

**ADELAIDE PRIMARY HEALTH NETWORK LIMITED**

**ACN 155 472 067**

## **CONSTITUTION**

*28 February 2023*

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## 1. Definitions

1.1 In this Constitution, unless the context requires otherwise:

- (a) **Aboriginal Community Advisory Council** means any Aboriginal Community Advisory Council/s established to carry out the role and functions as set out in clause 18, and the terms of reference relating to that Aboriginal Community Advisory Council (as adopted by the Board from time to time).
- (b) **ACNC** means the Australian Charities and Not-for-profits Commission.
- (c) **ACNC Act** means the *Australian Charities and Not-for-profit Commission Act 2012* (Cth).
- (d) **ACNC Governance Standards** means the governance standards prescribed by Division 45 of the Australian Charities and Not-for-profit Commission Regulation 2013 (Cth).
- (e) **ACNC Registered Entity** means an entity which is registered with the Australian Charities and Not-for-profit Commission pursuant to the ACNC Act.
- (f) **ACNC Responsible Person** means a Responsible Person in accordance with ACNC Governance Standard 4.
- (g) **Act** means the *Corporations Act 2001* (Cth).
- (h) **Board** means the board of Directors of the Company.
- (i) **Board Committee** means a committee appointed by the Board under clause 17.1.
- (j) **Board Composition and Director Eligibility Policy** means the policy that the Board must adopt (as amended from time to time), including a Board Skills Matrix setting out the board composition requirements and any other criteria that must be satisfied before a person is eligible to be elected as a Director.
- (k) **Board Selection Committee** means the Board Selection Committee appointed to carry out the role and function set out in clause 13, and the terms of reference adopted by the Board from time to time.
- (l) **Board Skills Matrix** means the document prepared from time to time by the Board setting out the skills, experience and wisdom of the Directors on the Board.
- (m) **By-Laws** means by-laws made or adopted by the Board under clause 23.
- (n) **Chair** means the chair of the Board, elected from time to time under clause 11.2.
- (o) **Chairperson** means the person entitled to preside as chair at a particular:
  - (i) Board meeting, as determined under clauses 11.6 and 11.7;
  - (ii) Committee meeting, as determined under clause 17.2; or
  - (iii) general meeting, as determined under clauses 8.20 to 8.23.
- (p) **Chair Role Statement** means the document that the Board may approve from time to time setting out the role and expectations of the chair of the Board.

- (q) **Chief Executive Officer** means the chief executive officer of the Company, appointed under clause 22.1.
- (r) **Clinical Council** means any Clinical Council/s established to carry out the role and functions as set out in clause 19, and the terms of reference relating to that Clinical Council (as adopted by the Board from time to time).
- (s) **Commissioner** means the Commissioner of the Australian Charities and Not-for-profit Commission as established by the ACNC Act.
- (t) **Community Advisory Council** means any Community Advisory Committee/s established to carry out the role and functions as set out in clause 20, and the terms of reference relating to that Community Advisory Council (as adopted by the Board from time to time).
- (u) **Company** means Adelaide Primary Health Network Limited (ACN 155 472 067).
- (v) **Deputy Chair Role Statement** means the document that the Board may approve from time to time setting out the role and expectations of the deputy chair of the Board.
- (w) **Director** means the individuals elected to the Board in accordance with this Constitution to perform the duties of a director on the Board of the Company.
- (x) **General Practitioner** means a medical professional registered by the Australian Professional Health Regulation Authority as a specialist general practitioner.
- (y) **Government** means any local Government, State Government or Federal Government.
- (z) **Member** means the persons who, at the relevant time, are the members of the Company in accordance with this Constitution.
- (aa) **Register** means the register of Members kept by the Company under the Act.
- (bb) **Related** means a parent, child, sibling, spouse/partner, brother or sister-in-law by marriage or defacto; an uncle or aunt or first cousin by blood or marriage; persons associated by way of partnership, shareholding or beneficial interest, or persons associated in any other way that shall be deemed to be material and/or create a personal interest at law.
- (cc) **Secretary** means the person appointed as secretary of the Company under clause 21.1.
- (dd) **Transitional Board** means the persons who were Directors at the time of adoption of this Constitution.

## 2. Nature of Company

- 2.1 The Company is a public company limited by guarantee.
- 2.2 The liability of the Members is limited. The Members undertake to contribute \$10 to the assets of the Company if it is wound up while the person is a Member, or within one (1) year after the person ceases to be a Member.

### **3. Objects**

- 3.1 The ultimate object of the Company is to improve the health of the local community through:
- (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 through effective stakeholder engagement;
  - (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.

### **4. Powers**

- 4.1 Subject to the Act, the Company has the rights, powers and privileges of a natural person to do all such acts, deeds, matters and things to enter into and make such arrangements as are incidental or conducive to the attainment of any of its objects.

### **5. Not for profit**

#### **No profits for Members**

- 5.1 Subject to clause 5.2, all of the assets and income of the Company must be applied only to fulfil the objects of the Company and no portion may be distributed directly or indirectly to the Members.
- 5.2 Payments may be made to Members in good faith, if calculated on commercial (arms-length) terms, in respect of:
- (a) remuneration payable to an employee or Director of the Company for services they provide to the Company.
  - (b) goods or services actually supplied by the Members to the Company in the ordinary and usual course of the Member's business.
  - (c) interest on money borrowed from Members (at a rate not exceeding interest at the rate for the time being charged by the Company's bankers for overdrawn accounts).

- (d) rent for premises that the Company may rent from the Members.
- (e) if applicable, payment to the Member in his or her capacity as a Director (clauses 10.33 or 10.34).
- (f) other expenses as authorised by the Board from time to time.

## **6. Members**

### **Membership**

- 6.1 The number of Members of the Company shall be limited to the following individuals:
- (a) the number of Directors appointed from time to time; and
  - (b) the Chair/s of any Aboriginal Community Advisory Council established by the Board; and
  - (c) the Chair/s of any Clinical Council established by the Board; and
  - (d) the Chair/s of any Community Advisory Council established by the Board.
- 6.2 There is one class of membership of the Company, being ordinary voting membership.

### **Member's rights**

- 6.3 The Members have the right to:
- (a) receive notices of, attend and be heard at any general meeting; and
  - (b) cast one vote in person or by proxy at any properly convened general meeting.
- 6.4 Members must pay the annual membership fee (if any) to remain a Member of the Company.
- 6.5 Members retain membership subject to the terms and conditions of this Constitution.

