

Constitution of Australian Primary Health Care Nurses Association Limited

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## Operative Provisions

### 1 Preliminary

#### 1.1 Particulars`

The following particulars apply to this constitution:

Item		Particulars
(a)	Name of the company	Australian Primary Health Care Nurses Association Limited <b>(the company)</b>
(b)	Type of company	The <b>company</b> is a not-for-profit public <b>company</b> limited by guarantee which is established to be, and to continue as, a charity
(c)	Limited liability of members	The liability of members is limited to the amount of the guarantee in clause 1.1(d)
(d)	The guarantee	Each member must contribute an amount not more than five dollars ( <b>the guarantee</b> ) to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:  (a) debts and liabilities of the company incurred before the member stopped being a member; or  (b) costs of winding up

#### 1.2 Definitions

In this constitution the following terms will have the meaning given to them below unless the context dictates to the contrary:

Term	Definition
<b>ACNC Act</b>	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)

<b>Term</b>	<b>Definition</b>
<b>Board</b>	means the Board of directors of the <b>company</b>
<b>Business Days</b>	means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the State of Victoria, Australia
<b>company</b>	means the <b>company</b> referred to in clause 1.1(a)
<b>Co-opted Director</b>	is a director who is appointed by the Board as a director in accordance with clause 8.3(a)
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth)
<b>general meeting</b>	means a meeting of members and includes the annual <b>general meeting</b> , under clause 5.3(a)
<b>initial Co-opted Director</b>	is defined in clause 19.2
<b>initial director</b>	is an initial director of the company as defined in clause 19.2
<b>initial member</b>	is defined in clause 19.1
<b>initial Member Director</b>	is defined in clause 19.2
<b>Member Director</b>	means a director who is nominated for and elected to office in accordance with this constitution
<b>member present</b>	means, in connection with a <b>general meeting</b> , a <b>member present</b> in person, by representative or by proxy at the venue or venues for the meeting
<b>Predecessor Entity</b>	means the Australian Primary Health Care Nurses Association Incorporated
<b>registered charity</b>	means a charity that is registered under the <b>ACNC Act</b>
<b>Regulations</b>	means: <ul style="list-style-type: none"> <li>(a) the company's rules and regulations as prescribed and amended from time to time in accordance with clause 14; and</li> <li>(b) the Predecessor Entity's rules and regulations that were in place immediately before the commencement of this constitution</li> </ul>

<b>Term</b>	<b>Definition</b>
<b>special resolution</b>	means a resolution that has been passed: (a) at a general meeting of which notice has been given in accordance with clause 5.4; and (b) by at least 75% of the votes cast by members present and entitled to vote on the resolution
<b>surplus assets</b>	means any assets of the <b>company</b> that remain after paying all debts and other liabilities of the <b>company</b> , including the costs of winding up
<b>Unfinancial member</b>	is defined in clause 3.10(a)(i)

### 1.3 Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

### 1.4 Reading this constitution with the Corporations Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the company.
- (b) While the company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- (c) If the company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 2 Charitable purposes and powers

### 2.1 Object

The company is established to improve the health of the Australian community by providing representation and support for nurses working in primary health care. The company will strive to improve the health of individuals and communities through effective advocacy and advancement of the profession of primary health care nursing.

## **2.2 Powers**

Subject to clause 2.3, the company has the following powers, which may only be used to carry out its purpose(s) set out in clause 2.1:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

## **2.3 Not-for-profit**

- (a) The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 2.3(b) and 18.2.
- (b) Clause 2.3(a) does not stop the company from doing the following things, provided they are done in good faith:
  - (i) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company; or
  - (ii) making a payment to a member in carrying out the company's charitable purpose(s).

## **2.4 Amending the constitution**

The members may amend this constitution by passing a special resolution.

## **3 Members**

### **3.1 Membership and register of members**

- (a) The members of the company are:
  - (i) the initial members; and
  - (ii) any other person that the directors allow to be a member, in accordance with this constitution.
- (b) The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
  - (i) for each current member:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the member for the service of notices;
    - (D) class of membership; and
    - (E) date the member was entered on to the register;

- (ii) for each person who stopped being a member in the last 7 years:
  - (A) name;
  - (B) address;
  - (C) any alternative address nominated by the member for the service of notices; and
  - (D) dates the membership started and ended.

