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An Australian Government Initiative

# Corporations Act 2001

## A Public Company Limited by Guarantee Constitution

**Adelaide Primary Health Network Limited**

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## **1 Nature of the Company**

- 1.1 The Company is a public company limited by guarantee.
- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$1.00 to the assets of the Company if it is wound up while they are a Member, or within one year afterwards.

## **2 Objects**

- 2.1 The ultimate objects of the Company are to improve the health of the local community and achieve measurable health outcomes through, amongst other things:
- (a) improving the patient journey through developing integrated and co-ordinated services;
  - (b) providing support to clinicians and service providers to improve patient care;
  - (c) identification of the health needs of local areas and development of locally focused and responsive services;
  - (d) facilitation of the implementation and successful performance of primary health care initiatives and programs;
  - (e) be efficient and accountable with strong governance and effective management;
  - (f) raising money to further the aims of the Company and to secure sufficient funds for the objects of the Company;
  - (g) receiving any funds and distributing these funds in a manner that best attains the objects of the Company; and
  - (h) doing all such other things as are incidental or conducive to the operation of the Company and otherwise for the attainment of all or any of the above objects of the Company.

## **3 Membership**

### **Membership**

The Membership of the Company shall comprise:

- 3.1 such organisations as the Board admits to membership in accordance with this Constitution (see clause 3.2).

## Becoming a Member

3.2 Membership is open to any organisation that:

- (a) is a separately incorporated entity that is recognised as such at law in Australia;
- (b) is an unincorporated association or body of persons that fulfils the criteria from time to time prescribed by the Board (an **Unincorporated Member Organisation**), in which case the collective of natural persons who from time to time comprise the association or body shall be the members of the Company and shall, in addition to all other provisions of this Constitution, after admission as a Member be subject to the provisions of clause 3.5;
- (c) demonstrates to the satisfaction of the Board that it is supportive of or has a bona fide interest in the achievement of the objects of the Company;
- (d) completes and lodges an application for membership in the form and manner, and providing such supporting information, as may be from time to time prescribed by the Board;
- (e) pays the application fee (see clause 4) from time to time prescribed by the Board when lodging the application for membership;
- (f) in the opinion of the Board (which opinion may be determined in the absolute discretion of the Board) meets the Membership eligibility criteria from time to time promulgated by the Board; and
- (g) is accepted to membership by a resolution of the Board.

3.3 In respect of each application for Membership duly made in accordance with this Constitution:

- (a) the Secretary shall provide the application to the Board at a meeting of the Board held within 60 days after receipt of the application;
- (b) the Board shall consider the application promptly and may, after considering it, determine in the Board's sole and absolute discretion to accept or reject the application;
- (c) if the application is accepted, the applicant shall be admitted forthwith as a Member and shall be notified accordingly;
- (d) the Board does not have to give reasons for rejecting an application; and
- (e) if the application is rejected, all amounts paid by the applicant on account of the application shall be refunded in full.

## Notifying Member of Admission

3.4 Following admission of a new Member, the Secretary must promptly:

- (a) notify the Member in writing of the admission to membership by issuing a receipt for the entrance fee paid by the Member on account of the application for membership; and
- (b) cause the required details to be entered in the Register.

### **Ongoing Member Obligations and Rights**

- 3.5 In relation to each Unincorporated Member Organisation, references in this Constitution to Members shall be read to apply in each such case to the collective of natural persons who, from time to time comprise the Unincorporated Member Organisation, and for the avoidance of doubt:
- (a) Each collective group of natural persons that constitutes an Unincorporated Member Organisation shall collectively have and exercise through their duly nominated Representative the rights, powers and obligations set out in this Constitution;
  - (b) Without limiting clause 3.5(a), the collective group of natural persons that constitutes the Unincorporated Member Organisation shall collectively have the rights set out in clause 3.8 as a Member, as if they were a single incorporated Member, each of which rights shall be exercised collectively through the Representative of that Unincorporated Member Organisation.
  - (c) The individuals who comprise an Unincorporated Member Organisation shall not separately or individually have or be capable of exercising any rights or powers as a Member except to the extent that such person is the duly authorised Representative of such Unincorporated Member Organisation.
- 3.6 The Members of the Company agree to be bound by the provisions of this Constitution.
- 3.7 For so long as a Member abides by the provisions of this Constitution, the Member shall enjoy the rights and privileges of membership under this Constitution and the Act.
- 3.8 Members have the rights to:
- (a) receive notices of and to attend and be heard at any General meeting of the Members of the Company;
  - (b) vote in person (by their Representative) or by proxy at any properly convened General meeting of the Members of the Company; and
  - (c) cast a vote in any properly held postal ballot.