### **Members obligations and rights**

- 6.6 Members agree to be bound by the provisions of this Constitution.
- 6.7 For so long as a Member abides by the terms and conditions set out in this Constitution, the Member will enjoy the rights and privileges of membership.

### **Membership fees**

- 6.8 Any annual membership fees, and the time and payment method are to be determined by the Board from time to time.
- 6.9 Where a Member's membership fee or any part of it remains unpaid for thirty (30) days after it becomes payable, the Board may give the Member a notice of default:
- (a) requiring the Member to pay the unpaid membership fee within the time determined by the Board and specified in the notice; and
  - (b) informing the Member that the rights attached to their membership (under this Constitution or otherwise) may be suspended and they may be removed from

membership if the membership fee remains unpaid within the time specified in the notice.

- 6.10 If a Member's membership fee or any part of it remains unpaid after the time specified in a notice given to the Member under clause 6.9, the Board may, in its absolute discretion and without any further recourse to the Member, suspend the Member's rights as a Member (under this Constitution or otherwise) until such time as the Member has paid all arrears of membership fees.
- 6.11 If a Member resigns or is removed from Membership or otherwise ceases to be a Member that Member is not entitled to any refund of any entrance fee or annual membership fees.

### **Register of Members**

- 6.12 A Register of Members must be kept in accordance with the Act.
- 6.13 The following details must be entered and kept current in the Register in respect of the Member:
- (a) the Member's full name, residential address, postal address, telephone number and email address.
  - (b) the date of admission to and cessation of membership.
  - (c) the category of membership.
  - (d) such other information as the Board requires.
- 6.14 Members may inspect the Register in accordance with the Act.
- 6.15 Members must notify the Secretary in writing of any change in the Member's name, residential address, postal address, telephone number or email address within 1 month after the change.

### **Resignation from membership**

- 6.16 Members may resign from membership by giving written notice to the Secretary.
- 6.17 A Member's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.

### **Member's liability for fees**

- 6.18 A Member's liability for any fees or other moneys in arrears at the date of resignation continues until payment is made.

### **Removal from membership**

- 6.19 Subject to clause 6.20, if a Member:
- (a) fails to comply with the terms and conditions set out in this Constitution; and/or
  - (b) conducts themselves in a manner considered to be injurious or prejudicial to the character or interests of the Company; and/or



- (c) shows behaviour which is causing or has caused, or is likely to cause harm to the Company; and/or
- (d) has membership fees in arrears following the giving of a notice to that Member under clause 6.9,

the Member's membership may be suspended by ordinary resolution of the Board, until a determination is made regarding the removal of the Member from membership by ordinary resolution of the Company.

6.20 If a Member has been suspended by the Board pursuant to clause 6.19, they may only have their membership terminated if:

- (a) the Board has first given at least six weeks written notice to the Member which:
  - (i) states the intention to terminate the Member's membership;
  - (ii) sets out the grounds of the intended termination;
  - (iii) invites the Member to provide to the Board (within a specified timeframe) any written representations which the Member wishes to be put to the general meeting.
- (b) the Board has included in the notice of the meeting a copy of the Member's written representations (unless the written representations were not provided by the Member in the specified timeframe);
- (c) whether or not the Member has provided written representations, the Member has been given a full and fair opportunity to address the meeting; and
- (d) an ordinary resolution is passed by the membership at general meeting, confirming the removal of the Member's membership.

6.21 If Members vote to terminate the Member's membership, that Member's liability for any fees or other monies in arrears as at the date of the Member's termination will become immediately due and payable to the Company.

6.22 If the membership does not pass an ordinary resolution at general meeting to remove the Member's membership, that Member will have their membership reinstated and will enjoy all rights and privileges of membership of the Company. However, all membership fees and any other monies outstanding will become immediately due and payable.

6.23 There will be no liability for any loss or injury suffered by a member as a result of any decision made in good faith under clauses 6.19 to 6.22.

### **Other cessation of membership**

6.24 A Member otherwise ceases to be a Member if the Member:

- (a) dies.
- (b) becomes bankrupt.
- (c) becomes of unsound mind or a person whose property is liable to be dealt with under a law regarding mental health.

- (d) is convicted of an indictable offence.
- (e) receives adverse findings issued by any regulator.
- (f) resigns from their role as Director.
- (g) ceases to hold the role of Chair of any Aboriginal Community Advisory Council, Clinical Council and/or Community Advisory Council established by the Board.

## **7. Dispute resolution**

7.1 The dispute resolution procedure in this clause applies to disputes (disagreements) between a Member or Director and:

- (a) one or more Members.
- (b) one or more Directors.
- (c) the Company.

7.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a removal from membership until the process set out in this Constitution is completed.

7.3 The parties involved in a dispute must try to resolve it between themselves within 14 days of knowing about it. If those involved in the dispute do not resolve the matter, they must within 10 days:

- (a) tell the Directors about the dispute in writing.
- (b) agree or request that a mediator be appointed.
- (c) attempt in good faith to settle the dispute by mediation.

7.4 The mediator must be chosen by agreement of those involved. Where those involved cannot agree, and the dispute is between Members, the mediator will be chosen by the Directors (by ordinary resolution). For all other disputes, the President of the South Australian Law Society will choose.

7.5 A mediator chosen by the Directors under clause 7.4:

- (a) may be a former member of the Company.
- (b) must not have a personal interest in the dispute.
- (c) must not be biased towards or against anyone involved in the dispute.

7.6 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard.
- (b) allow those involved a reasonable chance to review any written statements.
- (c) ensure that those involved are given natural justice.
- (d) not make a decision on the dispute.

## **8. General meetings**

### **Calling of general meetings**

- 8.1 General meetings of the Company may be called and held at the times and places and in the manner determined by the Board.
- 8.2 The Company must provide reasonable means by which Members have an adequate opportunity to raise with the Board concerns about the governance of the Company.
- 8.3 Members may call or requisition a general meeting in accordance with the Act which shall apply as if the Company were not an ACNC Registered Entity and the Chair must, on the written request of Members, direct the Secretary to convene a meeting.

