

Constitution of Brien Holden Vision Institute Foundation

ACN 081 872 586

ABN 86 081 872 586

A company limited by guarantee

16 April 2021

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CONSTITUTION
of
BRIEN HOLDEN VISION INSTITUTE FOUNDATION
ABN 86 081 872 586

1. COMPANY NAME

- (a) The name of the company is BRIEN HOLDEN VISION INSTITUTE FOUNDATION, hereinafter called "the Foundation".
- (b) The Foundation is limited by guarantee.

2. COMPANY

2.1 Objects

- (a) The objects for which the Foundation is established are:
 - (i) To promote, foster, advance and assist:
 - (1) research into the causes, diagnosis, prevention, treatment and rehabilitation of anomalies and diseases of the eye, resulting in visual impairment and blindness.
 - (2) in the study of and acquisition, dissemination and application of knowledge, information and measures concerning the causes, treatment and rehabilitation of anomalies and diseases of the eye, to help reduce the incidence of blindness.
 - (3) in the raising of educational standards and the availability and provision of expertise, teaching materials, resources, services and support by whatever means deemed appropriate and without limiting the generality of the aforementioned; for the promotion of eye health and international eyecare education in pursuit of this object, throughout the developing world.
 - (4) in the conduct of research activities, project work and related activities including the provision of relief aid, as the case may be, conducted both within Australia and on a world-wide basis.
 - (ii) To initiate and advocate measures:
 - (1) which may contribute to a reduction in the incidence of blindness or impaired vision, following study, investigation and research of causes, whether direct or indirect, and which may lead to the elimination of such causes.
 - (2) which will help and advance by all possible means: increases in standards of eyecare education; awareness of the need for the protection of eye health; and opportunities for the prevention, cure and/or reduction in the incidence of blindness or impaired vision.

- (3) to assist persons with low vision or visual impairment through the provision of care and support services in communities and areas where such conditions are prevalent.
 - (4) to bring together optometry, related groups, and partners in order to organise and co-ordinate care and support programmes.
 - (5) which can be made readily available to all professions concerned with eyecare and eyecare education to ensure maintenance of currency of information: in the methods of treatment, training, teaching materials, teaching techniques and demonstrations related to the anomalies and diseases of the eye.
- (iii) To provide expertise, teaching materials, resources and support for all identified institutions which provide eyecare education.
 - (iv) To provide funding for programs that create capacity in countries, regions and communities in need of refractive and other vision care including low vision care especially at the primary, secondary and tertiary levels of service provision through advocacy and initiation of education programs for eye-care educators, practitioners and providers.
 - (v) To disseminate knowledge relating to eyecare and to make known and advance the objects and activities of the Foundation by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any other means thought desirable.
 - (vi) To structure and administer education programs for eyecare educators, practitioners and providers; and to educate the public on any matters related to eyecare and eyecare services.
 - (vii) To investigate and source fund raising opportunities from a wide cross section of the industry, the business sector and the community at large.
 - (viii) To develop reliable performance indicators capable of monitoring and measuring the progress of initiatives to improve international eyecare in the developing world.
 - (ix) To conduct needs analyses for each identified country/region and develop and apply appropriate solutions to improve eye health and vision in those communities.
 - (x) To establish entities as may be appropriate in each country where the Foundation may operate due to the prevalence of preventable refractive error of the eye, permanent or correctable low vision impairment and other vision-care related deficiencies.
 - (xi) To create/update a bank of intellectual, organisational and technological resources from which tailored solutions, programs and materials can be developed and implemented.
 - (xii) To organise and hold conventions, meetings and scientific conferences regarding eyecare and other related areas.

- (xiii) To develop, organise and assist in the delivery of educational services and subsidised (non-profit) vision care and optical appliances to disadvantaged persons in developing countries.
- (xiv) To work with collaborators to develop systems for the supply of affordable spectacles and other visual aids and the development of eye-care and eye-care services in support of the delivery of such visual aids.
- (xv) To establish its own separate research fund to be used exclusively for research purposes into which all monies, gifts and bequests to that fund in respect of which deductions for taxation shall be placed and which must be used towards the financing of the aims and objects of the Foundation.
- (xvi) To undertake any activities which advance the aims and objects of the Foundation.
- (xvii) To do any other act that it is authorised to do by any other law.
- (xviii) To promote, obtain and achieve the objects expressed in Clauses 2(a)(i) - 2(a)(xviii) herein, in conjunction with or through the facilities available in any established public hospital, established university or recognised ophthalmic or research institute or centre which has been endorsed pursuant to Section 30-120 of the *Income Tax Assessment Act 1997*.

