specified means approved by the Directors and they may not necessarily be required to gather and meet in the same physical location in order to conduct a meeting between them and to make formal decisions and pass members resolutions, which may be solicited by the Directors at any time using postal, telephone, email or other polling methods approved by the Directors;
- 6.7.3 The Members Committee shall formally meet to discuss an Agenda proposed by the Directors at the commencement of each term and immediately following the convening of a Members Forum;
- 6.7.4 The Members Committee may add items to the Agenda presented to it by the Directors by a simple majority showing of hands of serving committee members, provided at least 2 of the Directors present are also agreed that the item should be added to the Agenda.

6.8 Remuneration of the Members Forum and Members Committee

- 6.8.1 Members attending Members Forum meetings and those serving on the Members Committee are not entitled to any fees for their time in relation to their ordinary service as members of the Members Forum and or the Members Committee and neither are they entitled to the reimbursement of any expenses they incur in attending any such meetings or in the execution of any of the ordinary rights, duties or responsibilities typically associated with their service as a member.
- 6.8.2 Members who are called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond or outside of the ordinary duties of a member of the Members Forum or the Members Committee or to engage in or provide any other service to or on behalf of the Company and at its request, may be paid a fee for those services, exertions or work.
- 6.8.3 The amount paid and the manner of payments shall be determined by and agreed with the Directors on terms and conditions that shall be recorded in writing and any such payments shall be itemised in the annual financial statements of the Company.

7. Directorship

7.1 Board Composition

7.1.1 One Lifetime Directorship

The Company is being founded by the parents of Dylan Smith - Leigh and William Smith - in the name of their child who died shortly after birth due to an aggressive bacterial infection. The Smith family have also experienced the loss of two other infants due to the onset of early labour for unexplained reasons, and more recently, in 2008, their eldest son Cameron was diagnosed with Hodgkin's Lymphoma. In recognition of the enormously relevant and unusual experience that the Smith family have in relation to the objectives of the Company, one seat on the Board of the Company is to remain reserved for a member of Dylan Smith's immediate family (parents or siblings) for so long as one of them remains alive. Nothing contained elsewhere in this document shall be interpreted in any manner that serves to undermine, deny or negate this right to the Smith family who shall, immediately prior to every Annual General Meeting, nominate one of themselves to serve as a Director of the Company.

7.1.2 Initial Directors

The initial Directors of the Company, appointed on the day the Company is registered, are the individuals named in the notice of Registration lodged with the Australian Securities and Investments Commission. Notwithstanding the provisions concerning the Special Lifetime Seat, the initial Directors shall be entitled to serve as Directors and hold office until the total number of Directors nominated by the membership classes (as provided for in this document) exceeds the number of initial Directors serving on the Board of the Company at that time. At that time all of the initial directors shall resign their Directorship of the Company (except the Lifetime Directorship) which shall be effective from the date of the first Annual General Meeting when these conditions have been met – as provided for in this document.

7.1.3 Initial Directors are eligible for nomination to serve as Directors by the Members Assembly.

7.2 Number of Directors

7.2.1 From the election of the Directors until otherwise determined in accordance with this document, the number of Directors shall be not less than 3 and not more than 8.

7.2.2 The Company may, by resolution, increase the number of Directors and may also determine in what rotation the increased or reduced number is to enter or go out of office.

7.3 Qualifications of Directors

- 7.3.1 Directors must have substantial, relevant and verifiable experience in at least one of the following areas: caring for a child with a life-threatening childhood illness and or information expertise in technology, communications, research and data analysis, philanthropy, non-profit fund-raising, marketing and or related event management and or a recognised qualification in a financial management, legal or a relevant social science discipline.
- 7.3.2 A person does not have to be a Member to be appointed as a Director, or Co-opted to the Board. Each Director once appointed shall be a General Member while holding office as a Director of the Company. No application fee shall be required for this membership.
- 7.3.3 A Co-opted Director must be a person, who in the opinion of the Directors possesses extraordinary relevant skills and experience, professional recognition and or social standing that will clearly benefit the Company and enhance its ability to achieve its objectives.