### **Notice of general meetings**

- 8.4 Notice of every general meeting must be given to every Member, Director and auditor (if any) for the time being of the Company. No other person is entitled to receive notices of general meetings.
- 8.5 Notice of a general meeting:
- (a) subject to the provisions of the Act permitting short notice, notice must be given not less than 21 days prior to the meeting, unless the provisions of the Act permitting short notice are met;
  - (b) may be given by any form of communication permitted by the Act; and
  - (c) must specify:
    - (i) the place, the date and the time of the meeting;
    - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
    - (iii) the general nature of the business to be transacted;
    - (iv) if it is proposed to move a special resolution at the meeting, the intention to propose the special resolution and the resolution; and
    - (v) any other matters required by the Act.
- 8.6 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.

### **Business at annual general meetings**

- 8.7 If the Board determines that an annual general meeting will be held in any year, it must be held not later than 30 November in each year. Except as permitted by the Act or with the approval of the Board, no person may move any business of which notice has not been given under clause 8.5, other than the following at an annual general meeting:
- (a) the receipt and consideration of the accounts and reports of the Board and the auditors;

- (b) the appointment of an auditor;
- (c) the Chair's report on the Company's activities during the preceding year; and
- (d) confirmation of the appointment of the Board.

### **Adjournment of general meetings**

- 8.8 The Chairperson of any general meeting at which a quorum is present may, with the consent of the meeting, and must, if so directed by the meeting, adjourn the meeting to another time and to another place.
- 8.9 The only business that may be transacted at any adjourned general meeting is the business left unfinished at the meeting from which the adjournment took place.
- 8.10 When a general meeting is adjourned under clause 8.8 for thirty (30) days or more notice of the adjourned meeting must be given in the same manner as in the case of an original meeting.
- 8.11 When a general meeting is adjourned under clause 8.8 for less than thirty (30) days, it is not necessary to give a further notice of the adjourned meeting.

### **Cancellation of general meetings**

- 8.12 The Board may cancel or postpone any general meeting (other than a meeting which has been called or requisitioned by Members in accordance with the Act) at any time prior to the date on which it is to be held.
- 8.13 If a general meeting has been cancelled or postponed, notice of the cancellation or postponement must be given in the same manner as in the case of the original meeting.

### **Attendance at general meetings**

- 8.14 A person, whether a Member or not, who is invited or requested by the Board to attend a general meeting is entitled to attend that general meeting. Any persons invited or requested to attend by the Board are not counted for the purpose of the quorum.

### **Quorum at general meetings**

- 8.15 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 8.16 A quorum for the purposes of a general meeting is half the number of Members plus one (1).
- 8.17 To calculate a quorum, Members must be regarded as present whether present personally or by proxy.
- 8.18 If a quorum is not present within thirty (30) minutes from the time appointed for the meeting or a longer period allowed by the Chairperson:
  - (a) if the meeting was called or requisitioned by Members, it must be dissolved; or

- (b) in any other case, it must be adjourned to the same day in the next week at the same time and place, or to another day, time and place determined by the Board.
- 8.19 Notwithstanding any other provision of this Constitution, if a general meeting is adjourned under sub-clause 8.18(b):
- (a) not less than five (5) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting;
  - (b) a quorum for the purpose of the adjourned meeting is three (3); and
  - (c) if a quorum is not present within thirty (30) minutes after the time appointed for the adjourned meeting, the meeting must be dissolved.

### **Chairperson of general meetings**

- 8.20 The Chair is entitled to be the Chairperson of every general meeting.
- 8.21 The Directors present at a general meeting must elect one (1) of the Directors present to chair the meeting if the Chair is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or the Chair is not willing to act.
- 8.22 Except as provided by the Act, the general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the Chair.
- 8.23 The Chairperson of a general meeting may, in his or her discretion, refuse admission to, or expel from, the meeting any person:
- (a) using a recording device;
  - (b) in possession of a placard or banner;
  - (c) in possession of an object considered by the Chairperson to be dangerous, offensive or liable to cause disruption;
  - (d) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
  - (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - (f) whose conduct, in the reasonable opinion of the Chairperson, is inappropriate; or
  - (g) who is not a Member, Director or auditor of the Company.

## **9. Voting at general meetings**

- 9.1 At a general meeting, a resolution put to the vote of the meeting must be decided by the vote of the Members present or represented and entitled to vote at the meeting.
- 9.2 The Chairperson of a general meeting is not entitled to a second or casting vote on any resolution, whether by show of hands or on a poll.

9.3 If a Member's membership fees are more than two (2) months in arrears at the date of a general meeting they are not entitled to vote at that meeting.

### **Show of hands**

9.4 At a general meeting, a resolution put to the vote of the meeting, must be decided on a show of hands unless a poll is demanded in accordance with clause 9.8.

9.5 Subject to this Constitution, on a show of hands, every Member present in person and entitled to vote on the resolution has one (1) vote.

9.6 For the avoidance of doubt, on a show of hands a Member may not vote by proxy.

9.7 If a poll is not duly demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the 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.

### **Poll**

9.8 A poll may be demanded in respect of a resolution at a general meeting by:

- (a) a Member; or
- (b) the Chairperson.

9.9 A secret ballot poll may be demanded in respect of a resolution at a general meeting:

- (a) before the vote on that resolution is taken;
- (b) before the voting result on a show of hands is declared; or
- (c) immediately after the voting result on a show of hands is declared.

9.10 A poll cannot be demanded on the election of a Chairperson or on the adjournment of a meeting.

9.11 Subject to this Constitution, every Member has:

- (a) the right to join in the demand for a poll; and
- (b) one (1) vote in the poll.

9.12 The demand for a poll may be withdrawn.

9.13 If a poll is duly demanded, it:

- (a) must be secret;
- (b) must be taken in the manner directed by the Chairperson, including either at once or after an interval or adjournment; and
- (c) does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll is demanded.

9.14 In the case of any dispute as to the admission or rejection of a vote, the Chairperson's determination in respect of the dispute is final.

9.15 The result of the poll is the resolution taken at the meeting at which the poll is demanded.

### **Proxies**

9.16 A Member entitled to vote at a general meeting may appoint another Member as their proxy, to attend and vote in their place at a general meeting.

9.17 A Member may only hold a maximum of two proxies.

9.18 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.

9.19 A person attending a general meeting as proxy has all the rights and powers of the relevant Member, except where expressly stated to the contrary in:

- (a) the document appointing the proxy;
- (b) this Constitution; or
- (c) the Act.

9.20 If the document appointing a proxy specifies the way 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.

9.21 A document appointing a proxy may only appoint a proxy for the meeting or adjourned meeting at which the proxy is proposed to vote. A proxy cannot be a standing one.