### 3.2 Classes of membership

- (a) The classes of membership of the company are:
  - (i) Full members as defined in clause 3.3(a);
  - (ii) Student members as defined in clause 3.3(b); and
  - (iii) Associate members as defined in clause 3.3(c).
- (b) The Board may determine other classes or sub-classes of membership from time to time.
- (c) Membership of the company shall be within a class or a sub-class of membership in accordance with this clause, clauses 3.6, 3.8 and the Regulations (if any). A person admitted to a class or a sub-class of membership of the company shall be entitled to exercise all the rights and privileges and shall be required to meet all liabilities and requirements attaching to that class or sub-class of membership by reason of this constitution and the Regulations.
- (d) The Board may transfer a member from one class of membership to another, or from one sub-class of membership to another within the same class, if the member qualifies for membership of the new class or sub-class and consents to the transfer.

### 3.3 Who can be a member

#### Full member

- (a) Subject to clause 3.3(e), an individual can apply to be a **Full member**, if the individual:
  - (i) supports the purposes of the company set out in clause 2.1; and
  - (ii) has at any time been registered as a nurse or midwife with the Nursing and Midwifery Board of Australia (**NMBA**).

#### Student member

- (b) Subject to clause 3.3(e), an individual can apply to be a **Student member**, if the individual:
  - (i) supports the purposes of the company set out in clause 2.1;

- (ii) is ineligible to be admitted as a Full member under clause 3.3(a); and
- (iii) is enrolled in a program of study approved by the NMBA for general registration.

#### **Associate member**

- (c) Subject to clause 3.3(e), a person can apply to be an **Associate member**, if the person:
  - (i) supports the purposes of the company set out in clause 2.1; and
  - (ii) is ineligible to be a Full member under clause 3.3(a) or Student member under clause 3.3(b).
- (d) In clause 3.3(c), 'person' means an individual or incorporated body.

#### **Ineligibility**

- (e) Notwithstanding anything in this clause 3.3, any individual whose registration with the NMBA as a nurse or midwife in Australia has been cancelled for disciplinary reasons, is not entitled to be admitted as a member and must not be admitted to any class of membership until his or her registration is reinstated.

### **3.4 Membership rights and obligations**

#### **Full member**

- (a) Each Full member is entitled to:
  - (i) receive notices of, attend and speak at a general meeting of the company;
  - (ii) vote at a general meeting of the company;
  - (iii) nominate a person to be elected as a director in accordance with clause 8.2; and
  - (iv) receive such membership benefits as apply to the class of Full members as are determined from time to time by the Board to apply to that class of membership.

#### **Student member and Associate member**

- (b) Each Student member and Associate member is:
  - (i) entitled to receive notices of, attend and speak at a general meeting of the company;
  - (ii) not entitled to vote at a general meeting of the company;
  - (iii) not entitled to nominate a person to be elected as a director in accordance with clause 8.2; and
  - (iv) entitled to receive such membership benefits as apply to the relevant class of member as are determined from time to time by the Board to apply to



that class of membership.

### **3.5 How to apply to become a member**

A person may apply to become a member of the company by writing to the Board in a form and in a manner approved by the Board. The form must require the person to state that they:

- (a) want to become a member;
- (b) support the purpose(s) of the company; and
- (c) agree to comply with the company's constitution, including paying the guarantee under clause 1.1(d) if required.

### **3.6 Directors decide whether to approve membership**

- (a) The directors must consider an application for membership within a reasonable time after the Board receives the application.
- (b) If the directors approve an application, the Board must as soon as possible:
  - (i) enter the new member on the register of members; and
  - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 3.7).
- (c) If the directors reject an application, the Board must return any membership fees paid as part of the application.
- (d) For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clause 3.5. In that case, by applying to be a member, the applicant agrees to those three matters.
- (e) Without limiting clause 9.2, the Board may delegate its powers under this clause.

### **3.7 Membership fees**

The Board may, at its sole discretion:

- (a) determine that an applicant and/or member pay to the company membership fees (if any);
- (b) waive any payment of a membership fee due to the company by applicant or member;
- (c) determine any payment arrangement (which may include an administration fee) for the payment of the membership fee.

### **3.8 When a person becomes a member**

Other than initial members, an applicant will become a member when they are entered on the register of members.

### **3.9 When a person stops being a member**

A person immediately stops being a member if they:

- (a) die;
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member);
- (c) resign, by writing to the Board;
- (d) are expelled under clause 4.2;
- (e) have not responded within three months to a written request from the Board that they confirm in writing that they want to remain a member;
- (f) cease to be a member by virtue of clause 3.10(a)(ii) and the Board has not resolved to reinstate the member under clause 3.10(b);
- (g) at the time of application to the company for membership, provide false or misleading information; or
- (h) brings the company, its Members or the nursing profession into disrepute.

### **3.10 Non-payment of membership fee**

- (a) A member whose membership fee is in arrears:
  - (i) by more than one month but less than three months – is an Unfinancial member; and
  - (ii) by three months or more – ceases to be a member.
- (b) The Board may, at its sole discretion and on such terms as it thinks fit, reinstate a member if the member pays all their arrears of any membership fees (and administration fee if applicable).

