

**CONSTITUTION OF  
HUNTER PRIMARY CARE LIMITED  
(ACN 061 783 015)  
("Company")**

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## CONSTITUTION

### 1 DEFINITIONS

#### 1.1 Definitions

In this Constitution the following words have the following meanings:

<b>Term</b>	<b>Meaning</b>
<b>AHPRA</b>	the Australian Health Practitioners Regulation Agency established by the Health Practitioner Regulation National Law (NSW)
<b>Annual General Meeting</b>	the annual general meeting of the Company held in accordance with Paragraphs 19 and 20
<b>ASIC</b>	the Australian Securities and Investment Commission
<b>Associate Member</b>	a person who is granted membership of the Company as an Associate Member and is registered in the Register as an Associate Member
<b>Associated Party</b>	each of the following: <ul style="list-style-type: none"> <li>(a) The Company;</li> <li>(b) Any Related Body Corporate of the Company; and</li> <li>(c) Any other body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind.</li> </ul>
<b>Audited Financial Statements</b>	the “financial statements” as defined in the Corporations Act prepared by an Auditor
<b>Auditors</b>	the auditors of the Company and the term “auditor” shall have a corresponding meaning
<b>Auditors Report</b>	the reports prepared from time to time by the Auditor
<b>Board</b>	the Board of Directors of the Company
<b>Board-nominated Director</b>	a Director nominated by the Board in accordance with Paragraph 22.3(a) and includes Directors appointed by the

<b>Term</b>	<b>Meaning</b>
	Board to fill a vacancy between Annual General Meetings in accordance with Paragraph 28.1
<b>Chair</b>	<p>the Chair of Directors elected pursuant to Paragraph 25 and includes (where the context permits) in the event of any inability of the Chair to attend:</p> <ul style="list-style-type: none"> <li>(a) a Board meeting, the Deputy Chair, and in the absence of the Deputy Chair, any person elected as substitute chair of a Board meeting pursuant to Paragraph 36.8; and</li> <li>(b) an Annual General Meeting, or any other general meeting, the Deputy Chair, and in the absence of the Deputy Chair, any person elected as substitute chair of the Annual General Meeting pursuant to Paragraph 20.4(b).</li> </ul>
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth)
<b>Deputy Chair</b>	the Deputy Chair of Directors elected pursuant to Paragraph 26
<b>DGR</b>	a ‘deductible gift recipient’ within the meaning of section 30-227 of ITAA 97
<b>Directors</b>	includes Member-nominated Directors and Board-nominated Directors, and “ <b>Director</b> ” will mean either a Member-nominated Director or a Board-nominated Director as the case may be
<b>General medical practitioner</b>	a “medical practitioner” as defined in Section 3 of the <i>Health Insurance Act 1973</i> (Cth) including any amendment or re-enactment of the same or any legislation passed in substitution and whose practice involves the provision of primary, continuing and comprehensive whole patient care to individuals, families and their community
<b>General Practice</b>	the provision of primary continuing comprehensive whole-patient medical care to individuals, families and their communities

<b>Term</b>	<b>Meaning</b>
<b>Gift Fund</b>	a fund that is maintained for the Principal Purpose
<b>ITAA</b>	the <i>Income Tax Assessment Act 1936 (Cth)</i>
<b>Member</b>	a person who is granted membership of the Company as either a Primary Member or Associate Member and is registered in the Register as a Member
<b>Member-nominated Director</b>	a Director nominated by the Primary Members in accordance with Paragraph 24
<b>Office</b>	the registered office of the Company
<b>Primary Health Care</b>	<p>socially appropriate, universally accessible, scientifically sound, first level care provided by health services and systems with a suitably trained workforce comprised of multi-disciplinary teams supported by integrated referral systems in a way that:</p> <ul style="list-style-type: none"> <li>(a) gives priority to those most in need and addresses health inequalities;</li> <li>(b) maximises community and individual self-reliance, participation and control; and</li> <li>(c) involves collaboration and partnership with other sectors to promote public health.</li> </ul>
<b>Primary Health Care Clinician</b>	a clinician delivering Primary Health Care services who has registration as a health practitioner with the Australian Health Practitioner Regulation Agency
<b>Primary Member</b>	a person who is granted membership of the Company as a Primary Member and is registered in the Register as a Primary Member