9.22 A document appointing a proxy is valid only if the document appointing the proxy is received at the Company's registered office (or other address, facsimile number or electronic address specified for that purpose in the notice convening the meeting) at least forty-eight (48) hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote.

9.23 A vote made under a proxy is valid despite any of the following facts (unless the Company receives written notice before the commencement of the meeting at which the vote is cast):

- (a) the Member has died;
- (b) the Member has become mentally unfit to vote;
- (c) the proxy or authority under which the proxy was signed has been revoked.

9.24 A proxy is not revoked by the Member attending and taking part in the meeting, unless the Member actually votes at the meeting on the resolution for which the proxy is to be used.

## **10. Board of Directors**

### **Duties owed by Directors**

- 10.1 The Directors are subject to and must comply with duties owed at law, including but not limited to the duties prescribed by the ACNC Governance Standards as follows:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company.
  - (b) to act in good faith in the best interests of the Company and to further the charitable purposes of the Company.
  - (c) not to misuse their position as a Director.
  - (d) not to misuse information they gain in their role as a Director.
  - (e) to disclose any perceived or actual material conflicts of interest.
  - (f) to ensure that the financial affairs of the Company are managed responsibly.
  - (g) not to allow the Company to operate while it is insolvent.

### **Number of Directors**

- 10.2 The number of Directors must be not less than 5 and not more than 9.
- 10.3 No Director may appoint an alternate to represent them in circumstances where they are unable to attend a meeting.
- 10.4 If the number of Directors is reduced below the minimum number prescribed by this Constitution, the continuing Directors may act only to:
- (a) appoint additional Directors to the minimum number prescribed by this Constitution; or
  - (b) convene a general meeting.
- 10.5 The Company may, by ordinary resolution, increase the maximum number of Directors and may determine in what rotation the Directors appointed as the result of any such alteration are to go out of office.

### **Director Eligibility criteria**

- 10.6 The following director eligibility requirements apply to Directors:
- (a) the person is a Member or agrees to become a Member upon election as a Director.
  - (b) the appointment of a person must not result in more than two (2) Directors being Related.
  - (c) there must be at least three (3) General Practitioners.



- (d) the person has not already been appointed for three (3) terms of office as a Director unless one term has elapsed (approximately three (3) years) since the end of the person's last term of office, in which case the person will once again be eligible.
- (e) if the person resigned as Director without having completed three (3) terms, twelve (12) months must have elapsed since the person's resignation.
- (f) the person is not an employee of the Company.
- (g) the person has not been a director of a company that has been:
  - (i) wound up; and/or
  - (ii) the subject of review by a regulator, where such review has resulted in their removal from the Board.
- (h) the person is of such character that their appointment will ensure the Company continues to be well governed, responsibly managed, and they are able to carry out the duties required to ensure the Company meets its obligations under the law.
- (i) the person is not a current member of State or Federal Parliament.
- (j) the person is not considered to be someone who may pose a risk to the Company's financial position or the pursuit of its charitable work.
- (k) the person is not prohibited by law from being a director of a company, and during any period in which the Company is an ACNC Registered Entity has not been disqualified by the Commissioner.
- (l) any other matters that must be satisfied under the Company's Board Composition and Director Eligibility Policy.

10.7 A Director must notify the Board immediately if any circumstances arise which have the potential to impact upon their eligibility to continue as a director.

10.8 If a Director becomes ineligible to be an ACNC Responsible Person, the Board must notify the ACNC immediately.

### **Election of Directors**

10.9 Directors will be elected at the Company's annual general meeting. The Board must call for nominations at least two (2) months before the annual general meeting.

10.10 The director nomination must be:

- (a) in the form prescribed by the Board.
- (b) received by the Company at least one (1) month prior to the annual general meeting.

10.11 If the number of candidates who are eligible for election is less than or equal to the number of vacancies and the Board Selection Committee is satisfied that the candidates are suitable,

the candidates will be automatically elected as Directors from the close of the annual general meeting.

10.12 If the number of candidates who are eligible for election is more than the number of vacancies:

- (a) the Board Selection Committee will review the candidates who are eligible for election.
- (b) the Board Selection Committee will provide binding recommendations to the Board as to the persons that they recommend be elected.
- (c) if the number of candidates put forward by the Board Selection Committee is equal to the number of vacancies, the candidates will be elected as Directors from the close of the annual general meeting.
- (d) if the number of candidates put forward by the Board Selection Committee is more than the number of vacancies, a ballot paper must be prepared setting out the nominees recommended by the Board Selection Committee for consideration by Members at the annual general meeting. A secret ballot will be held for the election of Directors with any decision based upon the first past the post system. In the event of an equality of votes, the matter must be determined by the drawing of lots.

10.13 The Secretary must announce at the annual general meeting which persons have been elected as Directors.

### **Directors must become Members**

10.14 Upon election, a Director must become a Member. Upon cessation of appointment as a Director, a person ceases to be a Member.

### **Tenure for Directors**

10.15 Each Director will serve for a term of approximately three (3) years commencing from the close of the annual general meeting at which the Director was elected but is eligible for re-election as a Director if not then disqualified by this Constitution or the Act from being re-elected.

10.16 A Director may only serve a maximum of three (3) terms in office (that is approximately 9 years), unless three (3) years has elapsed since the end of the person's last term of office, in which case they will be re-eligible for election.

10.17 Notwithstanding anything to the contrary, the length of term served by a Director prior to the adoption of this Constitution is included in calculating their time in office under clause 10.16.

### **Rotation of Directors**

10.18 There will be a staggered rotational system of election of Directors such that at each annual general meeting, approximately one-third of Directors, each of whom has served a term of approximately three (3) years, must retire from office.

- 10.19 In order to transition to the staggered three (3) year rotational system:
- (a) the Directors who were on the Board following the annual general meeting after adoption of this Constitution will hold office until they are required to retire under this rule.
  - (b) at least 2 months before the first annual general meeting following adoption of this Constitution:
    - (i) the Board must determine (by agreement based on the length of tenure served, or if the Board cannot agree, by the drawing of lots) which three of the Directors will be the “First Directors”;
    - (ii) the First Directors must retire, but (if not otherwise disqualified by this Constitution or law) are eligible for re-election at or after that meeting; and
    - (iii) the remaining Directors will be the “Remaining Directors”.
  - (c) at least 2 months before the second annual general meeting following adoption of this Constitution:
    - (i) the Board must determine (by agreement based upon the length of tenure served, or if the Board cannot agree, by the drawing of lots), which three of the Remaining Directors will be the “Second Directors”;
    - (ii) the Second Directors must retire, but (if not otherwise disqualified by this Constitution or the law) are eligible for re-election at or after that meeting; and
    - (iii) the remaining Directors, if any, will be the “Continuing Directors”.
  - (d) at the third annual general meeting following adoption of this Constitution, all of the Continuing Directors must retire, but (if not otherwise disqualified by this Constitution or the law) are eligible for re-election at or after that meeting.