### **Register of Members**

- 3.9 A Register of the Members must be kept in accordance with the Act.
- 3.10 The following details must be entered and kept current in the Register in respect of each Member:
- (a) the full name and contact details of the Member;
  - (b) the date of admission to and cessation of membership; and

(c) such other information as the Board requires.

3.11 Each Member is responsible to notify the Secretary in writing of any change in that person's name, address, telephone or facsimile number within 1 month after the change.

## **4 Application Fee**

### **Amount of Fees**

4.1 The entrance fee, payable by applicants for ordinary Membership of the Company (if demanded), shall be \$1.00 or such other amount determined from time to time by resolution of the Board.

## **5 Removal and Cessation of Membership**

### **Resignation**

5.1 A Member may resign from membership of the Company by giving written notice to the Secretary, and:

- (a) the resignation shall take effect from the date of receipt of the notice of resignation or such later date as may be stated in the notice; and
- (b) the Member's liability for any fees, subscriptions or other moneys in arrears at the date of such resignation shall continue until discharged by payment.

### **Removal from Membership**

5.2 A Member (other than the Foundation Member) may be removed by ordinary resolution of the Members in a general meeting, provided that:

- (a) the Board has first, pursuant to an ordinary resolution of the Board, given at least 2 months' written notice to the Member of the intention to terminate their membership and the grounds of the intended termination;
- (b) the Member has been invited, in the written notice to provide to the Board any written representations which the Member wishes to be put to the general meeting of the Members;
- (c) the Board has included a copy of the Member's representations in the notices calling the meeting (unless they were not provided by the Member in sufficient time); and
- (d) if copies of the representations have not been included in the notices of meeting, for any reason, the Member may require the representations to be read out at the meeting.

5.2.2 whether or not representations have been circulated or read, the Member must be given a full and fair opportunity to address the meeting.

- 5.3 The Foundation Member may be removed by a special resolution (as defined by the Act) of the Members in a General meeting provided that:
- (a) the Board has first, pursuant to a unanimous resolution of the Board given at least 2 months' written notice to the Member of the intention to terminate their membership and the grounds of the intended termination; and
  - (b) the procedures set out in paragraphs (b) and (c) inclusive of clause 5.2 are followed in relation to the resolution to remove the Foundation Member.

#### **Other Cessation of Membership**

- 5.4 A Member otherwise ceases to be a Member if:
- (a) they fail or decline to complete and lodge with the Company Secretary an Annual Membership renewal in the form and manner from time to time required by the Board; or
  - (b) the Member becomes insolvent, is dissolved or otherwise ceases to exist.

## **6 No Profits for Members**

#### **Transfer of Income or Property**

- 6.1 Subject to clause 6.2, all of the assets and income of the Company shall be applied solely in the furtherance of the objects of the Company and no portion shall be distributed directly or indirectly to any Member.

#### **Payments, Services and Information**

- 6.2 Nothing in clause 6.1 prevents the payment in good faith of an amount, calculated on arms length terms in respect of:
- (a) remuneration payable to an employee of the Company, who is also a Member's Representative under clause 9, for services actually rendered to the Company; or
  - (b) goods or services actually supplied to the Company by a Member in the ordinary and usual course of the Member's business.

## **7 General Meetings of Members**

#### **Convening of Meetings**

- 7.1 The Chairperson or any 3 or more Directors or at least the number of Members permitted from time to time by the Act, may at any time request the Secretary to convene a General meeting of the Members and the Secretary must comply with all such requests.

#### **Notice of General Meeting**

- 7.2 Notice of a General meeting of the Members:
- (a) may be given by any form of communication permitted by the Act.

- (b) must specify the place, the day, the hour of meeting and the general nature of the business to be transacted and any other matters as are required by the Act.

7.3 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.