## **4 Dispute resolution and disciplinary procedures**

### **4.1 Dispute resolution**

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
  - (i) one or more members;
  - (ii) one or more directors; or
  - (iii) the company.
- (b) A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 4.2 until the disciplinary procedure is completed.

- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under clause 4.1(c), they must within 10 days:
  - (i) tell the directors about the dispute in writing;
  - (ii) agree or request that a mediator be appointed; and
  - (iii) attempt in good faith to settle the dispute by mediation.
- (e) The mediator must:
  - (i) be chosen by agreement of those involved; or
  - (ii) where those involved do not agree:
    - (A) for disputes between members, a person chosen by the directors; or
    - (B) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.
- (f) A mediator chosen by the directors under clause 4.1(e)(ii):
  - (i) may be a member or former member of the company;
  - (ii) must not have a personal interest in the dispute; and
  - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
  - (i) allow those involved a reasonable chance to be heard;
  - (ii) allow those involved a reasonable chance to review any written statements;
  - (iii) ensure that those involved are given natural justice; and
  - (iv) not make a decision on the dispute.

## **4.2 Disciplining members**

- (a) In accordance with this clause, the directors may resolve by majority to reprimand, suspend or expel a member from the company if the directors consider that:
  - (i) the member has breached this constitution or any Regulation; or
  - (ii) the member's conduct has been, is or is likely to be, prejudicial to the company.

- (b) At least 14 days before the directors' meeting at which a resolution under clause 4.2(a) will be considered, the secretary must notify the member in writing:
  - (i) that the directors are considering a resolution to reprimand, suspend or expel the member;
  - (ii) that this resolution will be considered at a directors' meeting and the date of that meeting;
  - (iii) what the member is said to have done or not done;
  - (iv) the nature of the resolution that has been proposed; and
  - (v) that the member may provide an explanation to the directors, and details of how to do so.
- (c) Before the directors pass any resolution under clause 4.2(a), the member must be given a chance to explain or defend themselves by:
  - (i) sending the directors a written explanation before that directors' meeting; and/or
  - (ii) speaking at the meeting.
- (d) After considering any explanation under clause 4.2(c), the directors may:
  - (i) take no further action;
  - (ii) reprimand the member;
  - (iii) suspend the member's rights as a member for a period of no more than 12 months;
  - (iv) expel the member;
  - (v) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
  - (vi) require the matter to be determined at a general meeting.
- (e) The directors cannot fine a member.
- (f) The secretary must give written notice to the member of the decision under clause 4.2(d) as soon as possible.
- (g) Disciplinary procedures must be completed as soon as reasonably practical.
- (h) There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## 5 General meetings of members

### 5.1 General meetings called by directors

- (a) The directors may call a general meeting.
- (b) If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:
  - (i) within 21 days of the members' request, give all members notice of a general meeting; and
  - (ii) hold the general meeting within 2 months of the members' request.
- (c) The percentage of votes that members have in clause 5.1(b) is to be worked out as at midnight before the members request the meeting.
- (d) The members who make the request for a general meeting must:
  - (i) state in the request any resolution to be proposed at the meeting;
  - (ii) sign the request; and
  - (iii) give the request to the company.
- (e) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 5.2 General meetings called by members

- (a) If the directors do not call the meeting within 21 days of being requested under clause 5.1(b), 50% or more of the members entitled to vote who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a meeting under clause 5.2(a) the members must:
  - (i) as far as possible, follow the procedures for general meetings set out in this constitution;
  - (ii) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost; and
  - (iii) hold the general meeting within three months after the request was given to the company.
- (c) The company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

### 5.3 Annual general meeting

- (a) A general meeting, called the annual general meeting, must be held:

- (i) within 18 months after registration of the company; and
  - (ii) after the first annual general meeting, at least once in every calendar year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (i) a review of the company's activities;
  - (ii) a review of the company's finances;
  - (iii) any auditor's report;
  - (iv) any Board report;
  - (v) the election of directors; and
  - (vi) the appointment and payment of auditors, if any.
- (c) Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.
- (d) The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

#### **5.4 Notice of general meetings**

- (a) Notice of a general meeting must be given to:
- (i) each member entitled to vote at the meeting;
  - (ii) each director; and
  - (iii) the auditor (if any).
- (b) Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- (c) Subject to clause 5.4(d), notice of a meeting may be provided less than 21 days before the meeting if:
- (i) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
  - (ii) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (d) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (i) remove a director;
  - (ii) appoint a director in order to replace a director who was removed; or