2.2 Interpretations

- (a) It is declared that in the interpretation of these objects the terms "anomalies and diseases of the eye" and "visual impairment and blindness" are to be construed in its widest sense and shall include disorders of the eye, brain, nerves, blood vessels and circulation, muscles, bones and other associated and related organs or functions of the body causing or likely to cause visual disturbance and of associated or related organs or functions of the body and any injury causing or likely to cause partial or complete loss of sight.

2.3 Company Powers

- (a) Solely for the purpose of carrying out the aforesaid objects and not otherwise the Foundation shall have the following powers:
 - (i) To hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith.

Provided that no member of the Foundation shall receive any prize award or distinction of monetary value except as a successful competitor at any competition held or promoted by the Foundation.
 - (ii) To subscribe to, become member of and cooperate with or amalgamate with any other association or organisation whether incorporated or not, whose objects are similar to those of the Foundation.

Provided that the Foundation shall not subscribe to or support with its funds or amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as

great as that imposed on the Foundation under or by virtue of Clause 3 of this Constitution.

- (iii) To buy, sell and deal in all kinds of apparatus and all kinds of provision, liquid and solid, required by the members of the Foundation or persons frequenting the Foundation's premises.
- (iv) To purchase, take on lease or rent in exchange, hire and otherwise acquire any lands, buildings, easement or property, real and personal, and any rights or privileges which may be required for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Foundation.
- (v) To undertake and execute as trustee the trusts of any settlement, declaration of trust or other deed or instrument including unit trusts, discretionary trusts, superannuation or family settlements and for such purposes or any of them to take and acquire any real or personal property and to hold administer, manage and deal with the same or any part thereof upon such trusts and to exercise, carry out and perform all or any of the powers, authorities and discretions thereby conferred or therein implied establish trust funds and serve as trustees in accordance with the law.
- (vi) To enter into any arrangements with any Government or authority, supreme, municipal, local, or otherwise, that may seem conducive to the Foundation's objects or any of them and to obtain from any such Government or authority any rights, privileges and concessions which the Foundation may think it desirable to obtain: and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
- (vii) To appoint, employ, remove or suspend such managers, officers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purpose of the Foundation.
- (viii) To establish and support or aid in the establishment and support of the associations, institutions funds, trusts and conveniences calculated to benefit employees of past employees of the Foundation or the dependants or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money to charitable or benevolent objects, or for any public, general or useful object.
- (ix) To construct, improve, maintain, develop, work, manage, carry out, alter, or control any houses, buildings, grounds, work or conveniences which may in the opinion of the members, directly or indirectly advance the Foundation's interests, and to contribute to, subscribe, or otherwise assist and take part in, the construction, improvement, maintenance, development, work, management, carrying out, alteration, or control thereof.
- (x) To invest and deal with money of the Foundation not immediately required in such manner as the Board thinks fit.
- (xi) To borrow or raise or secure the payment of money in such manner as the Foundation may think fit and secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be

entered into by the Foundation in any way and in particular by the issue of debentures, perpetual or otherwise, charged upon all or any of the Foundation's property (both present and future), and to purchase, redeem, or pay off such securities.