<b>Term</b>	<b>Meaning</b>
<b>Principal Purpose</b>	the purposes of the Company as reflected in the objects of the Company specified in clause 3, or any of those purposes
<b>Proxy</b>	a person appointed on behalf of a Primary Member in accordance with Paragraph 21.1
<b>Quorum of Primary Members</b>	at least eight Primary Members one of whom shall be a Director
<b>Register</b>	the register of Primary Members and Associate Members referred to in Paragraph 14
<b>Related Body Corporate</b>	has the meaning given to it in the Corporations Act
<b>the seal</b>	the common seal or duplicate common seal of the Company
<b>Secretary</b>	any person appointed to perform the duties of a secretary of the Company
<b>Special Resolution of the Company</b>	a resolution passed at a meeting of the Company in general meeting of which not less than 21 days notice of the prepared resolution has been given, and being a resolution passed by at least 75% of the votes cast by Primary Members either present at that general meeting and voting on the resolution or cast by their duly authorised Proxy voting at the said general meeting
<b>State</b>	the State of New South Wales

## **1.2 Interpretation**

In this Constitution, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Constitution or another document includes any document which varies, supplements, replaces, assigns or novates this Constitution or that other document;

- (b) (**references**) a reference to the background, a party, clause, paragraph, schedule or annexure is a reference to the background, a party, clause, paragraph, schedule or annexure to or of this Constitution;
- (c) (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Constitution;
- (d) (**person**) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity;
- (e) (**including**) including and includes are not words of limitation;
- (f) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning;
- (g) (**singular**) the singular includes the plural and vice-versa;
- (h) (**gender**) words importing one gender include all other gender;
- (i) (**legislation**) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (j) (**replacement bodies**) a reference to a body (including an institute, association or government body or authority and including the Commonwealth Department of Health and Medicare Locals in general) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (k) section 46 of the *Acts Interpretation Act 1901* (Cth) applies in relation to this Constitution as if it is an instrument made under the Corporations Act; and
- (l) an expression has, in a provision of this Constitution which relates to a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

## 2 NAME

The name of the Company is “**Hunter Primary Care Limited**” (“the **Company**”).

## 3 OBJECTS AND POWERS

### 3.1 Objects

The objects for which the Company is established are:

- (a) working towards a patient centred system of primary health care, delivering better outcomes for the community;
- (b) improving coordination between primary health care clinicians, and with other areas of the health care system;

- (c) enabling Primary Health Care Clinicians to contribute to health planning at all levels with an emphasis at the local level;
- (d) developing programs and services that respond to identified health needs of the community, including high needs groups such as Aboriginal and Torres Strait Islanders, those with non-English speaking backgrounds, and chronic disease;
- (e) developing programs and services that respond to needs of the community that are related to health and health determinants, including aged care and the care of disabled people;
- (f) facilitating the advancement of primary health care and evidence-based models of care and practice;
- (g) enhancing educational and professional development opportunities for Primary Health Care Clinicians and clinicians in training, and encouraging them to continually maintain and upgrade their skills in the many areas of their practice;
- (h) facilitating, where appropriate, increased primary health care focus on illness prevention and health promotion activities;
- (i) improving the efficiency and effectiveness of health services at all levels, particularly at the local level; and
- (j) providing support to Primary Health Care Clinicians and other service providers to improve patient care and outcomes.