### **Resignation from office**

- 10.20 A Director may resign from office by giving written notice to the Secretary.
- 10.21 A Director’s resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.
- 10.22 A person is not eligible for re-election as a Director until twelve months has elapsed since the person’s resignation.
- 10.23 Immediately a Director’s resignation takes effect, the person ceases to be a Member.

### **Removal from office**

- 10.24 A Director may be removed from office by resolution of Members.
- 10.25 At any general meeting at which it is proposed to remove a Director under clause 10.24, the Director must be given the opportunity to present his or her case, orally or in writing or by both of those means.

- 10.26 A Director who is removed under clause 10.24 retains office until the end or adjournment of the general meeting at which the Director is removed.
- 10.27 The Members may, by ordinary resolution, elect a person to take the removed Director's place.
- 10.28 The term of appointment of a Director elected under clause 10.27 continues until the annual general meeting at which the person who was removed from office would have been required to retire pursuant to this Constitution if he or she had not been removed.

### **Vacation of office**

- 10.29 The office of a Director becomes vacant if the Director:
- (a) is no longer eligible to be a director in accordance with this constitution;
  - (b) becomes prohibited from being a director of a company by reason of the Act or the ACNC Act, any order made under the Act or otherwise at law;
  - (c) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
  - (d) 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;
  - (e) becomes an employee of the Company;
  - (f) fails to pay any debt outstanding to the Company and that debt remains due and owing to the Company for a period exceeding thirty (30) days and within that thirty (30)] day period the Secretary has issued a further notice in writing to the Director advising that the debt is payable and if it has not been paid by the end of that thirty (30) day period then the Director's office will become vacant
  - (g) fails to attend three (3) consecutive meetings without leave of absence from the Board;
  - (h) is removed from office at a general meeting;
  - (i) ceases to be a Member.

### **Casual vacancies**

- 10.30 If a casual vacancy arises in relation to a Director, other than pursuant to clause 10.24, the Board may appoint a person who is eligible for appointment to fill the casual vacancy until the next annual general meeting.
- 10.31 The election of Directors at the next annual general meeting must include the appointment of a person to fill the vacancy (but such vacancy is not to be considered in determining the number of directors who must retire by rotation at the annual general meeting). Any person appointed under clause 10.30 is eligible for appointment at the next annual general meeting if not then disqualified by this Constitution or the Act.

- 10.32 The term of appointment of a Director appointed under clause 10.31 continues until the annual general meeting at which the person who vacated office early would have been required to retire pursuant to this Constitution if he or she had not vacated office early.

### **Directors' remuneration and expenses**

- 10.33 Directors shall be entitled to be remunerated for their role as Directors provided that such fees are approved annually in advance by the Board.
- 10.34 In addition to any remuneration approved by the Board, Directors may at 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.

## **11. Chair**

### **Eligibility for appointment to Chair**

- 11.1 To be eligible for appointment as Chair of the Board, an individual must not have served as Chair for more than two (2) consecutive terms.

### **Election**

- 11.2 The election of the Chair (if any) may be held by any means determined by the Board, but in the event of an equality of votes, the matter must be determined by the drawing of lots.
- 11.3 A Director elected by the Board as Chair holds that office until:
- (a) the expiration of that Director's current term of office as Director;
  - (b) the Director ceases to be a Director in accordance with this Constitution;
  - (c) the Director resigns from the office of Chair by written notice to the Secretary; or
  - (d) the Board, by ordinary resolution excluding the relevant Director, removes the Director from the office of Chair (as the case may be).
- 11.4 At the first Board meeting held after the vacation of office of the Chair under clause 11.3, the Board must elect a Director as Chair.
- 11.5 Subject to clause 11.1, a Director who is re-appointed as a Director following expiration of the term during which the Director was elected as Chair is eligible for re-election as Chair.
- 11.6 The Directors present at a Board meeting must elect one (1) of the Directors present to chair the meeting if any of the following apply:
- (a) there is not then a Chair;
  - (b) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting; or
  - (c) the Chair is not willing to act.

## **Role of the Chair**

11.7 The Chair is entitled to preside as Chairperson at every Board meeting and must carry out their role in accordance with any Chair Role Statement.

## **12. Deputy Chair**

12.1 The Board may appoint a Deputy Chair by any means determined by the Board, but in the event of an equality of votes, the matter must be determined by the drawing of lots.

12.2 A Director elected by the Board as Deputy Chair holds that office until:

- (a) the expiration of that Director's current term of office as Director;
- (b) the Director ceases to be a Director in accordance with this Constitution;
- (c) the Director resigns from the office of Deputy Chair by written notice to the Secretary; or
- (d) the Board, by ordinary resolution excluding the relevant Director, removes the Director from the office of Deputy Chair (as the case may be).

12.3 The Deputy Chair must carry out their role in accordance with any Deputy Chair Role Statement.

## **13. Board Selection Committee**

13.1 A Board Selection Committee will be established pursuant to the Board Selection Committee terms of reference to review all Director nominations (other than casual vacancies under clause 10.30).

13.2 The primary objective of the Board Selection Committee is to ensure the Board's composition is skills-based and the Board is capable of overseeing the Company's affairs.

13.3 The Board Selection Committee terms of reference will set out the role and responsibilities of the Board Selection Committee and will, at a minimum:

- (a) require the Board Selection Committee to have regard to the Company's strategic direction, the Board Skills Matrix and a candidate bio (not exceeding 500 words) in determining the suitability of candidates.
- (b) make binding recommendations to the Board as to the candidates that the Board Selection Committee considers ought to be elected to the Board.
- (c) provide for the removal of Board Selection Committee members at the sole discretion of the Board.
- (d) provide for a maximum tenure of Board Selection Committee members.