7.4 Retirement of Directors

- 7.4.1 Each elected Director may hold office for a term agreed by the board. An elected Director shall not be a Director for more than three consecutive annual terms (a term being the period between Annual General Meetings).
- 7.4.2 Any Director nominated by the board shall not remain a Director for more than 10 years (whether such terms are consecutive or otherwise).
- 7.4.3 Directors who are resigning or retiring at an annual general meeting and who are not disqualified by law from being reappointed may act as a director throughout that Annual General Meeting.
- 7.4.4 A Director may retire from office by giving notice in writing to the Company of their intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.
- 7.4.5 The board may nominate and appoint a Director at any time by written notice to the Company.
- 7.4.6 Directors may, by a unanimous vote of a Directors meeting, remove and or replace any Director at any time.

7.5 Vacation of office

- 7.5.1 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this document, the office of Director becomes vacant if any of the following occurs:
- 7.5.2 If the Director becomes an insolvent under administration
- 7.5.3 If the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health
- 7.5.4 If the Director is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of six months and the Board resolves that the office of that Director be vacated
- 7.5.5 If the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act.

7.6 Directors' remuneration

7.6.1 Payment for expenses

The Directors may be paid all reasonable travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings or otherwise in the execution of their duties as Directors.

7.6.2 Directors fees

Save for those provisions set out under the *Payment for Services* clauses below, the Directors are not entitled to any fees for serving as Directors.

7.6.3 Payment for services

The ordinary duties of a Director are to attend Directors Meetings and Annual General Meetings as well as mentoring to staff. A Director who is called upon to undertake executive or other work for the Company on a full or part time basis, and or to provide extra services or to make a special exertions or to engage in the provision of other services that are beyond their ordinary duties and properly authorised by the board, may be paid a fee for those services. The amount paid may be a fixed sum or other fee structure determined and agreed by the board.

7.6.4 Register of payments to Directors

The Company must maintain a register of payments made to Directors. The register must be available for inspection by members of the Members Assembly during business hours.

7.6.5 Powers of directors

The Directors may exercise all those powers of the Company as are not, by the Corporations Act or by this document, required to be exercised by the Members Assembly, the Members in general meeting or otherwise.

7.7 Proceedings of directors

7.7.1 Convening of Directors' meetings

The Chairperson, or at least two Directors, may at any time require the Secretary to convene a meeting of the Directors.

7.7.2 Notice of Directors' meetings

Notice of each meeting of the Directors must be given to each Director at least two business days before the meeting or at another time determined by resolution of the Directors.

Despite that requirement all Directors may waive in writing the required period of notice for a particular meeting and it is not necessary to give a notice of a meeting of Directors to a Director who is out of Australia or who has been given leave of absence.

7.7.3 Mode of meeting for Directors

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

7.7.4 Quorum at Directors' meetings

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is four or another higher number determined by the Directors.

If the number of Directors is reduced below the number necessary for a quorum of Directors, the continuing Director or Directors may act only to appoint additional Directors to the number necessary for a quorum or to convene a meeting of the Members Assembly or a general meeting of the Company.

7.7.5 Voting at Directors' meetings

Questions arising at a meeting of Directors must be decided by a majority of votes of Directors present and voting. A decision of the majority is for all purposes a decision of the Directors.

7.7.6 Appointment of chairperson of Directors

The Directors may elect a Director to chair their meetings and determine the period for which the person elected is to hold office.

If a chairperson has not been elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present may choose one of their number to chair the meeting.

7.7.7 Chairperson's vote at Directors meetings

The chairperson has a second or casting vote at meetings of Directors.

7.7.8 Participation where Directors interested

A Director may be present and may vote on a matter before the Board if and to the extent that they are permitted to do so under the Corporations Act. If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting then one or more of the Directors (including those who have the disqualifying interest in the matter) may call a meeting of the Members Assembly and that meeting may pass a resolution to deal with the matter.

7.7.9 Validity of acts of Directors

All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

7.7.10 Minutes

The Directors must cause minutes of all proceedings of general meetings, meetings of the Members Assembly, meetings of the Directors and meetings of committees formed by the Directors to be entered, within one month after the relevant meeting is held, in books kept for the purpose.

The Directors must cause all minutes, except resolutions in writing treated as determinations of the Directors, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

7.7.11 Resolution in writing

A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Directors passed at a meeting of the Directors duly convened and held.