- (iii) remove an auditor.
- (e) Notice of a general meeting must include:
  - (i) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (ii) the general nature of the meeting's business;
  - (iii) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
  - (iv) a statement that Full members have the right to appoint proxies and that, if a Full member appoints a proxy:
    - (A) the proxy must be a Full member of the company;
    - (B) the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
    - (C) the proxy form must be delivered to the company at least 2 Business Days before the meeting unless otherwise specified in the notice of the meeting; and
  - (v) a statement that incorporated Associate members have the right to appoint individuals as representatives and that, if an incorporated Associate member has not appointed a representative under clause 5.7, it can appoint a representative to attend and speak at the meeting:
    - (A) the representative must be an individual authorised to act on behalf of the Associate member;
    - (B) the representative form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
    - (C) the representative form must be delivered to the company at least 2 Business Days before the meeting unless otherwise specified in the notice of the meeting.
- (f) If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## 5.5 Quorum at general meetings

- (a) For a general meeting to be held, at least 25 members entitled to vote (**a quorum**) must be present (in person, or by proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy of more than one Full member).
- (b) No business may be conducted at a general meeting if a quorum is not present.

- (c) If a meeting of members called by its members under clause 5.2 does not have a quorum present within 30 minutes after the time set for the meeting, the meeting shall be dissolved.
- (d) If a meeting of members is not called by its members under clause 5.2 and there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
  - (i) if the date is not specified – the same day in the next week;
  - (ii) if the time is not specified – the same time; and
  - (iii) if the place is not specified – the same place.
- (e) If no quorum is present at the resumed meeting referred to in clause 5.5(d) within 30 minutes after the time for the meeting, the members present shall be a quorum.

#### **5.6 Auditor's right to attend meetings**

- (a) The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- (b) The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

#### **5.7 Representatives of incorporated Associate members**

- (a) An incorporated Associate member must appoint as a representative, one individual to represent the member at meetings.
- (b) The appointment of a representative by an incorporated Associate member must:
  - (i) be in writing;
  - (ii) include the name of the representative;
  - (iii) be signed on behalf of the incorporated Associate member; and
  - (iv) be given to the company or, for representation at a meeting, be given to the chairperson at least 2 Business Days before the meeting.
- (c) A representative has all the rights of an Associate member relevant to the purposes of the appointment as a representative.
- (d) The appointment may be standing (ongoing).

#### **5.8 Using technology to hold meetings**

- (a) The company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.



- (b) Anyone using this technology is taken to be present in person at the meeting.

## 5.9 Chairperson for general meetings

The chairperson for general meetings is:

- (a) the President elected by the Board under clause 12.2;
- (b) if the President is unable or unwilling to chair the general meeting, the Vice-President elected by the Board under clause 12.2; and
- (c) if the President and Vice-President are unable or unwilling to chair the general meeting, a director elected by a majority of the votes cast by the directors who are physically present and entitled to vote at the general meeting.

## 5.10 Role of the chairperson

- (a) The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- (b) The chairperson does not have a casting vote.

## 5.11 Adjournment of meetings

- (a) If a quorum is present, a general meeting must be adjourned if a majority of members present and entitled to vote direct the chairperson to adjourn it.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

# 6 Members' resolution and statements

## 6.1 Members' resolutions and statements

- (a) Full members with at least 5% of the votes that may be cast on a resolution may give:
  - (i) written notice to the company of a resolution they propose to move at a general meeting (**members' resolution**); and/or
  - (ii) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (**members' statement**).
- (b) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- (c) A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- (d) Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

- (e) The percentage of votes that members have (as described in clause 6.1(a)) is to be worked out as at midnight before the request or notice is given to the company.
- (f) If the company has been given notice of a members' resolution under clause 6.1(a)(i), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- (g) This clause does not limit any other right that a member has to propose a resolution at a general meeting.

## **6.2 Company must give notice of proposed resolution or distribute statement**

- (a) If the company has been given a notice or request under clause 6.1:
  - (i) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost; or
  - (ii) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.
- (b) The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
  - (i) it is more than 1,000 words long;
  - (ii) the directors consider it may be defamatory;
  - (iii) clause 6.2(a)(ii) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
  - (iv) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

## **7 Voting at general meetings**

### **7.1 How many votes a Full member has**

Each Full member:

- (a) who is not an Unfinancial member; and
  - (b) whose membership rights have not been suspended under clause 4.2,
- has one vote.