- (xii) To make, draw, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading, and other negotiable, or transferable instruments.
- (xiii) To sell, improve, manage, develop, exchange, lease, dispose or, turn to account, or otherwise deal with all or any part of the property and rights of the Foundation.
- (xiv) To take or hold mortgages, liens and charges to secure payment of the purchase price, or any unpaid balance of the purchase price, of any part of the Foundation's property of whatsoever kind sold by the Foundation or any money due to the Foundation from purchases and others.
- (xv) To take any gift of property, whether subject to any special trust or not, for any one or more of the objects of the Foundation but subject always to the proviso in Paragraphs (iv & v) of this Clause 2.
- (xvi) To take steps by personal or written appeals, public meetings, or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Foundation in the shape of donations, bequests, fund-raising, annual subscriptions or otherwise: or procuring other aid from any source, for the purpose of the Foundation and the promotion of its objects.
- (xvii) To print and publish any newspapers, periodical, books or leaflets that the Foundation may think desirable for the promotion of its objects.
- (xviii) To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institution, societies, or associations with which the Foundation is authorised to amalgamate.
- (xix) To transfer all or part of the property, assets, liabilities and engagements of any one or more of the companies, institution, societies, or associations with which the Foundation is authorised to amalgamate.
- (xx) To make donations for patriotic or charitable purposes.
- (xxi) To transact any lawful business in aid of the Commonwealth of Australia in the prosecution of any war in which the Commonwealth of Australia is engaged.
- (xxii) To purchase or otherwise acquire letter, patent, brevets d'invention, concessions, licences, inventions, trademarks and designs, rights and privileges, subject to royalty or otherwise, and whether exclusive or non-exclusive or limited, or any part interest in such letters, patent, brevets d'invention, concessions, licences, inventions, trademarks and designs, rights and privileges, whether in the Commonwealth or Australia or in any other part of the world.
- (xxiii) To sell, let or grant any patent rights, brevets d'invention, concessions, licences, inventions, trademarks and designs, rights or privileges belonging to the Foundation or which it may acquire, or any interest in the same.

(xxiv) To register any patent or patents for any invention or inventions, or obtain exclusive or other privileges in respect of the same, in any part of the world, and to apply for, exercise, use or otherwise deal with or turn to account any patent rights, brevets d'invention, concessions, monopolies, trademarks and designs, or other rights or privileges, Acts of Parliament or provisional orders, either in the Commonwealth of Australia or in any other part of the world.

(xxv) To give any guarantee or indemnity for the payment of money or for the performance of any contract or obligation by any person or otherwise to assist any person for the purpose of the Foundation and the promotion of its objects.

3. USE OF COMPANY ASSETS AND INCOME

(a) The assets and income of the Foundation whencesoever derived, shall be applied solely towards the promotion of the objects of the Foundation as set forth in this Constitution, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend bonus or otherwise, to the members of the Foundation.

(b) Provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the Foundation or to any member of the Foundation in return for any services actually rendered to the Foundation or for goods supplied in the ordinary and usual way of business, nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this clause by this Constitution on money borrowed from any members of the Foundation or reasonable and property rent for premises demised or let by any member to the Foundation, but so that no director shall be appointed to any salaried office of the Foundation or any office of the Foundation paid by fees and that no remuneration or other benefit in money or money's worth shall be paid or given by the Foundation to any director except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper rent for premises demised or let to the Foundation.

4. DIRECTOR LIABILITY

The liability of the directors is limited.

5. MEMBER LIABILITY

Every member of the Foundation undertakes to contribute to the property of the Foundation in the event of the same being wound up while they are a member, or within one year after they cease to be a member for payment of the debt and liabilities of the Foundation (contracted before they cease to be a member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding ten dollars (\$10.00)

6. ACCOUNT RECORDS

True accounts shall be kept of the sums of money received and expended by the Foundation and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Foundation and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with this Constitution, shall be open to the inspection of the members. Once at least in every year, the accounts of

the Foundation shall be examined by one or more properly qualified Auditor or Auditors who shall report to the members in accordance with the provisions of the Corporations Act.

7. MEMBERSHIP

7.1 The members of the Foundation are:

- (a) the Initial members; and
- (b) any other persons that the Board shall admit to membership in accordance with this Constitution.

7.2 A person who supports the purposes of the Foundation is eligible to apply to be a member of the Foundation under Clause 7.3. In this Clause, "person" means an individual or incorporated body.

7.3 Every application for membership of the Foundation shall be proposed by one and seconded by another member of the Foundation to both of whom the applicant shall be personally known. The application for membership shall be made in writing, signed by the applicant and their proposer and seconder and shall be in such form as the Board from time to time prescribes.

7.4 At the next meeting of the Board after the receipt of any application for membership, such application shall be considered by the Board, which shall thereupon determine upon the admission or rejections of the applicant. In no case shall the Board be required to give any reason for the rejection of an applicant.

7.5 When an applicant has been accepted for membership the secretary shall forthwith send to the applicant written notice of their acceptance.