#### **Quorum at General Meetings**

7.4 A quorum for the purposes of a General meeting of Members shall be:

- (a) the Member for so long as there is only one Member of the Company; or
- (b) in any other case, the greater of two or one-third (rounded up to the nearest whole number) of the number of Members of the Company for the time being.

Members will be regarded as present for these purposes whether present personally by their Representative or by proxy.

7.5 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the Chair:

- (a) if the meeting was convened by or on the requisition of Members, it must be dissolved; or
- (b) in any other case 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 Board.

7.6 If a meeting has been adjourned to another time and place determined by the Board, then notwithstanding any other provision, not less than 7 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

7.7 If, at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

#### **Appointment of Chair and Powers of Chair**

7.8 The Chairperson or, in his/her absence, the Deputy Chairperson, if any, shall preside as Chair at every General meeting of Members.

7.9 If for any reason there is not then a Chairperson or a Deputy Chairperson, or neither of them is present within 15 minutes of the time nominated for the meeting to start, the Directors who are present shall select one of their number to Chair the meeting.

7.10 The Chair of a General meeting may in his/her discretion, expel any person from a General meeting if the Chair reasonably considers that the person's conduct is inappropriate.

#### **Casting Vote of Chair**

7.11 The Chair of a General meeting is entitled to a second or casting vote on any resolution, whether by show of hands or on a poll.

**Adjournment of Meetings**

- 7.12 The Chair 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.
- 7.13 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.
- 7.14 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.
- 7.15 When a meeting is adjourned for less than 30 days, it is not necessary to give a further notice of the adjourned meeting.

**Postal Ballots**

- 7.16 Notwithstanding any other provision, to the extent permitted by law, a resolution of the Members decided by postal ballot conducted in accordance with this Constitution shall be as valid and effective as if it had been passed at a meeting of the Company duly called and constituted.
- 7.17 Without limiting the purposes for which the Board may conduct a postal ballot amongst the Members, a postal ballot shall be held for the elections of all Member Elected Directors (including the filling of casual vacancies as contemplated by clause 10.16) and the results shall be declared as appropriate at each Annual General meeting.
- 7.18 A postal ballot may be held by electronic means.
- 7.19 In relation to a postal ballot for an election as contemplated by clause 7.17:
- (a) the postal ballot must be commenced by the Board calling for nominations no earlier than 6 months before the Annual General meeting and must be completed no later than one day before the Annual General meeting; and
  - (b) there shall not be a further vote on the relevant resolution (whether by show of hands or by poll) at the Annual General meeting in respect of any such election.
- 7.20 In relation to a postal ballot other than one conducted for an election as contemplated by clause 7.17, the Board may declare that the results of the postal ballot will be added to votes to be taken on the resolution at a General Meeting of Members provided that:
- (a) this is advised to the Members in writing prior to the conduct of the postal ballot; and
  - (b) no Member is entitled to vote more than once on the same resolution.
- 7.21 All postal ballots shall be held in such a manner as to provide a reasonable opportunity for the Members to cast a vote and otherwise in the manner prescribed by the Board from time to time in by-laws promulgated by the Board.
- 7.22 All resolutions put to the vote of a General meeting of Members, which have not already been decided by postal ballot under this Constitution, must be decided on a show of hands unless a poll is demanded in accordance with clause 7.25.

- 7.23 On a show of hands, every Member present in person has one vote.
- 7.24 On a show of hands, a declaration by the Chair that a resolution has been carried or carried unanimously, or by a particular majority, or lost an entry to that effect in the book containing 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.

### **Vote on a Poll**

- 7.25 A poll may be demanded in respect of a resolution at a General meeting:
- (a) by the Chair; or
  - (b) by at least 2 Members present and entitled to vote on the resolution:
    - (c) before the vote on that resolution is taken;
    - (d) before the result is declared on a show of hands; or
    - (e) immediately after the result is declared on a show of hands.
- 7.26 On a poll every Member present in person or by proxy has one vote.
- 7.27 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a Chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the Chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- 7.28 A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

## **8 Proxies**

### **Proxies and Representatives of Members**

- 8.1 At meetings of Members, each Member entitled to vote may vote in person by its Representative (see clause 9) or by proxy.
- 8.2 A person attending as a proxy shall be deemed to have all the powers of the relevant Member, except where expressly stated to the contrary in this Constitution or the Act.