## **7.2 Challenge to Full member's right to vote**

- (a) A Full member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- (b) If a challenge is made under clause 7.2(a), the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

## **7.3 How voting is carried out**

- (a) Voting must be conducted and decided by:
  - (i) a show of hands;
  - (ii) a vote in writing; or
  - (iii) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- (b) Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- (c) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- (d) The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

## **7.4 When and how a vote in writing must be held**

- (a) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (i) at least five members present who are entitled to vote;
  - (ii) members present with at least 5% of the votes that may be cast on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
  - (iii) the chairperson.
- (b) A vote in writing must be taken when and how the chairperson directs, unless clause 7.4(c) applies.
- (c) A vote in writing must be held immediately if it is demanded under clause 7.4(a) to decide whether to adjourn the meeting.
- (d) A demand for a vote in writing may be withdrawn.

## **7.5 Appointment of proxy**

- (a) A Full member may appoint a proxy to attend and vote at a general meeting on their behalf.
- (b) A proxy must be a Full member.

- (c) A proxy appointed to attend and vote for a member has the same rights as the member to:
  - (i) speak at the meeting;
  - (ii) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (iii) join in to demand a vote in writing under clause 7.4(a).
- (d) An appointment of proxy (**proxy form**) must be signed by the Full member appointing the proxy and must contain:
  - (i) the Full member's name and address;
  - (ii) the company's name;
  - (iii) the proxy's name; and
  - (iv) the meeting(s) at which the appointment may be used.
- (e) A proxy appointment may be standing (ongoing).
- (f) Proxy forms must be received by the company at the address stated in the notice under clause 5.4(e)(iv) or at the company's registered address at least 48 hours before a meeting.
- (g) A proxy does not have the authority to speak and vote for a Full member at a meeting while the Full member is at the meeting.
- (h) Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Full member:
  - (i) dies;
  - (ii) is mentally incapacitated;
  - (iii) revokes the proxy's appointment; or
  - (iv) revokes the authority of a representative or agent who appointed the proxy.
- (i) A proxy appointment may specify the way the proxy must vote on a particular resolution.

## **7.6 Voting by proxy**

- (a) A proxy is not entitled to vote on a show of hands (but this does not prevent a Full member appointed as a proxy from voting as a Full member on a show of hands).
- (b) When a vote in writing is held, a proxy:
  - (i) does not need to vote, unless the proxy appointment specifies the way they must vote;

- (ii) if the way they must vote is specified on the proxy form, must vote that way; and
- (iii) who holds more than one proxy, may cast the votes held in different ways.

## 8 Directors

### 8.1 Number of directors

- (a) The company must have at least five and no more than ten directors (collectively referred to as the **Board**).
- (b) The Board must comprise of:
  - (i) between five to seven Member Directors; and
  - (ii) up to three Co-opted Directors.
- (c) Subject to clause 8.1(a) and 8.1(b)(i), the Board may from time to time and at its sole discretion determine the number of Member Directors.
- (d) If the number of directors is reduced to fewer than five, or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to five (or higher if required for a quorum) for calling a general meeting, but for no other purpose.

### 8.2 Member Directors

- (a) The Regulations and policies which govern nomination and election of Member Directors will be determined by the Board and must be in accordance with this constitution.
- (b) Members who are entitled to vote in a general meeting and satisfy the requirements under clauses 8.2(e)(i) and 8.2(e)(ii) may nominate a person who is eligible under clause 8.2(e) to be a candidate for election to the office of Member Director.
- (c) The procedures which govern nomination and election of Member Directors will be advised by the Board to Members in accordance with the Regulations and policies referred to in clause 8.2(a).
- (d) Elected Member Directors will be announced at the next annual general meeting following the election process completed in accordance with this clause 8.2.
- (e) A Member Director of the company must be an individual who:
  - (i) is not an employee of the company;
  - (ii) has been a Full member of the company for at least six months immediately prior to the closing date for nominations as advised by the Board in accordance with this clause 8.2, and has not at any time during that period been an Unfinancial member;
  - (iii) is nominated by two members who must satisfy the requirements under

- clause 8.2(b);
- (iv) gives the company his or her signed consent to act as a director of the company;
- (v) is not ineligible to be a director under the Corporations Act or the ACNC Act; and
- (vi) satisfies all the requirements in the nominations policy determined by the Board from time to time.

### **8.3 Co-opted Directors**

- (a) The Board may appoint a Co-opted Director by a resolution passed at a Board meeting.
- (b) A Co-opted Director of the company must be an individual who:
  - (i) is not a nurse working in primary health care;
  - (ii) has relevant experience and expertise;
  - (iii) is, or agrees to become upon appointment, an Associate member of the company for the entire period of appointment;
  - (iv) is not an employee of the company;
  - (v) does not have any business or other relationship that could materially interfere with, or could reasonably be perceived to interfere with, the independent exercise of his or her judgment in relation to the company;
  - (vi) gives the company his or her signed consent to act as a director of the company;
  - (vii) is not ineligible to be a director under the Corporations Act or the ACNC Act; and
  - (viii) satisfies all other requirements determined by the Board from time to time.