8. CESSATION OF MEMBERSHIP

8.1 A member may at any time, by giving notice in writing to the secretary, resign their membership of the Foundation but shall continue to be liable for any sum for which they are liable as a member of the Foundation under Clause 5 of this Constitution.

8.2 If any member shall wilfully refuse or neglect to comply with the provisions of this Constitution or shall be guilty of any conduct which in the opinion of the Board is unbecoming of a member or prejudicial to the interests of the Foundation the Board shall have power by resolution to censure, fine, suspend, or expel the member from the Foundation.

8.3 Provided that at least one week before the meeting of the Board at which such a resolution is passed the member shall have had notice of such meeting and of what is alleged against the member and of the intended resolution and that they shall, at such meeting and before the passing of such resolution, have had an opportunity of giving orally or in writing, any explanation they may think fit and, provided further, that any such member may, by notice in writing lodged with the secretary at least twenty-four hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Foundation in general meeting. In that event a general meeting of the Foundation shall be called for the purpose and if, at the meeting such a resolution be passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot), the member concerned shall be punished accordingly and in the case of a resolution for their expulsion the member shall be expelled.

9. GENERAL MEETINGS

- 9.1 The Board will cause to be held, at least once a year, an Annual General Meeting of members at which election of directors will be conducted and the annual profit and loss statement and balance sheet will be presented.
- 9.2 Any director may, whenever they think fit, convene a general meeting.
- 9.3 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the Foundation for a general meeting to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a general meeting, and
 - (b) hold the general meeting within 2 months of the members' request.
- 9.4 The members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the Foundation.
- 9.5 If the directors do not call the meeting within 21 days of being requested under Clause 9.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 9.6 To call and hold a meeting under Clause 9.5, the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this Constitution,
 - (b) call the meeting using the list of members on the Foundation's member register, which the Foundation must provide to the members making the request at no cost, and
 - (c) hold the general meeting within three months after the request was given to the Foundation.
- 9.7 Subject to the provisions relating to agreements for shorter notice, fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which notice is given) specifying the place, the day and the hour of the meeting, and in the case of special business the general nature of that business shall be given to such persons as are entitled to receive such notices from the Foundation.
- 9.8 Notice of a general meeting may be provided less than 14 days before the meeting if the required number of members to constitute a quorum at the general meeting agree to accept such lesser notice prior to the commencement of that general meeting.
- 9.9 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Foundation's activities

- (b) a review of the Foundation's finances
- (c) tabling of the auditor's report
- (d) the election of directors, and
- (e) the appointment and payment of auditors.

9.10 Before or at the annual general meeting, the directors must give information to the members on the Foundation's activities and finances during the period since the last annual general meeting.

9.11 The chairperson of the annual general meeting must give members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Foundation.

10. PROCEEDING AT GENERAL MEETINGS

10.1 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided THREE members present in person or by using any technology that enables the member to participate in the meeting (such as video or teleconferencing), shall be a quorum. For the purpose of this Clause "member" includes a person attending as a proxy or as representing a corporation which is a member.

10.2 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (being not less than two) shall be a quorum.

10.3 The members present shall elect one of their number to chairperson at every general meeting.

10.4 The chairperson 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 or the business to be transacted at an adjourned meeting.

10.5 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show and hands) demanded:

- (a) by the chairperson: or
- (b) by at least three members present in person or by proxy.

Unless a poll is so demanded a declaration by the chairperson that a resolution has, on a show of hands, be carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Foundation 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.

- 10.6 If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson 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 chairperson or on a question of adjournment shall be taken forthwith.
- 10.7 In the case of an equality of votes whether on a show of hands or on a poll, the chairperson 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.
- 10.8 A member may vote in person or by proxy or by attorney and on a show of hands every person present who is a member or a representative of a member shall have one vote on a poll every member present in person or by proxy or by attorney or other duly authorised representative shall have one vote.
- 10.9 A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by their Committee or by their Trustee or by such other person as properly has the management of their estate and any such Committee, Trustee or other person may vote by proxy or attorney.
- 10.10 The instrument appointing a proxy shall be in writing under the hand of the appointer or of their attorney duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A member shall be entitled to instruct their proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as they think fit.
- 10.11 The instrument appointing a proxy may be in the following form or in a common or usual form.