### **Appointment of Proxies**

- 8.3 A Member may appoint another Member's Representative as their proxy to attend and vote in their place at a General meeting.
- 8.4 The proxy must be appointed in writing, in the form from time to time required by the Board and signed by the Member appointing the proxy.
- 8.5 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

### **Verification of Proxies**

- 8.6 Notwithstanding any other provision, a proxy shall be deemed to be invalid unless the following provisions are fulfilled:
- (a) each Member appointing a proxy must send or deliver to the Company, for receipt by 5pm on the last business day before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote, the following:
  - (b) the document appointing the proxy; and
  - (c) if the appointment is signed by the Member's attorney, the authority under which the appointment was signed or a certified copy of that authority
  - (d) the required documents must be either sent or delivered to the Company's office address, fax number or electronic address, and marked to the attention of the relevant person, as specified for that purpose in the notice convening the meeting.

### **Revocation of Appointment of Proxy**

- 8.7 A vote given in accordance with the terms of a proxy document or Power of Attorney is valid despite:
- (a) the death or unsoundness of mind of the appointor; or
  - (b) the revocation of the instrument or of the authority under which the instrument was executed,

except where the Secretary has been notified in writing of such event before the commencement of the meeting or adjourned meeting at which the proxy is used, in which case the proxy shall be deemed to be invalid.

## **9 Members' Representatives**

- 9.1 Members that are organisations shall appoint an individual as a Representative to exercise all or any of the powers of the Member under this Constitution or the Act or otherwise at law.
- 9.2 The appointment may be a standing one.
- 9.3 The appointment may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 9.4 A Member may appoint more than 1 Representative, but only 1 Representative may exercise the body's powers at any one time.
- 9.5 Unless otherwise specified in the appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.

## 10 Board of Directors

- 10.1 The governance of the Company shall be the responsibility of the Board of Directors duly elected and appointed under and in accordance with this Constitution.
- 10.2 The Directors may exercise all of the powers of the Company which are not, by the Act or by this Constitution, required to be exercised by the Members in a General meeting.

### Number of Directors

- 10.3 Until the General meeting of the Members of the Company occurring in 2015, the Board shall comprise the Initial Directors.
- 10.4 The number of Directors of the Company shall be a minimum of 3 and a maximum of 9, provided that whilst it is a condition of the Core Funding Requirements of the Department, the number of Directors of the Company shall be a minimum of 7 and a maximum of 9.
- 10.5 The Board shall comprise:
- (a) 3 Member Elected Directors;
  - (b) up to 6 Board Appointed Directors; and
  - (c) whilst it is a condition of the Core Funding Requirements of the Department that the Board comprise 7-9 Directors (see clause 10.4), there shall be at least 4 and up to 6 Board Appointed Directors.
- 10.6 The Company may, by ordinary resolution of its Members, increase or decrease the minimum or maximum number of Directors (provided that the minimum must not fall below 3 as required by the Act) and may also determine in what rotation the Directors appointed as the result of any such alteration are to go out of office.

### Eligibility for Appointment or Election as a Director

- 10.7 A person is only eligible for election or appointment as a Director if:
- (a) the person is not an employee of the Company or of any related entity employing staff of the Company; and
  - (b) starting from the first time the person was elected or appointed to the Board after the adoption of this Constitution, the person being considered for election or appointment as a Director has served:
    - (i) less than 3 consecutive terms of office as a Director; or
    - (ii) in the case of an existing Director who was elected by the Board pursuant to Section 11 of this Constitution as Chairperson during his or her third term of office, the person has served no more than 3 consecutive terms of office as a Director; or
    - (iii) at least 3 years has elapsed since the end of the person's last term of office as a Director; and

- (c) prior to election or appointment of the person, the Director Nominations Committee has affirmed in writing to the Members (in the case of a candidate for a Member Elected Director position) or the Board (in the case of a candidate for a Board Appointed Director position) that:
- (iv) the person fulfils the Director Eligibility Criteria; and
  - (v) upon election or appointment of the person the Board Composition Requirements will be fulfilled provided that if this assessment is contingent upon any other factors or circumstances, the Director Nominations Committee specifies those factors or circumstances in their written affirmation.