### **8.4 Casual vacancies and additional directors**

- (a) The Board may from time to time appoint:
  - (i) a person who meets the eligibility requirements for a Member Director specified in clause 8.2(e) (other than clause 8.2(e)(iii)) to fill a casual vacancy in the office of Member Director, and that person will hold office until the next annual general meeting, and that person will be eligible to be re-elected in accordance with clause 8.2; and
  - (ii) a person who meets the eligibility requirements for a Co-opted Director specified in clause 8.3(b) to fill a casual vacancy in the office of Co-opted Director, and that person will hold office for the term of their appointment in accordance with clause 8.5(a)(ii).
- (b) If the number of Directors becomes less than five as a result of vacancies on the Board, the Board must not act, except for the purposes of filling vacancies or

convening a general meeting, while there are less than five Directors.

## **8.5 Appointment and term of office**

- (a) Subject to clauses 8.4 and 8.5(f):
  - (i) a Member Director is elected for a term of three years at the end of which he or she shall retire;
  - (ii) a Co-opted Director is appointed by the directors for a term not exceeding three years at the end of which he or she shall retire.
- (b) Unless otherwise resolved by the company in general meeting:
  - (i) a retiring Member Director is eligible to be re-elected for a maximum of two consecutive terms of not more than three years each; and
  - (ii) a retiring Co-opted Director is eligible to be reappointed by the Board for a maximum of two consecutive terms of not more than three years each.
- (c) For the purposes of clauses 8.5(a) and 8.5(b), service by a person:
  - (i) in a Co-opted Director position under clause 8.3(a) for any period will be treated as a term;
  - (ii) to fill a casual vacancy in a Member Director position under clause 8.4(a)(i) for any period will not be treated as a term; and
  - (iii) to fill a casual vacancy in a Co-opted Director position under clause 8.4(a)(ii) for any period will be treated as a term.
- (d) A director who has served three consecutive terms may be either re-elected or reappointed as a director after a period of two years has elapsed since the end of his or her previous term as a director.
- (e) Without limiting the powers of the Board under clause 8.2, the company may call for nominations for positions of Member Director in such manner as the Board determines from time to time. This clause 8.5(e) does not apply to persons appointed to the Board, whether to fill a casual vacancy or appointed as Co-opted Directors.
- (f) At the second annual general meeting after the adoption of this constitution:
  - (i) the three initial Member Directors longest in office since last being elected as board members of the Predecessor Entity, must retire from office at the annual general meeting and, subject to clause 8.5(b), are eligible to be re-elected; and
  - (ii) an election will be held in accordance with clause 8.2, and the elected Member Directors will be announced for three Member Directors, and if the Board has made a determination under clause 8.1(c) to increase the number of Member Directors, any additional Member Director, each of whom will hold office for a term of three years in accordance with clause 8.5(a)(i).

- (g) Subject to the minimum number of directors not being less than five, the company may from time to time in general meeting resolve not to replace retiring directors or directors who have vacated office.
- (h) If the number of candidates for election of Member Directors is below the number of positions of Member Director called by the company under clause 8.5(e), a person who is not eligible to be re-elected under clauses 8.5(b) or 8.5(d), may be declared eligible to be nominated for and re-elected to position of Member Director by a Special Resolution.
- (i) Nothing in this constitution affects the validity of appointment or the term of office of any director (howsoever described) in office as at the date of adoption of this constitution.

## **8.6 When a director stops being a director**

A director stops being a director if he or she:

- (a) gives written notice of resignation as a director to the company;
- (b) dies;
- (c) becomes an employee of the company;
- (d) is removed as a director by a resolution of the members;
- (e) is a Member Director of the company who ceases to meet any of the eligibility requirements for a Member Director under clause 8.2(e) (except paragraph (iii));
- (f) is a Co-opted Director of the company who ceases to meet any of the eligibility requirements for a Co-opted Director under clause 8.3;
- (g) are absent from directors' meetings during three consecutive directors' meetings without approval from a majority of the directors; or
- (h) become ineligible to be a director of the company under the Corporations Act or the ACNC Act.

## **9 Powers of Directors**

### **9.1 Powers of directors**

- (a) The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 2.1.
- (b) The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- (c) The directors must decide on the responsible financial management of the company including:
  - (i) any suitable written delegations of power under clause 9.2; and
  - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise



approved.

- (d) The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

## **9.2 Delegation of directors' powers**

The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a **chief executive officer**) or any other person, as they consider appropriate.