Brien Holden Vision Institute Foundation

I,.....of.....

being a member of Brien Holden Vision Institute Foundation

hereby appoint.....of.....

or failing them.....of.....

as my proxy to vote for me on my behalf at the (Annual General Meeting or general meeting as the case may be) of the Foundation to be held on the day of..... and at any adjournment thereof.

my proxy is hereby authorised to vote in favour of/against* the following resolutions.

Dated this day of

(Note: In the event of the member desiring to vote for or against any resolution they shall instruct their proxy accordingly. Unless otherwise instructed, the proxy may vote as they think fit).

*Strike out whichever is not desired.

- 10.12 The proxy may not vote if the member also attends the meeting.
- 10.13 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority shall be deposited at the registered office of the Foundation or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four (24) hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.
- 10.14 A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Foundation at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.
- 10.15 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under Clause 11.1, and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
 - (c) The appointment of a representative by a member must:
 - (i) be in writing
 - (ii) include the name of the representative
 - (iii) be signed on behalf of the member, and
 - (iv) be given to the Foundation or, for representation at a meeting, be given to the chairperson before the meeting starts.
 - (d) A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
 - (e) The appointment may be for a meeting, a period or ongoing.

11. CIRCULAR RESOLUTIONS OF MEMBERS

- 11.1 Subject to Clause 11.2, the directors may put a resolution to the members to pass a resolution without a general meeting of members being held (a circular resolution).
- 11.2 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution within seven (7) days of receiving the text of the resolution.

11.3 Members may sign:

- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording is the same in each copy.

11.4 The Foundation may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

12. BOARD OF DIRECTORS

12.1 There shall be a Board of directors consisting of at least three (3) and a maximum of seven (7) people which will conduct the affairs of the Foundation.

13. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

13.1 Period of Appointment

At each Annual General Meeting, two (2) members of the Board will retire. Retirement will be in chronological order of appointment.

13.2 Retiring Board members shall be eligible for reappointment.

13.3 A Board member who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution.

13.4 Casual vacancies in the composition of the Board will be filled by the Board and any such appointment will continue until the next annual general meeting of members.

13.5 Additional Circumstances for Vacation of Office

In addition to the circumstances in which the office of a director becomes vacant by virtue of Clause 13.1 or the Law, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under the Law relating to mental health.
- (b) resigns office by notice in writing to the Foundation.
- (c) is absent without the consent of the directors from meetings of directors held during a six-month period without special leave of absence from the directors and the board resolves that the office of the director will be vacated.

13.6 Remuneration of directors

Directors shall serve in an Honorary capacity and will not be paid a salary.

14. ALTERNATE DIRECTORS

14.1 Appointment of alternate director

- (a) A director may appoint a person to be an alternate director in the director's place, during the period that the director thinks fit, provided that the alternate director consents in writing to act in that capacity, and is approved by a majority of directors to act as an alternate director.
- (b) The appointment of an alternate director must be in writing and signed by the director.

14.2 Powers and obligations of an alternate director

14.3 An alternate director may exercise any of the powers of a director and is subject to all of his or her obligations. He or she is entitled to be notified of directors' meetings and to attend and vote at them, but only if the appointing director is not present or not voting.

14.4 End of appointment of alternate director

14.5 An alternate director's appointment ends immediately any of the following happens:

- (a) the director who appointed the alternate director ceases for any reason to be a director;
- (b) the director who appointed the alternate director ends the appointment by giving the alternate director a written notice signed by the director;
- (c) a majority of directors pass a resolution to remove the alternate director provided that prior notice of intention to move for the removal of such alternate director is given to the director who appointed the alternate director.
- (d) the period of the appointment ends; or
- (e) anything happens that would result in the alternate director ceasing to be a director if he or she were a director.

14.6 Remuneration of an alternate director

14.7 The Foundation is not required to pay any remuneration or benefit to an alternate director.

15. POWERS AND DUTIES OF DIRECTORS

15.1 Subject to the Law and to any other provision of this Constitution, the affairs of the Foundation shall be managed by the directors, who may pay all expenses incurred in promoting and forming the Foundation and may exercise all such powers of the Foundation.