### **3.2 Powers of the Company**

The Company has the legal capacity of a natural person as contained in the Corporations Act and, without limiting the generality of the foregoing, has the power:

- (a) to subscribe to, become a member of and co-operate with any other association or organisation, whether incorporated or not, including those whose objects are similar to those of the Company including a company, association or organisation which is not income tax exempt under the Income Tax Assessment Act (1936 and/or 1997) and does not prohibit the distribution of its income and property among its members PROVIDED THAT the Company does not amalgamate or merge with a company, association or organisation which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Company under or by virtue of Paragraph 4;
- (b) to purchase, take on lease or in exchange, hire and otherwise acquire (whether absolutely or in trust) any lands, building, easement or property, real and personal, and any right or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the Company, provided that if the Company takes or holds any property which may be subject to any trusts, the Company may only deal with the same in such manner as is allowed by law having regard to such trusts;

- (c) **to enter into any arrangements with any Government or** authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them and to obtain from any such Government or authority any grants, rights, privileges and concessions which the Company may think it desirable to obtain and to carry out exercise and comply with any such arrangements, rights, privileges and concessions;
- (d) to appoint, employ, remove or suspend such managers, clerks, secretaries, workers and other persons as may be necessary or convenient for the purposes of the Company;
- (e) to establish and support or aid in the establishment and support of associations, institutions, funds, trust and conveniences calculated to benefit employees or past employees of the Company or the dependants or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;
- (f) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, ground, works or conveniences which directly or indirectly advance the Company's interest, and to contribute, to subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- (g) to invest and deal with the money of the Company not immediately required for the purposes of the Company in such manner as may be permitted by law for the investment of trust funds;
- (h) to borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Company's property (both present and future), and to purchase, redeem or pay off such securities;
- (i) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (j) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;
- (k) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Company's property of whatsoever kind sold by the Company or any money due to the Company from purchasers and others;

- (l) to take any gift of property whether subject to any special trust or not for any one or more of the objects of the Company but subject always to the proviso in Paragraph 3;
- (m) to take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company;
- (n) to print, publish, produce, sell and otherwise distribute any newspapers, periodicals, books, or leaflets that the Company may think desirable for the promotion of its objects;
- (o) to purchase or otherwise acquire and undertake all or any part of the property assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (p) to transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate;
- (q) to make donations for patriotic or charitable purposes;
- (r) to contract or enter arrangements with any person, company, incorporated or unincorporated group or association that may seem conducive to the Company's objects or any of them and to obtain from any such person, company, incorporated or unincorporated group or association any rights privileges and concessions which the Company may think it desirable to obtain, PROVIDED THAT the Company does not support with its funds any activity or endeavour to impose on or procure to be observed by its Members or others any regulations or restrictions, which if any object of the Company would make it a "trade union" within the meaning of the *Industrial Relations Act 1996* (NSW); and
- (s) to do all such other acts and things incidental to the attainment of all or any of the Company's powers and objects.

## **4 APPLICATION OF INCOME**

### **4.1 Application towards the promotion of the objects**

The income and property of the Company whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.

### **4.2 No portion payable to Members**

No portion of the income or property of the Company will be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members of the Company; PROVIDED THAT nothing herein contained will prevent the payment in good faith by way of remuneration to any officers, employees or contractors of the Company or to any Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business

nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this Paragraph 4.2 by this Constitution on money borrowed from any Members of the Company or reasonable and proper rent for premises demised or let by any Member of the Company.

## **5 LIMITED LIABILITY**

### **5.1 Limited Liability**

The liability of the Members is limited.

### **5.2 Contribution on Winding-Up**

Each Member of the Company undertakes to contribute to the property of the Company in the event of the same being wound up while he/she is a Member, or within one year after he/she ceases to be a Member, for payment of the debts and liabilities of the Company contracted or incurred before the time at which he/she ceased to be a Member and of the costs, charges and expenses of winding up and for the adjustment of the rights of contributories among themselves, such amount as may be required, not exceeding twenty dollars (\$20.00).

## **6 ACCOUNTS**

True accounts must be kept of the sums of money received and expended by the Company and the manner that such receipt and expenditure takes place, and of the property, credits and liabilities of the Company and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with this Constitution for the time being in force, shall be open to the inspection of the Members. At least once in every year, the accounts of the Company will be examined by one or more properly qualified Auditors who will report to the Members in accordance with the provisions of the Corporations Act.

## **7 REPLACEABLE RULES**

To the extent permitted by the Corporations Act the replaceable rules contained in the Corporations Act do not apply to the Company except as repeated or amended in this Constitution.

## **8 PURPOSES**

The Company is established for the objects set out in this Constitution.