## **9.3 Payments to directors**

- (a) The Board may make a Regulation in accordance with clause 14 to determine:
  - (i) reasonable remuneration for a director; and
  - (ii) reimbursement for expenses properly incurred by a director in connection with the affairs of the company.
- (b) If remuneration is paid to any director, the following information must be disclosed in the Board report at the annual general meeting set out under clause 5.3(b)(iv):
  - (i) a copy of the Regulation under clause 9.3(a); and
  - (ii) the total amount of remuneration to directors for the financial year.
- (c) The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

## **9.4 Execution of documents**

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

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

## **10 Duties of Directors**

### **10.1 Duties of directors**

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
- (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 2.1;

- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 10.2;
- (f) to ensure that the financial affairs of the company are managed responsibly; and
- (g) not to allow the company to operate while it is insolvent.

## 10.2 Conflicts of interest

- (a) A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
  - (i) to the other directors; or
  - (ii) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- (c) Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 10.2(d):
  - (i) be present at the meeting while the matter is being discussed; or
  - (ii) vote on the matter.
- (d) A director may still be present and vote if:
  - (i) their interest arises because they are a member of the company, and the other members have the same interest;
  - (ii) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 17.2);
  - (iii) their interest relates to a payment by the company under clause 17.1 (**indemnity**), or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (iv) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the director to vote on the matter; or
  - (v) the directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company; and
    - (B) says that those directors are satisfied that the interest should not

stop the director from voting or being present.

## **11 Directors' meetings**

### **11.1 When the directors meet**

The directors may decide how often, where and when they meet.

### **11.2 Calling directors' meetings**

- (a) The President, Vice-President or three directors may call a directors' meeting by giving reasonable notice to all of the other directors.
- (b) A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### **11.3 Chairperson for directors' meetings**

The chairperson for directors' meetings is:

- (a) the President elected by the Board under clause 12.2; and
- (b) if the President is unable or unwilling to chair the meeting, the Vice-President elected by the Board under clause 12.2; and
- (c) if the Vice-President is unable or unwilling to chair the meeting, a director elected by a majority of the votes cast by the directors who are physically present and entitled to vote at the directors' meeting.
- (d) The chairperson for directors' meetings does not have a casting vote.

### **11.4 Quorum at directors' meetings**

- (a) Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- (b) A quorum must be present for the whole directors' meeting.

### **11.5 Using technology to hold directors' meetings**

- (a) The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- (b) The directors' agreement may be a standing (ongoing) one.
- (c) A director may only withdraw their consent within a reasonable period before the meeting.

### **11.6 Passing directors' resolutions**

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution. A director cannot vote by proxy.

### **11.7 Circular resolutions of directors**

- (a) The directors may pass a circular resolution without a directors' meeting being held.
- (b) A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 11.7(c) or clause 11.7(d).
- (c) Each director may sign:
  - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 11.7(c) or clause 11.7(d).

## 12 Appointment and role of office-bearers, secretary and Chief Executive Officer

### 12.1 Office-bearers

The Board must comprise of the following:

- (a) the President;
- (b) the Vice-President, and

any other office-bearer positions determined by the Board from time to time.

### 12.2 Election of office-bearers

- (a) As soon as practicable after an annual general meeting at which elected Member Directors are announced under clause 8.2, separate elections must be held by the Board for each of the office-bearer positions under clause 12.1.
- (b) An office-bearer position may be removed by the directors.
- (c) The directors must decide the terms and conditions under which the office-bearer positions are appointed.

### 12.3 President and Vice-President

To be nominated for the position of President or Vice-President, the director must be a Member Director.

### 12.4 Chief Executive Officer

- (a) The Board may appoint a person as the Chief Executive Officer, for any period and on any terms (including as to remuneration) as the Board thinks fit.

- (b) Subject to any agreement between the company and the Chief Executive Officer, the Board may remove, dismiss or suspend the Chief Executive Officer at any time.
- (c) The Board employs the Chief Executive Officer and may delegate to the Chief Executive Officer such of its powers and authorities as it deems fit from time to time.
- (d) The Chief Executive Officer is not a member of the Board, but may attend and speak at meetings of the Board except where the Board otherwise requests.