15.2 Without limiting Clause 15.1, the directors may exercise all the powers of the Foundation to charge any property or business of the Foundation.

15.3 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Foundation shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by the secretary and one other director or in such other manner as the directors may determine.

16. PROCEEDINGS OF DIRECTORS

- 16.1 The directors may meet together or by using any technology that enables all director to participate in the meeting (such as video or teleconferencing) for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 16.2 A director at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.
- 16.3 Subject to this Constitution, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.
- 16.4 In case of an equality of votes the chairperson of the meeting in addition to their deliberative vote shall have a casting vote.
- 16.5 Three directors will constitute a quorum.

17. CHAIRPERSON

- 17.1 The directors shall elect one of their members as chairperson of their meetings and may determine the period for which the chairperson will hold office.
- 17.2 If the chairperson is not present within thirty (30) minutes after the time appointed for the meeting or if the chairperson is unwilling to act, the directors present will elect one of their number to be chairperson of the meeting.

18. COMMITTEE OF DIRECTORS

- 18.1 The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit. The directors may nominate and approve the appointment of one or more non-director members to serve on a committee established under this clause 18, provided that any such proposed non-director member is appropriately qualified to serve on the relevant committee.
- 18.2 Except where clause 18.3 applies, a committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.
- 18.3 A committee to which any powers have been so delegated that has non-director members shall not exercise the powers delegated in a manner that binds the Company.
- 18.4 Questions arising at a committee meeting shall be determined by a majority of votes of the members present and voting.
- 18.5 Committee members will elect one of their number as chairperson for a period which they may decide.
- 18.6 In the event of there being an equal number of votes, the chairperson has only a deliberative vote.

19. RESOLUTIONS OF DIRECTORS

19.1 The directors may pass a resolution in writing without holding a meeting if the following conditions are met:

- (a) the resolution is set out in a document or documents indicating that the required number of directors to constitute a quorum at a directors' meeting ("**requisite majority**") are in favour of it; and
- (b) the requisite majority of all directors required to pass a resolution at a directors meeting sign the document or documents or identical copies of it or them.

A written resolution will be treated as having been passed by the directors on the date that the last director signs.

19.2 For the purposes of Clause 19.1, two (2) or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents. Such documents may be provided to the directors by hand delivery, by courier, by pre-paid post, or by facsimile or email and shall be deemed received (in the case of delivery by courier) when it is delivered to the address, or (in the case of delivery by post) on the third day after posting to an address in Australia or on the fifth day to an address outside Australia or, in the case of facsimile or email, one hour after sending or at 9.00am on the next business day if receipt would otherwise be after 5.00pm on the day of sending.

19.3 The Foundation may send a circular resolution by email to the directors and the directors may agree by sending a reply email to that effect, including the text of the resolution in their reply.

20. VALIDITY OF ACTS OF DIRECTORS

20.1 All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of a committee or to act as a director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a director or a member of the committee.

21. SECRETARY

21.1 A secretary of the Foundation holds office on such terms and conditions as the directors determine.

22. NOTICE OF CONFLICTS OF INTEREST

22.1 A director who has an interest in a matter may give notice of that interest by giving to the other director standing notice of the nature and extent of the interest in the matter in accordance with clause 22.3.

22.2 The notice may be given at any time and whether or not the matter relates to the affairs of the Foundation at the time the notice is given.

22.3 The notice under 22.1 must:

- (a) give details of the nature and extent of the interest; and
- (b) be given:
 - (i) at a directors' meeting (either orally or in writing); or
 - (ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

- 22.4 If the standing notice is given to the other directors individually in writing, it must be tabled at the next directors' meeting after it is given.
- 22.5 The director must ensure that the secretary is notified of the nature and extent of the interest disclosed in the standing notice and the secretary must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- 22.6 The standing notice:
- (a) takes effect as soon as it is given; and
 - (b) ceases to have effect if a person who was not a director of the Foundation at the time when the notice was given is appointed as a director of the Foundation.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

- 22.7 The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially changes from above that disclosed in the notice.
- 22.8 The secretary shall record the interest in the directors conflicts of interest register, which shall be available to all directors on request.
- 22.9 A contravention of this Clause by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

23. ACCOUNTS AND INSPECTION OF RECORDS

- 23.1 The directors shall cause proper accounting and other records to be kept and also distribute copies of balance sheets as required by Law.
- 23.2 The directors will from time to time cause to be prepared and laid before the Annual General Meeting a profit and loss account and a balance sheet for the most recent Financial Year.