- 13.4 Subject to clause 13.5, the composition of the Board Selection Committee must include:
- (a) two independent members, who have not been a Member or Director in the last three years; and .
  - (b) one Director from the current Board, provided that the person is not up for re-election (to be decided amongst the Board and if no agreement, by the drawing of lots).
- 13.5 For the purposes of determining the binding recommendations for the First Directors, none of the Transitional Board members will be eligible for appointment to the Board Selection Committee. Instead, the Chief Executive Officer (or their nominee) will take the place of the current director.
- 13.6 The Board must take steps to ensure that, where necessary, the appointment of persons to the Board Selection Committee is considered at least three months before each Annual General Meeting of the Company.
- 13.7 Any resolution to decide upon the appointment (or removal) of a person to the Board Selection Committee is carried by a simple majority of Directors.
- 13.8 A person appointed to the Board Selection Committee shall continue to hold office for three (3) years following that person's appointment unless they are no longer eligible to hold the role or are removed earlier by the Board.
- 13.9 Any person vacating their role on the Board Selection Committee shall be eligible for re-appointment if they will not hold that position for any longer than six (6) years consecutively.
- 13.10 Whenever a vacancy occurs on the Board Selection Committee either because of ineligibility, removal, resignation, and/or incapacity or death, the Board must take steps to fill the vacancy as soon as possible.
- 13.11 In making binding recommendations to the Board as to a candidate's suitability, the Board Selection Committee must endeavour to achieve a situation where the Board will:
- (a) have a well-developed understanding of the Company's strategic priorities and any issues arising.
  - (b) act and operate as a cohesive and integrated team in the best interests of the Company.
  - (c) have the capacity to engender trust in the community, business sector, and Government.
  - (d) be comprised of individuals who understand the expectations of directorship and are committed to carrying out their role.
- 13.12 A quorum for the purposes of a meeting of the Board Selection Committee is three (3).
- 13.13 Notwithstanding anything to the contrary the independent members currently sitting on any nominations committee established at time of adoption of this Constitution must be re-appointed at the sole discretion of the Board.

## **14. Powers of the Board**

- 14.1 The governance of the Company is the responsibility of the Board of Directors duly appointed under and in accordance with this Constitution.
- 14.2 The Board may exercise all the powers of the Company which are not, by the Act or by this Constitution, required to be exercised by members in general meeting.

## **15. Board meetings**

### **Convening of Board meetings**

- 15.1 Subject to the provisions of the Act and this Constitution, the Board may meet for the dispatch of business and regulate its meetings as it thinks fit.
- 15.2 The Board must meet at least six (6) times in each financial year.
- 15.3 Any Director may request the Secretary to convene a Board meeting at any time and the Secretary must comply with such request.

### **Notice of Board meetings**

- 15.4 Notice of each Board meeting must be given to each Director at least twenty-four (24) hours before the meeting or otherwise as determined by the Board, except all Directors may waive in writing the required period of notice for a particular meeting.
- 15.5 Notice of Board meetings may be given to a Director by mail, delivery, facsimile transmission or e-mail to any address, facsimile number or e-mail address given by the Director to the Secretary for that purpose (unless and until the Director informs the Secretary that he or she may not be contacted at that address, facsimile number or e-mail address).

### **Mode of Board meetings**

- 15.6 A Board meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable time before the meeting.

### **Quorum at Board meetings**

- 15.7 A quorum for the purposes of a Board meeting is half the number of Directors then on the Board plus one (1), rounded up to the nearest whole number.
- 15.8 If a quorum is not present within thirty (30) minutes from the time appointed for a Board meeting or a longer period allowed by the Chairperson:
- (a) the meeting must be 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 Chairperson may determine; and
  - (b) if at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting lapses.



## **Voting at Board meetings**

- 15.9 Questions arising at a Board meeting must be decided by a majority vote of Directors present and voting. If the votes are equal, the question is decided in the negative.
- 15.10 The Chairperson does not have a second or casting vote at Board meetings.

## **Resolution in writing**

- 15.11 The Directors may pass a resolution in writing without holding a meeting if the following conditions are met:
- (a) all Directors who are entitled to vote on the resolution are provided with a copy of the resolution;
  - (b) reasonable attempts have been made to contact all Directors to obtain their response;
  - (c) at least eighty percent (80%) of all Directors (rounded up to the next whole number, but excluding Directors who have been given leave of absence) sign the document or documents or identical copies of it or them; and
  - (d) a copy of any resolution passed in writing is provided to those Directors who did not respond.
- 15.12 A resolution in writing may consist of several documents in like form, including facsimile and email copies, each signed by one or more Directors and the resolution takes effect on the latest date on which a Director signs one of the documents.
- 15.13 A resolution bearing an electronic copy of a signature is deemed to be signed, for the purposes of this clause.
- 15.14 The resolution will be valid and effectual as if it had been passed at a Board meeting duly convened and held.

## **Validity of acts**

- 15.15 All acts done by the Board or a Committee 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 as a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

## **Conflicts of Interest**

- 15.16 The Board must agree from time to time a policy in writing as to how to manage conflicts of interest.
- 15.17 If there are not enough Directors to form a quorum as a result of one (1) or more Directors having an interest which disqualifies them from voting, then one (1) or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting and the Company in general meeting may pass a resolution to deal with the matter.

- 15.18 At a minimum, the conflicts of interest policy must provide that a Director may 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 in the Company's annual report; and
  - (e) the Board agrees, by ordinary resolution excluding the interested Director, to the provision of the goods or services by the Director.

## **16. Transitional Board of Directors**

### **Transitional Board**

- 16.1 The Transitional Board will be those persons who were appointed as Directors upon adoption of this Constitution.

### **Transitional provisions**

- 16.2 Having regard to clause 10.17, the persons on the Transitional Board will hold office until they are required to retire in accordance with clause 10.19, as the case may be.

## **17. Board Committees**

- 17.1 The Board may appoint one or more Board Committees consisting of such Directors or other persons as the Board thinks fit.
- 17.2 The Board may appoint the Chairperson of a Board Committee, but if it does not do so, the Committee members present must elect a Chairperson.
- 17.3 The Board may delegate any of its powers, except this power to delegate, to a Board Committee.
- 17.4 The purpose of a Board Committee shall be set out in terms of reference approved by the Board, but in the exercise of any powers delegated to it, a Board Committee must:
- (a) conform to the directions of the Board;
  - (b) only act within its delegated powers;
  - (c) report to the Board; and
  - (d) otherwise 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.

- 17.5 The terms of reference shall permit the Board to remove Board Committee members at its sole discretion.
- 17.6 Unless otherwise determined, the quorum for committee meetings will be half the number of persons appointed to the Board Committee, plus one (1).