7.7.12 Form of resolution in writing

A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.

The document or documents may be generated by electronic means (including by facsimile and email) and a document bearing a facsimile of a signature or the registered email address of the Director is to be treated as signed by the Director.

8. Secretary

The Directors may appoint one or more Secretaries and may at any time terminate the appointment or appointments. The Chief Executive (however this position is titled) of the Company may not be appointed as a Secretary of the Company.

The Directors may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this document, the Corporations Act or by any other statute to be carried out by the secretary of the Company.

9. Indemnity and insurance

9.1 Indemnity

Every past or present Director and or officer of the Company will be indemnified by the Company, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in defending any relevant action.

9.2 Insurance premiums

The Company must pay the premium on a contract insuring a person who is or has been an officer of the Company is covered to the fullest extent permitted by law.

10. Seals and execution of documents

10.1 Custody of Seal

If the Company has one, the Directors must provide for the safe custody of the Seal.

10.2 Execution of documents

10.2.1 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by any of the following:

10.2.1.1 by two Directors.

10.2.1.2 by a Director and the Secretary.

10.2.1.3 by a Director and some other person appointed by the Directors for the purpose.

10.2.2 The Company may execute a document without the use of a seal if the document is signed by either of the following:

10.2.2.1 by two Directors.

10.2.2.2 by a Director and a Secretary.

10.3 Official seals

The Company may have for use in place of the Seal outside the jurisdiction where the Seal is kept one or more official seals, to be used in accordance with procedures approved by the Directors.

11. Gift Fund requirements

The Company must maintain a Gift Fund in accordance for so long as it seeks or has received endorsement from the Australian Taxation Office as a recipient of 'deductible gift receipts'.

11.1 Rules applying to the Gift Fund

The following rules apply to any Gift Fund established and maintained by the Company:

11.1.1 The Gift Fund must have a name.

11.1.2 The Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.

11.1.3 The Company must maintain a separate bank account for the Gift Fund.

The following must be credited to the Gift Fund:

11.1.4 (a) All gifts of money or property to the Company for the Principal Purpose.

11.1.5 (b) All money or property received by the Company because of those gifts.

11.1.6 No other money or property may be credited to the Gift Fund.

11.1.7 The Company must use any gifts, money or property of the kind referred only for the Principal Purpose.

11.2 Winding up of Gift Fund

If the Gift Fund is wound up or the Company ceases to be recognised as a DGR for any reason, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made and its constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of current ATO rules governing DGR status. For the avoidance of doubt, if a Gift Fund operated by the Company is wound up but the Company remains a DGR and operates any other gift fund in accordance, any surplus assets of the Gift Fund that is being wound up may be transferred to any other gift fund operated by the Company.

11.3 Definitions

The following definitions apply:

DGR means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.

Gift Fund means a fund that is maintained for the Principal Purpose.

ITAA 97 means Income Tax Assessment Act 1997 (Cth).

Principal Purpose means the purposes of the Company as reflected in the objectives of the Company specified in clause 2, or any of those purposes.

12. Surplus assets on winding up or dissolution

Upon the winding up or dissolution of the Company, any remaining property the disposal or treatment of which is not otherwise accounted for within this here Constitution, after satisfaction of all debts and liabilities, will not be paid to or distributed among the Members, but will be given or transferred to some other institution or company which satisfies the following requirements:

12.1.1 It has objectives similar to the objectives of the Company.

12.1.2 It is a DGR.

12.1.3 Its constituent documents prohibit the distribution of its income and property among its members on terms substantially aligned with the terms of this here Constitution.

12.1.4 This is to be determined by the Members at or before the time of winding up or dissolution of the Company and, in default of any determination, by the Supreme Court of Queensland.

13. Accounts, audit and records

13.1 Accounts

The Directors must cause proper accounting and other records to be kept in accordance with the Corporations Act. The Directors must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act.

13.2 Audit

Subject to the Corporations Act, a registered company auditor approved by the Minister must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

13.3 Rights of Inspection

Subject to the Corporations Act and any relevant clauses herein, the Directors determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

14. Notices

14.1 Persons authorised to give notices

A notice by either the Company or a Member in connection with this document may be given on behalf of the Company or Member by a solicitor, director or company secretary of the Company or Member.