24. AUDIT

- 24.1 A properly qualified Auditor or Auditors shall be appointed, and their remuneration fixed and duties regulated in accordance with the Law and Clause 6 of this Constitution.

25. NOTICES

- 25.1 A notice may be given either by serving it personally, or by sending by registered post, by facsimile or by email.
- 25.2 Written notice or any communication may be given to the Foundation, the directors or the secretary by:
- (a) delivering it to the Foundation's registered office;
 - (b) posting it to the Foundation's registered office or to another address chosen by the Foundation for notice to be provided;
 - (c) sending it to an email address or other electronic address notified by the Foundation to the members as the Foundation's email address or other electronic address; or
 - (d) sending it to the fax number notified by the Foundation to the members as the Foundation's fax number.
- 25.3 Written notice or any communication may be given to a member:
- (a) in person;
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
 - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any).
- 25.4 If the Foundation does not have a physical address for the member, the Foundation is not required to give notice in person.
- 25.5 A notice:
- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
 - (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
 - (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent if transmitted during the recipient's normal business hours and the relevant receipt of such communication being read is given to the sender and otherwise on the business day after it is sent.

26. WINDING UP OR DISSOLUTION

- 26.1 In the event of the Foundation being wound up or dissolved, the amount which remains after such winding up or dissolution and the satisfaction of all debts and liabilities shall be paid and applied by the Foundation in accordance with its objects to any fund, institution including a member or authority which, itself, has similar objects and has been endorsed by the

Commissioner of Taxation for the purposes of Section 30-120 of the *Income Tax Assessment Act 1997*.

27. INDEMNITY

27.1 The Foundation indemnifies each officer of the Foundation out of the assets of the Foundation, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Foundation.

In this Clause:

- (a) 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office;
- (b) 'to the relevant extent' means:
 - (i) to the extent that the Foundation is not precluded by Law from doing so, and
 - (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

27.2 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Foundation.

27.3 To the extent permitted by Law, and if the directors consider it appropriate, the Foundation may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Foundation against any liability incurred by the person as an officer of the Foundation.

27.4 A director has a right of access to the financial records of the Foundation at all reasonable times and if the directors agree, the Foundation must give a director or former director access to:

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

28. COMPANY'S FINANCIAL YEAR

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

29. SEAL

29.1 The Seal shall be used only:

- (a) as a result of a resolution of the Board or of a committee of the directors authorised by the directors to authorise the use of the Seal, and every document upon which the Seal is affixed shall be signed by a director and be countersigned by another director, the secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included; or

- (b) in accordance with a formal delegation of authority authorised by the directors, and every document upon which the Seal is affixed shall be signed by a director and be countersigned by another director, the secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

29.2 The secretary shall maintain a register identifying documents to which the Seal has been affixed.

30. INTERPRETATION

30.1 In this Constitution:

"ACNC Act" means the *Australian Charities and Not-for-profits Commission Act 2012*;

"Corporations Act" means the *Corporations Act 2001*;

"Financial Year" means the period 1 July to 30 June, unless the directors pass a resolution to change the financial year;

"Initial Member" means a person who is a member of the Foundation as at the date of adoption of this Constitution;

"the Law" means the ACNC Act and the Corporations Act;

"the Board" or "the Board of directors" means the directors of the Foundation elected or appointed pursuant to this Constitution;

"the Foundation" means Brien Holden Vision Institute Foundation;

"the Seal" means the Common Seal of the Foundation.

30.2 In this Constitution:

- (a) expressions referring to writing shall, unless contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing works in a visible form;
- (b) words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Law;
- (c) a cross-reference to a clause number shall be a reference to all of its sub-clauses;
- (d) words importing the singular shall be deemed to include the plural and *vice versa*;
- (e) monetary references shall be references to Australian currency;
- (f) words importing one gender shall be deemed to include all other genders.

NOTWITHSTANDING anything contained in these presents the Foundation may adopt any by-laws, standing orders or constitutional rules as may be passed from time to time at any General Meeting of the Foundation.