## **18. Aboriginal Community Advisory Council**

- 18.1 The Board may appoint an Aboriginal Community Advisory Council as a standing or ad-hoc working group to advise or make recommendations to the Board.
- 18.2 The composition of the Aboriginal Community Advisory Council must be considered having regard to the purpose for which the Aboriginal Community Advisory Council is established. The Board may appoint appropriately qualified and experienced people to serve on the Aboriginal Community Advisory Council.
- 18.3 The purpose of the Aboriginal Community Advisory Council shall be set out in terms of reference approved by the Board, but at a minimum, the terms of reference should require the Aboriginal Community Advisory Council to:
- (a) understand locally relevant Aboriginal community perspectives in relation to their unique health needs including access to primary health services and service gaps.
  - (b) develop local strategies to improve the operation of the health care system for community members and facilitate effective primary health care.
  - (c) identify how to keep people well in the community to prevent avoidable hospitalisation.
  - (d) inform and provide feedback to the Board.
  - (e) advance the Company's public image.
  - (f) be accountable to the Board.
  - (g) empower the Board to remove Aboriginal Community Advisory Council members at its sole discretion.

## **19. Clinical Council**

- 19.1 The Board may appoint a Clinical Council as a standing or ad-hoc working group to advise or make recommendations to the Board.
- 19.2 The composition of the Clinical Council must be considered having regard to the purpose for which the Clinical Council is established. The Board may appoint appropriately qualified and experienced people to serve on the Clinical Council.
- 19.3 The purpose of the Clinical Council shall be set out in the terms of reference approved by the Board, but at a minimum, the terms of reference should require the Clinical Council to:
- (a) report on clinical issues so that the Board can respond to the needs of the communities the Company serves.

- (b) develop strategies to improve the operation of the health care system for patients in the Company's remit.
- (c) report to and influence the Board's understanding of opportunities to improve medical and health care services through strategic, co-effective investment and innovation.
- (d) inform and provide feedback to the Board.
- (e) advance the Company's public image.
- (f) be accountable to the Board.
- (g) empower the Board to remove Clinical Council members at its sole discretion.

## **20. Community Advisory Council**

- 20.1 The Board may appoint a Community Advisory Council as a standing or ad-hoc working group to advise or make recommendations to the Board.
- 20.2 The composition of the Community Advisory Council must be considered having regard to the purpose for which the Community Advisory Council is established. The Board may appoint appropriately qualified and experienced people to serve on the Community Advisory Council.
- 20.3 The purpose of the Community Advisory Council shall be set out in the terms of reference approved by the Board, but at a minimum, the terms of reference should require the Community Advisory Council to:
- (a) provide the community perspectives so that the Board's decisions, investments, and innovations are patient centred, cost-effective, locally relevant, and aligned to local care experiences and expectations.
  - (b) provide an arena for ongoing review and involvement of stakeholders to address the key issues and challenges relating to the matters for which the group has been established.
  - (c) inform and provide feedback to the Board.
  - (d) advance the Company's public image.
  - (e) be accountable to the Board.
  - (f) empower the Board to remove Community Advisory Council members at its sole discretion.

## **21. Secretary**

- 21.1 The Board may appoint a person as Secretary to carry out all acts and deeds required by this Constitution or the Act.
- 21.2 The Board may set the terms and conditions of the Secretary's engagement and terminate the appointment of the Secretary.

## **22. Chief Executive Officer**

- 22.1 The Board may appoint any person to the position of Chief Executive Officer for the period and on the terms and conditions (including as to remuneration) the Board sees fit.
- 22.2 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on the Chief Executive Officer any of the powers that the Board can exercise.
- 22.3 The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the Chief Executive Officer.
- 22.4 If the Chief Executive Officer becomes incapable of acting in that capacity, the Directors may appoint any other person other than a Director to act temporarily as Chief Executive Officer until such time as the position can be filled permanently.

## **23. By-Laws**

- 23.1 The Board may make, adopt, amend and repeal By-Laws to give effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Company.
- 23.2 Any By-Laws adopted by the Board will be binding on the Members and will be enforceable under the terms of this Constitution.
- 23.3 To the extent of any inconsistency, this Constitution prevails over any By-Laws.
- 23.4 The Board has the authority to interpret this Constitution and the By-Laws, and the decision of the Board upon any interpretation and/or upon any matter affecting the Company not provided for in this Constitution or the By-Laws shall be final and binding on the Members.

## **24. Confidential Information**

- 24.1 All Board related documents and materials and all matters discussed or business transacted at meetings of the Board is confidential information and must remain confidential unless otherwise resolved by the Board.
- 24.2 Confidential information may only be disclosed if:
- (a) reasonable notice is given to the Company to allow the Company to legally challenge the required disclosure; and/or
  - (b) it is required to comply with an applicable law or legally binding order of any court, Government or semi-Government authority, administrative or judicial body, or a requirement of a regulator, only if the minimum amount of confidential information is disclosed to satisfy the law; and/or
  - (c) it is information available in the public domain (which did not result from a breach of this clause or other obligation of confidence).

## **25. Indemnities and insurance**

### **Officers' liabilities to third parties**

- 25.1 Every officer and past officer of the Company is indemnified against a liability incurred by that person as an officer, other than a liability:
- (a) to the Company or a related body corporate;
  - (b) for a pecuniary penalty under section 1317G of the Act or for compensation under section 1317H of the Act; or
  - (c) which arises from conduct that involves a lack of good faith.

### **Officers' costs and expenses**

- 25.2 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, other than legal costs incurred:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under clause 25.1;
  - (b) in defending or resisting proceedings in which judgement is made against the person or the person is found guilty;
  - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this sub-clause does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order); and/or
  - (d) in connection with any application in relation to those proceedings in which the Court denies relief to the person.

### **Insurance premiums**

- 25.3 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) any 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 the duties owed under the Governance Standards or sections 182, 183 or 184(2) or (3) of the Act.

## **26. Execution of documents**

- 26.1 The Company may execute a document, including a deed, if the document is signed by:
- (a) 2 Directors; or

(b) a Director and the Secretary.

26.2 Notwithstanding clause 26.1, any document, including a deed, may be executed by the Company in any other manner permitted by law.

## **27. Accounts, audit and records**

### **Financial year**

27.1 The financial year of the Company commences on the 1st day of July and ends on the 30<sup>th</sup> day of June in the following calendar year.