## **12.5 Secretary**

- (a) Unless otherwise determined by the Board, the Chief Executive Officer shall serve as a secretary of the company and give the company his or her signed consent to act as secretary of the company.
- (b) The company must have at least one secretary, who may also be a director.
- (c) A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- (d) The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- (e) The secretary must act in accordance with Act, the ACNC Act and this constitution.
- (f) The secretary is the public officer of the company unless the Board determines otherwise.
- (g) The role of the secretary includes:
  - (i) maintaining a register of the company's members; and
  - (ii) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

## **13 Minutes and records**

### **13.1 Minutes and records**

- (a) The company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of general meetings;
  - (ii) minutes of circular resolutions of members;
  - (iii) a copy of a notice of each general meeting; and
  - (iv) a copy of a members' statement distributed to members under clause 6.2.
- (b) The company must, within one month, make and keep the following records:

- (i) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (ii) minutes of circular resolutions of directors.
- (c) To allow members to inspect the company's records:
- (i) the company must give a member access to the records set out in clause 13.1(a); and
  - (ii) the directors may authorise a member to inspect other records of the company, including records referred to in clause 13.1(b) and clause 13.2(a).
- (d) The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (i) the chairperson of the meeting; or
  - (ii) the chairperson of the next meeting.
- (e) The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## 13.2 Financial and related records

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

## 14 Regulations

### 14.1 Regulations

- (a) The directors may pass a resolution to:
- (i) make rules and regulations (**Regulations**) to give effect to this constitution such as the regulation, management and control of the company's affairs including its members, directors and committees; and
  - (ii) amend such Regulations,
- as the Board thinks necessary or expedient.

- (b) Members and directors must comply with the Regulations as if they were part of this constitution.
- (c) All Regulations must be consistent with this constitution, the Act and the ACNC Act, and in the event of any inconsistency between this constitution and any Regulation, this constitution prevails.

## 15 Notice

### 15.1 What is a notice

- (a) Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 15.2 to 15.4, unless specified otherwise.
- (b) Clauses 15.2 to 15.4 do not apply to a notice of proxy under clause 7.5(f).

### 15.2 Notice to the company

Written notice or any communication under this constitution may be given to the company, the directors or the secretary by:

- (a) delivering it to the company's registered office;
- (b) posting it to the company's registered office or to another address chosen by the company for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the company to the members as the company's email address or other electronic address; or
- (d) sending it to the fax number notified by the company to the members as the company's fax number.

### 15.3 Notice to members

- (a) Written notice or any communication under this constitution may be given to a member:
  - (i) in person;
  - (ii) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - (iii) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
  - (iv) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
  - (v) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- (b) If the company does not have an address for the member, the company is not required to give notice in person.

## **15.4 When notice is taken to be given**

A notice:

- (a) delivered in person, or left at at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the Business Day after it is sent; and
- (d) given under clause 15.3(a)(v) is taken to be given on the Business Day after the notification that the notice is available is sent.

## **16 Financial year**

The company's financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

## **17 Indemnity, insurance and access**

### **17.1 Indemnity**

- (a) The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, legal costs, expenses and charges) incurred by that person as an officer of the company.
- (b) In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- (c) In this clause, 'to the relevant extent' means:
  - (i) to the extent that the company is not precluded by law (including the Corporations Act) from doing so; and
  - (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

### **17.2 Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

### **17.3 Directors' access to documents**



- (a) A director has a right of access to the financial records of the company at all reasonable times.
- (b) If the directors agree, the company must give a director or former director access to:
  - (i) certain documents, including documents provided for or available to the directors; and
  - (ii) any other documents referred to in those documents.

## 18 Winding up

### 18.1 Surplus assets not to be distributed to members

- (a) If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is a charity described in clause 18.2(a)

### 18.2 Distribution of surplus assets

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 18.2(d)) that remain after the company is wound up must be distributed to one or more charities:
  - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 2.1;
  - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company; and
  - (iii) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.
- (c) If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of clause 18.2(a), as decided by the directors.
- (d) For the purpose of this clause:
  - (i) 'gift funds' means:
    - (A) gifts of money or property for the principal purpose of the company;
    - (B) contributions made in relation to a fund-raising event held for the principal purpose of the company; and
    - (C) money received by the company because of such gifts and

contributions.

- (ii) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

## 19 Transition

### 19.1 Initial members

Any person whose name is entered in the register of members of the Predecessor Entity immediately before the commencement of this constitution is, at the commencement date of this constitution:

- (a) taken to be a member under this constitution in the same class of membership as the class of membership held with the Predecessor Entity; and
- (b) bound by any rights and obligations of members under this constitution.

### 19.2 Initial directors

- (a) The initial directors of the company are the people who:
  - (i) have agreed to act as directors;
  - (ii) are named as proposed directors in the application for registration of the company; and
  - (iii) were either:
    - (A) elected as board members by the members of the Predecessor Entity (or were appointed by the board to fill a casual vacancy in a position of an elected board member) (**initial Member Director**); or
    - (B) appointed as board members by the board of the Predecessor Entity (other than where the appointment was to fill a casual vacancy in the office referred to in paragraph (A) above) (**initial Co-opted Director**),immediately before the commencement of this constitution.
- (b) The initial directors are taken to have not served any terms of office in the position as Member Director or Co-opted Director despite the terms of office they had served immediately before the commencement of this constitution.