### Member Elected Directors

10.8 There shall be a staggered rotational system of election by postal vote (see clauses 7.17 – 7.19) of Member Elected Directors such that:

- (a) subject to clause 10.9, as and from the Annual General meeting of the Members of the Company occurring in 2015, and thereafter at each annual general meeting of the Company, one Member Elected Director shall be elected to serve for a term of approximately 3 years commencing from the close of the Annual General meeting as at which they were elected; and
- (b) if they are not then disqualified by law or by this Constitution from being reappointed, a retiring Director shall be eligible for re-election.

10.9 In the case of the Initial Directors, notwithstanding the previous clause:

- (a) they shall retire from office progressively over a period of 2 years starting at the general meeting of the Company occurring in 2015 and then at the subsequent two Annual General meetings in 2016 and 2017; and
- (b) the order in which the Initial Directors shall retire from office shall be determined by agreement amongst them;
- (c) if they are unable to agree on the order in which they shall retire from office, then this shall be determined by the drawing of lots; and
- (d) if they are not then disqualified by law or by this Constitution from being reappointed, a retiring Initial Director shall be eligible for re-election re-appointment.

### Appointment of Board Appointed Directors

10.10 As and from the Annual General meeting of the Members of the Company occurring in 2015, the Board must appoint up to 6 Directors (**Board Appointed Directors**) as required by clauses 10.5(b) and (c).

10.11 In addition to the requirements of clause 10.7, in considering persons for appointment as Board Appointed Directors, the Board shall have regard to the desired skills and other competencies which will assist the Board in discharging its role and functions in view of the skills and other competencies brought to the Board by the existing Directors then on the Board.

- 10.12 Each Board Appointed Director shall serve for a term of 3 years, but shall be eligible for reappointment if they are not then disqualified by law or by this Constitution from being reappointed.

#### **Retirement from Office**

- 10.13 A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire.
- 10.14 A notice of resignation takes effect at the time of giving the notice to the Company or, if another time is specified in the notice, at that time.

#### **Vacation of Office**

- 10.15 Without limiting any other provision, the office of a Director becomes vacant if required by the Act or if the Director:
- (a) becomes an insolvent under administration;
  - (b) 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;
  - (c) is absent without the prior consent of the Directors from 3 consecutive meetings of the Directors and the Board resolves that the office of that Director be vacated; or
  - (d) becomes prohibited from being a Director by reason of an order made under the Act.

#### **Casual Vacancies**

- 10.16 If a casual vacancy arises in relation to an Elected Director:
- (a) the Board may appoint a person to fill the casual vacancy until the next Annual General meeting after their appointment provided that the person is not disqualified from being appointed by law or by this Constitution;
  - (b) prior to the next Annual General meeting after the person's appointment to the casual vacancy, their appointment as a Director shall be submitted to a vote of the Members conducted by postal ballot in accordance with this Constitution;
  - (c) the person's appointment to fill the casual vacancy shall be deemed to be confirmed at the next annual general meeting if supported by an ordinary resolution of the Members in the postal ballot;
  - (d) the person's appointment to the Board shall then continue as and from the close of the Annual General meeting only until the next Annual General meeting at which the person who vacated the office of Director early would have been required to retire pursuant to this Constitution if they had not vacated office early; and
  - (e) that person shall then be eligible for re-election or re-appointment at the next relevant annual general meeting provided that they are not otherwise disqualified by law or by this Constitution.

## **11 Chairperson and Deputy Chairperson**

- 11.1 At the first meeting of the Board after each Annual General meeting, the Board shall elect from amongst their number a Chairperson.
- 11.2 The Board may elect from amongst their number a Deputy Chairperson.
- 11.3 The Chairperson or, in his/her absence the Deputy Chairperson (if any) shall preside as Chair at every meeting of the Board.
- 11.4 If for any reason there is not then a Chairperson or a Deputy Chairperson, or neither of them is present within 15 minutes of the time nominated for the Board meeting to start, the Directors who are present and entitled to vote at the meeting shall select one of their number to chair the meeting.