### **Banking of monies**

27.2 All monies of the Company must be banked in a bank account in the name of the Company at such bank as the Board may from time to time direct.

### **Accounts, records and reports**

27.3 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 providing accounts to the Members.

27.4 The Board must provide for the safe custody of the books, records, documents, instruments of title and securities of the Company.

### **Audit**

27.5 A registered company auditor must be appointed to the Company.

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

27.7 The auditor or his or her representative is entitled to attend any general meeting and be heard on any part of the business of the meeting which concerns the auditor. The auditor or his or her representative, if present at the meeting, may be questioned by Members about the audit.

### **Rights of inspection**

27.8 Members may inspect the accounting documents and any other document of the Company only as permitted by law.

## **28. Amendment of Constitution**

28.1 This Constitution may be amended by resolution passed at a general meeting if:

(a) at least 21 days' notice specifying the amendment has been given to the Members; and

(b) a special resolution is passed by the Members.

28.2 An amendment or repeal of this Constitution may only be made if it is not inconsistent with maintaining the charitable status of the Company under the ACNC Act and will only take effect if it is notified and approved in accordance with the ACNC Act.

## **29. Notices**

### **Persons authorised to give notices**

29.1 A notice given under this Constitution may be given:

- (a) on behalf of the Company by a solicitor for the Company, the Secretary or a Director; or
- (b) by a Member or a solicitor on behalf of a Member.

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

### **Method of giving notices**

29.3 A notice by the Company or a Member may be given under this Constitution by any of the following means:

- (a) by delivering it to the street address of the addressee;
- (b) by sending it by prepaid ordinary post (or by airmail if outside Australia) to the street or postal address of the addressee; or
- (c) by sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

### **Address for notices**

29.4 For the purposes of clause 29.3:

- (a) the street and postal address of the Company is the registered office of the Company, or such other address as was last formally notified by the Company to the Members.
- (b) the facsimile number and e-mail address of the Company are the details last formally notified by the Company to the Members.
- (c) the street and postal addresses, facsimile number and e-mail address of the Members are the details last formally notified by the Members to the Secretary.

### **Time notice is given**

29.5 A notice given in accordance with this Constitution is deemed to be given, served and received at the following times:

- (a) if delivered to the street address of the addressee, at the time of delivery;
- (b) if sent by post to the street or postal address of the addressee, on the fifth (5<sup>th</sup>) business day after posting; or
- (c) if sent by facsimile or e-mail, at the time transmission is completed.



## **Proof of giving notices**

29.6 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 or equivalent proof that the email was successfully transmitted. If no acknowledgement of receipt or equivalent proof is available, the sending of notice is deemed to be received the next business day.

## **30. Interpretation**

30.1 In this Constitution, unless the context requires otherwise:

- (a) a reference to 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 and a reference to a specific provision of such legislation is a reference to the equivalent provision in any later amended, re-enacted or replacement legislation;
- (b) a reference to this Constitution, where amended, means this Constitution as so amended;
- (c) a reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule of this Constitution;
- (d) a word which denotes:
  - (i) the singular denotes the plural and vice versa;
  - (ii) any gender denotes the other genders; and
  - (iii) a person denotes an individual and an organisation (where appropriate);
- (e) 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;
- (f) an expression used but not defined in this Constitution has the same meaning as given in the Act;
- (g) writing includes any mode of representing or reproducing words in a visible form; and
- (h) a reference to 'dollars' or '\$' means Australian dollars.

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

30.3 Where any provision of this Constitution is inconsistent with the ACNC Act, the ACNC Act will prevail.

### **Calculation of time**

30.4 In this Constitution, unless the context requires otherwise:

- (a) a reference to a time of day means that time of day in South Australia;
- (b) a reference to a business day means a day during which banks are open for general banking business in South Australia;
- (c) for the purposes of determining the length of a period (but not its commencement) a reference to:
  - (i) a day means a period of time commencing at midnight and ending twenty-four (24) hours later; and
  - (ii) a month means a calendar month which is a period commencing at the beginning of a day of one (1) of the twelve (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;
- (d) 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; and
- (e) 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.

### **Replaceable rules**

30.5 Each of the replaceable rule provisions of the Act are displaced and do not apply to the Company.

## **31. Winding up**

31.1 The Company may be wound up at a general meeting if:

- (a) notice of intention to move such motion has been given to all Directors and the Members not less than 60 days prior to the meeting at which the motion is moved; and
- (b) the motion is passed by special resolution of the Members.

31.2 Subject to clause 32.5 and 32.6, upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities must not be paid to or distributed among the Members or former Members, but must be given or transferred to some other institution or organisation:

- (a) to which gifts and contributions are deductible under division 30 of the *Income Tax Assessment Act 1997*,
- (b) which is a health promotion charity that meets the requirements of any Commonwealth Taxation Act;
- (c) which has objects similar to, or inclusive of, the objects of the Company; and
- (d) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 5.1,

as determined by the Members at or before the time of winding up or dissolution of the Company and, in default of any such determination, by the Supreme Court of South Australia.

## **32. Gift Fund Requirements**

32.1 The Company may establish one or more Gift Funds.

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

- (a) the Gift Fund must have a name;
- (b) the Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations;
- (c) the Company must maintain a separate bank account for the Gift Fund; and
- (d) the Company must ensure that the Gift Fund otherwise complies to the relevant extent, with all requirements of the ITAA 97.

32.3 The following must be credited to the Gift Fund:

- (a) all gifts of money (including deductible contributions) or property to the Company for the Principal Purpose;
- (b) all money or property received by the Company because of those gifts; and
- (c) no other money or property may be credited to the Gift Fund.

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

32.5 Despite clause 31.2, if the Gift Fund is wound up or the Company ceases to be a DGR for any reason, including revocation of endorsement under subdivision 30-BA of the ITAA 97, any surplus assets after satisfaction of all debts and liabilities must be transferred to a fund, authority or institution which is a DGR with similar charitable purposes.

32.6 For the avoidance of any doubt, if a Gift Fund operated by the Company is wound up but the Company remains a DGR and operates any other Gift Fund in accordance with this clause 32, any surplus assets of the Gift Fund that is being wound up may be transferred to any other Gift Fund operated by the Company.

32.7 In this clause, the following definitions apply:

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

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

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

**Principal Purpose** means the purposes of the Gift Fund as reflected in the documents establishing the purpose and operations of the Gift Fund (see clause 32.2).