## **9 MEMBERSHIP**

### **9.1 Membership**

The subscribers to the original Constitution of the Company and such other persons as the Board admits to membership in accordance with this Constitution are Members of the Company and the number of Members of the Company is unlimited.

### **9.2 Categories**

The Company shall have the following membership categories:

- (a) Primary Member - Any person being a Primary Health Care Clinician, or such other person working in Primary Health Care as is approved

by the Board, may apply in writing to the Company for admission as a Primary Member of the Company; or

- (b) Associate Member - Any person wishing to support the aims and objects of the Company (whether being a Primary Health Care Clinician or not) may apply in writing to the Company for admission as an Associate Member of the Company.

### **9.3 Admission of Members**

The Board, at any meeting of Directors, by a majority vote, may admit to membership such persons as apply for membership of the Company.

### **9.4 Rights of Primary Members**

A Primary Member shall have all the rights conferred on a Primary Member by this Constitution including the right to attend and to vote at Annual General Meetings and general meetings of the Company.

### **9.5 Rights of Associate Members**

- (a) An Associate Member who is also a Director shall have the right to attend and speak at, but not to vote at, general meetings of the Company including the Annual General Meeting.
- (b) An Associate Member who is not a Director shall have the right to attend but not to speak or vote at general meetings of the Company including the Annual General Meeting.

## **10 APPLICATION**

### **10.1 Application Form**

Every applicant for membership of the Company (other than the subscribers to the original Constitution of the Company) must lodge an application for membership in writing signed by the applicant addressed to the Board in such form as the Board may from time to time prescribe and may, subject to Paragraph 11.3, include an application fee as prescribed by the Board from time to time.

### **10.2 Determination**

At the next meeting of the Board after the receipt of any application for membership, such application must be considered by the Board, who must then determine the admission or rejection of the applicant. In no case is the Board required to give any reason for the rejection of an applicant.

### **10.3 Notification**

- (a) When an applicant has been accepted for membership, the Secretary must send to the applicant written notice of his or her acceptance, type of membership and a request for payment of the entrance fee and first annual subscription (if imposed).
- (b) Upon the later of:
- (1) provision by the Secretary of the written notice referred to in Paragraph 10.3(a); and

- (2) payment of any application fee or first annual subscription (if imposed),

the applicant will become a Member of the Company.

## **11 SUBSCRIPTIONS AND CHANGE OF ADDRESS**

### **11.1 Notification of change in details**

Each Member must notify the Secretary in writing of any change in that Member's address within a period of one month next following such change and all notices given in accordance with this Constitution to the address last notified, will be considered fully received.

### **11.2 Subscription fees**

Subject to Paragraph 11.3, a Member must pay such annual subscriptions as the Board may determine from time to time.

### **11.3 Board to determine fees**

The Board is empowered to set subscriptions and application fees and the mode of payment of such subscriptions and application fees, in such manner as it may think fit.

## **12 HUNTER PRIMARY CARE BOUNDARIES**

The Board will only be entitled to accept an application for Primary Membership, and a Primary Health Care Clinician will only be eligible to remain a Primary Member if, in the opinion of the Board, the applicant for Primary Membership or the Primary Member (as the case may be):

- (a) continues to carry on business within the Company's boundaries; or
- (b) remains domiciled within the Company's boundaries

as such boundaries may from time to time be determined by the Board.

## **13 NOTIFICATION OF MEMBERSHIP**

An applicant applying for membership must be notified by the Board within a reasonable period of applying for membership of the following:

- (a) in the case of a Primary Member application, whether the application has been accepted or rejected; or
- (b) in the case of an Associate Member application, whether the application has been accepted or rejected.

## **14 REGISTER OF NAMES**

The Register of Primary Members and Associate Members of the Company must be kept in the registered office of the Company setting forth the names in full and addresses of all members of the Company. The Register must also show:

- (a) the type of membership;
- (b) the date of admission to and cessation of membership; and
- (c) such other information as the Board may from time to time determine.



## **15 CHANGE IN CIRCUMSTANCES**

Each Primary Member must notify the Secretary in writing if the Primary Member ceases to practice or be registered as a Primary Health Care Clinician, within a period of one (1) month next following such change.