The signature of a person on a notice given by the Company may be written, printed or stamped.

14.2 Method of giving notices

In addition to the method for giving notices permitted by relevant statute(s), a notice by the Company or a Member in connection with this document may be given to the addressee by any of the following means:

14.2.1 by delivering it to a street address of the addressee.

14.2.2 by sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee.

14.2.3 by sending it by e-mail to the e-mail address of the addressee.

14.3 Addresses for giving notices to Members

The street address or postal address of a Member is the street or postal address of the Member shown in the Register.

The e-mail address of a Member is the e-mail address to which notices may be sent to the Member.

If a person is entitled to a membership in consequence of the death or bankruptcy of a Member, until that person gives notice to the Company of an address for the giving of notices, the address of that person is the address of the deceased or bankrupt Member.

14.4 Address for giving notices to the Company

The street and postal address of the Company is the Office.

The e-mail address of the Company is the number which the Company may specify by written notice to the Members as the facsimile number or e-mail address to which notices may be sent to the Company.

14.5 Time notice of meeting is given

A notice of meeting given in accordance with this document is to be taken as given, served and received at the following times:

14.5.1 if delivered in writing to the street address of the addressee, at the time of delivery.

14.5.2 if it is sent by post to the street or postal address of the addressee, on the business day after posting.

14.5.3 if sent by e-mail to the e-mail address of the addressee, at the time transmission is completed.

14.6 Time other notices are given

A notice given in accordance with this document is to be taken as given, served and received at the following times:

14.6.1 if delivered in writing to the street address of the addressee, at the time of delivery.

14.6.2 if it is sent by post to the street or postal address of the addressee, on the 2nd (5th if outside Australia) business day after posting.

14.6.3 if sent by e-mail to the e-mail address of the addressee, at the time transmission is completed.

14.7 Proof of giving notices

The sending of a notice by e-mail may be proved conclusively by production of an acknowledgment of receipt of the e-mail.

14.8 Persons entitled to notice of meeting

Notice of every general meeting must be given by a method authorised by this document to all of the following persons:

14.8.1 every Member.

14.8.2 every Director.

14.8.3 every person (if any) entitled to a membership in consequence of the death or bankruptcy of a Member who, but for the Member's death or bankruptcy, would be entitled to receive notice of the meeting.

14.8.4 the auditor for the time being of the Company, if any.

14.8.5 No other person is entitled to receive notices of general meetings.

15. Definitions and Interpretation

In this document the following definitions apply:

Board means the board of Directors of the Company.

Company means The Dylan Smith Foundation ACN [insert].

Corporations Act means the Corporations Act 2001.

Director means a person appointed to perform the duties of a director of the Company.

Directors means the board of directors of the Company.

Immediate Family means a spouse, partner, parent or son or daughter.

Member means a person whose name is entered in the Register as a member of the Company.

Members Assembly means the body established by the Directors to represent the opinions of the Members.

Office means the registered office of the Company.

Register means the register of Members kept by the Company under the Corporations Act 2001.

Seal means, if the Company has one, the common seal of the Company.

Secretary means a person appointed to perform the duties of a secretary of the Company.

15.1 Interpretation

In this document, unless the context otherwise requires:

15.1.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this document.

- 15.1.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 15.1.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document.
- 15.1.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 15.1.5 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 15.1.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 15.1.7 A reference to dollars or \$ means Australian dollars.
- 15.1.8 References to the word 'include' or 'including' are to be construed without limitation.
- 15.1.9 A reference to a time of day means that time of day in the place where the Office is located.
- 15.1.10 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.
- 15.1.11 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 15.1.12 A term of this document which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

15.2 References to the document

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

15.3 Replaceable rules

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

15.4 Application of Corporations Act

The Corporations Act applies in relation to this document as if it was an instrument made under the Corporations Act as in force on the day when this document became the constitution of the Company.

15.5 Exercise of powers

Except as specifically contemplated to the contrary in this document, the Company may, in any manner permitted by the Corporations Act exercise any power take any action or engage in any conduct or procedure which under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its document.