## **12 Directors' Remuneration**

### **Payment for Expenses**

- 12.1 Directors shall be entitled to be remunerated for their role as Directors provided that such fees are approved annually in advance by the Board.
- 12.2 In addition to remuneration approved by the Board, Directors may in the discretion of the Board be entitled to be paid all reasonable travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board or any of its Committee or General meetings or otherwise in the execution of their duties as Directors provided that such expenses have first been approved by the Board.

## **13 Proceedings of Directors**

### **Convening of Directors' Meetings**

- 13.1 The Board shall meet not less than 4 times per year, but otherwise as necessary to discharge their duties and functions.
- 13.2 The Chairperson or the Deputy Chairperson or any other 2 Directors may request the Secretary to convene a meeting of the Board at any time and the Secretary must comply with such request.
- 13.3 Notice of each meeting of the Directors must be given to each Director at least 48 hours before the meeting, or otherwise as determined by resolution of the Board, except in the case of a Director who is out of Australia or who has been given leave of absence from the Board.
- 13.4 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.

**Quorum and Voting at Directors' Meetings**

- 13.5 A quorum for the purposes of a meeting of the Board is a simple majority of the Board as then constituted.
- 13.6 Questions arising at a meeting of the Board must be decided in the manner from time to time determined by the Board, and in the absence of any such agreement, by a majority of votes of Directors present and voting.

**Chair's Casting Vote**

- 13.7 The Chair has a second or casting vote at meetings of Directors.

**Delegation of Powers to Committee**

- 13.8 The Board may delegate any of their powers, except this power to delegate to committees consisting of such Directors and such other persons as they think fit.
- 13.9 In the exercise of any powers delegated to it, a committee formed by the Board:
- (a) must conform to the directions of the Board; and
  - (b) otherwise shall conduct its meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.

**Validity of Acts of Directors**

- 13.10 All acts done by a meeting of the Board or of a committee appointed by the Board 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.

**Minutes**

- 13.11 The Board must cause minutes of all proceedings of General meetings, of meetings of the Board and of Committees formed by the Board to be entered within one month after the relevant meeting is held, in books kept for the purpose.
- 13.12 The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

**Resolution in Writing**

- 13.13 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 Board passed at a meeting of the Board duly convened and held.
- 13.14 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.
- 13.15 In relation to a resolution in writing:

- (a) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
- (b) a document bearing a facsimile of a signature is to be treated as signed.

### **Conflict of Interest**

- 13.16 The Board shall agree from time to time in writing on its policy for the regulation of conflicts of interest, which shall include a requirement that Directors only be engaged to provide goods or services to or on behalf of the Company if:
- (a) that Director is for bona fide reasons considered by Board, agreed to be a suitable person to provide, such goods or services;
  - (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
  - (c) the goods or services are provided on arms-length terms;
  - (d) the provision of the goods and services is disclosed clearly and expressly to the Members in the annual report of the Company; and
  - (e) the Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

## **14 Board Composition Requirements and Director Nominations Committee**

- 14.1 There shall be a Director Nominations Committee, comprising 4 persons appointed in accordance with this Constitution, for the purpose of reviewing and assessing the extent to which persons seeking election or being considered for appointment to the Board fulfil the Director Eligibility Criteria and the Board Composition Requirements.
- 14.2 In promulgating by-laws in relation to the composition and election of the Director Nominations Committee the Board must take in to account any recommendations of the Director Nominations Committee in relation to the content of those by-laws.
- 14.3 Notwithstanding any other provision of this Constitution, the Board Composition Requirements must, in addition to any other requirements set by the Board, require that the Board comprise 3 General Practitioners.
- 14.4 Within 7 months before each annual general meeting, being one month prior to the commencement of the postal ballot referred to in clauses 7.17 and 7.19, the Board shall appoint a Director Nominations Committee comprising 4 persons, at least 2 of whom must not themselves be Directors of the Company (see clauses 14.5 and 14.6).
- 14.5 In addition to the requirements of clause 14.2 and any other criteria which may be set out in the by-laws, a Director may only be eligible for appointment to, and membership of, the Director Nominations Committee, if the person:

- (a) is not a candidate being considered by the Director Nominations Committee for election (or re-election) or appointment (or reappointment) to the Board; and
  - (b) has not at the relevant time been a member of the Director Nominations Committee for more than 5 years.
- 14.6 In addition to the requirements of clause 14.2 and any other criteria which may be set out in the by-laws, a person other than a Director, shall only be eligible for appointment to, and membership of, the Director Nominations Committee, if the person:
- (a) is not at the relevant time a director, officer or employee of a Member;
  - (b) is not a candidate being considered by the Director Nominations Committee for election or appointment to the Board;
  - (c) is and has not during the previous 12 month period been an employee or director of the Company; and
  - (d) has not at the relevant time been a member of the Director Nominations Committee for more than 5 years.

## **15 CEO**

- 15.1 The Board may appoint any person, to the position of CEO, to act as Chief Executive Officer of the Company for the period and on the terms (including as to remuneration) the Board see fit.
- 15.2 The Board may, upon terms and conditions and with any restrictions they see fit, confer on the CEO any of the powers that the Board can exercise.
- 15.3 The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.
- 15.4 If the CEO becomes incapable of acting in that capacity the Directors may appoint any other person, not being a Director, to act temporarily as CEO until such time as the position can be permanently filled.

## **16 Secretary**

- 16.1 The Directors may:
- (a) appoint and terminate the appointment of, one or more Secretaries;
  - (b) determine their terms and conditions of appointment.
- 16.2 A Secretary shall be responsible to carry out all acts and deeds required by this Constitution, the Act or by law to be carried out by the secretary of the Company.

## 17 By-Laws

- 17.1 The Board may by resolution make and adopt, or amend by-laws with respect to any matter or thing for the purposes of giving effect to any provision of this Constitution, or generally for the purposes of carrying out the objects of the Company. The by-laws shall be binding on the Members, provided that to the extent of any inconsistency, this Constitution shall prevail over all such by-laws.

## 18 Seals and Execution of Documents

- 18.1 If the Company has one, the Board must provide for the safe custody of the Seal.
- 18.2 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
- (a) 2 Directors;
  - (b) a Director and the Secretary; or
  - (c) a Director and some other person appointed by the Directors for the purpose.
- 18.3 The Company may execute a document without the use of a Seal if the document is signed by:
- (a) 2 Directors; or
  - (b) a Director and a Secretary.

## 19 Surplus Assets on Winding Up or Dissolution

- 19.1 Upon the winding up or dissolution of the Company, any remaining property 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 organisations which:
- (a) has objects similar to the objects of the Company; and
  - (b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 6.1,

as 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 South Australia.

## 20 Indemnity

### Costs and Expenses

- 20.1 Every Officer and past Officer of the Company is indemnified by the Company against a liability for costs and expenses incurred by that person as an Officer:

- (a) in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
- (b) in connection with any application in relation to those proceedings in which the Court grants relief to the person under the Act.

### **Liabilities to Third Parties**

20.2 Every Officer and past Officer of the Company is indemnified against a liability incurred by that person as an Officer to a person other than the Company or a related body corporate, except a liability which arises from conduct that involves a lack of good faith.

### **Insurance Premiums**

20.3 The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company against:

- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an Officer, whether civil or criminal and whatever their outcome; and
- (b) other liability incurred by the person as an officer of the Company except a liability which arises from conduct that involves a wilful breach of duty in relation to the Company or a contravention of sections 182, 183 or 184(2) or (3) of the Act.

## **21 Accounts, Audit and Records**

### **Accounts**

21.1 The Board must cause proper accounting and other records to be kept in accordance with the Act and must comply with the requirements of the Act in respect of reporting and the provision of accounts to Members.

### **Audit**

21.2 A registered Company Auditor must be appointed.

21.3 The remuneration of the Auditor must be fixed and the auditor's duties regulated in accordance with the Act.

### **Rights of Inspection**

21.4 Subject to the Act, the Board shall 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 resolution of the Board.

## 22 Notices

### Persons Authorised to Give Notices

- 22.1 A notice given by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a Solicitor, or in the case of the Company, by the Secretary or a Director.
- 22.2 The signature of a person on a notice given by the Company may be written, printed or stamped.

### Method and Time of Giving Notices

- 22.3 In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given by:
- (a) delivering it to the street address of the addressee and shall be taken to have been received at the time of delivery;
  - (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee and shall be taken to have been received on the next business day (or 5th business day if sent outside Australia) after posting;
  - (c) sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee and shall be taken to have been received when the transmission is complete; or
  - (d) sending it by means of any other technology which the Members in general meeting agree to be permissible for the purpose of giving notices.

### Addresses for Giving Notices to Members and to the Company

- 22.4 For the purposes of clause 22.3:
- (a) the address, facsimile, email or other contact details of a Member are the last details formally notified by the Member to the Company with a request that they be recorded in the Register or the other records of the Company.
  - (b) the street and postal address of the Company is the registered office of the Company and the facsimile, e-mail or other contact details are as the Company may specify from time to time by written notice to the Members as the contact details for the Company.

### Proof of Giving Notices

- 22.5 The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:
- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
  - (b) a print out of an acknowledgement of receipt of the e-mail.

### **Persons Entitled to Notice of Meeting**

22.6 Notice of every General meeting must be given by a method authorised by this Constitution to every Member, Director and the Auditor for the time being of the Company, if any. No other person is entitled to receive notices of General meetings.

## **23 Interpretation**

### **References to Law and the Constitution**

23.1 A reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; or
- (b) this Constitution, where amended, means this Constitution as so amended.

### **Replaceable Rules**

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

### **Presumptions of Interpretation**

23.3 Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa;
- (b) any gender denotes the other genders; and
- (c) a person denotes an individual and a body corporate.

23.4 Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

23.5 Headings and any table of contents must be ignored in the interpretation of this Constitution.

23.6 Unless the context otherwise requires a reference to a time of day means that time of day in the State or Territory in which the office is situated.

23.7 For the purposes of determining the length of a period (but not its commencement) a reference to:

- (a) a day means a period of time commencing at midnight and ending 24 hours later; and
- (b) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.

- 23.8 Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.
- 23.9 A provision of this Constitution, except that specifying the time for deposit of proxies with the Company, 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.
- 23.10 A reference to a business day means a day during which banks are open for general banking business in the state or territory in which the Office is situated
- 23.11 A reference to an Act of Parliament, whether State or Federal, includes a reference to that Act of Parliament as amended from time to time, and a reference to a specific provision of an Act of Parliament means, unless the context demands otherwise, a reference to the equivalent provision in any later amended version of that Act of Parliament, or if the original Act of Parliament has been repealed in any Act of Parliament substituted in its place.

## 24 Definitions

- 24.1 In this Constitution, except where the context requires otherwise:

**Act** means the Corporations Act 2001.

**Board** means the board of Directors of the Company.

**Board Appointed Director** means a Director appointed to the Board, pursuant to clauses 10.10 and 10.12 and otherwise in accordance with this Constitution.

**Board Composition Requirements** means the requirements from time to time set out in by-laws promulgated by the Board in relation to the preferred composition of skills and other competencies within the Board.

**CEO** means the Chief Executive, referred to in clause 15.

**Chairperson** means the Chairperson of the Board, elected from time to time in accordance with this Constitution.

**Company** means Adelaide Primary Health Network Limited ACN 155 472 067.

**Core Funding Requirements** means the contractual requirements imposed on the Company by virtue of the Department providing core operational funding to the Company.

**Department** means the Commonwealth Government's Department of Health and Ageing or its successor department, body or agency.

**Director** means a person elected or appointed in accordance with this Constitution to perform the duties of a director of the Company.

**Director Eligibility Criteria** means the criteria set out in by-laws promulgated by the Board in relation to the eligibility of persons for election or appointment to the Board.

**Director Nominations Committee** means the committee formed from time to time pursuant to clause 14.

**General Practitioner** means a registered medical practitioner who usually practises in such a way as to provide un-referred, whole person care.

**Initial Directors** means the persons who are the Directors upon incorporation of the Company.

**Member** means the organisations that, at the relevant time, are ordinary Members of the Company admitted in accordance with this Constitution.

**Member Elected Director** means a Director elected to the Board pursuant to clauses 10.8 and 10.9 and otherwise in accordance with this Constitution.

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

**Representative** means, in relation to a Member, the representative of the Member appointed under clause 9.

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

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

**Unincorporated Member Organisation** means a Member that comprises an unincorporated association or body of natural persons that is admitted to Membership in as contemplated by clause 3.2(b) of this Constitution.