## **16 CESSATION OF MEMBERSHIP**

### **16.1 Right of Resignation**

Every Member has the right at any time to resign from membership of the Company by giving written notice to the Secretary.

### **16.2 Cessation of Membership**

A person will cease to be a Member:

- (a) if their membership is cancelled on the passing of a resolution in accordance with Paragraph 17; or
- (b) upon the Member resigning in accordance with Paragraph 16.1.

## **17 CANCELLED MEMBERSHIP**

If any Member:

- (a) wilfully refuses or neglects to comply with the provisions of the Constitution;
- (b) is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interest of the Company; or
- (c) no longer fulfils any of the requirements of membership (for example, has left the area, has died, is no longer contactable or, in the case of a Primary Member, is no longer registered and working as a Primary Health Care Clinician),

then the Board will have power by resolution to censure, fine, suspend, or expel a Member PROVIDED that at least seven (7) days before the meeting of the Board at which such a resolution is to be considered, the Member is given notice of such meeting and of what is alleged against them and of the intended resolution and at such meeting (before the passing of such resolution), the Member has had an opportunity to make oral or written submissions as they may think fit and PROVIDED FURTHER that any such Member may, by notice in writing lodged with the Secretary at least twenty-four (24) hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting and in that event an extraordinary general meeting of the Company must be called for that purpose and if at the meeting such a resolution be passed by a majority of two-thirds of those present and voting (such a vote to be taken by ballot) then the Member concerned will be treated accordingly and in the case of a resolution for his/her expulsion the relevant membership will be cancelled.

## **18 RESOLUTION OF INTERNAL DISPUTES**

### **18.1 Dispute**

In the event of a dispute arising between Members (in their capacity as Members), or between a Member and the Company, or between a Member and the Board the procedure set out in this Paragraph 18 will apply.

### **18.2 Representatives**

Each side of the dispute ('the disputants") will nominate a representative who is not directly involved in the dispute. Those representatives will then attempt to settle the dispute by negotiation.

### **18.3 Mediation**

(a) If the dispute is not settled within 14 days (or such other period as the disputants may agree upon) then the dispute will be referred to a person mutually agreed upon by the disputants for mediation.

(b) In the event that no person can be agreed upon to mediate the dispute, it will be referred to a qualified mediator with not less than seven (7) years experience as a mediator for mediation in accordance with the standard mediation rules of the Law Society of New South Wales.

(c) Until a dispute has been mediated in good faith as provided for in this Paragraph 18, no disputant may commence or maintain any legal proceedings against another disputant other than applications for urgent or interim relief.

## **19 GENERAL MEETINGS**

### **19.1 Annual General Meeting**

An annual general meeting of the Company shall be held in accordance with the provisions of the Corporations Act.

### **19.2 General Meetings**

All general meetings, other than the Annual General Meetings, shall be called general meetings.

### **19.3 Convening General Meetings**

Any member of the Board may convene a general meeting whenever they think fit. General meetings must be convened if the Board receives a requisition as required under the Corporations Act.

### **19.4 Notice**

Subject to the provisions of the Corporations Act relating to special resolutions and agreements for shorter notice, no less than twenty-one days notice (exclusive of the day which the notice is served or deemed to be served, and exclusive of the day on which notice is given) specifying the place, the day and the hour of the meeting and in the case of special business, the general nature of that business, must be given to all Members of the Company, by notice forwarded in accordance with Paragraph 45.

### **19.5 Special Business**

For the purposes of Paragraph 19.4, all business at a general meeting and at an Annual General Meeting, with the exception of:

- (a) the consideration of the accounts, balance sheets, and the report of the Board and Auditors;
  - (b) the election of officers and other members of the Board in the place of those retiring; and
  - (c) the appointment of the Auditors, if necessary;
- is considered special business and requires a Special Resolution of the Company.

#### **19.6 Additional Information**

With the notice of an Annual General Meeting there must be forwarded to each Member:

- (a) a link to a copy of the Audited Financial Statements to be presented at the Annual General Meeting;
- (b) relevant details of the nominees for the Member-nominated Directors and the Board-nominated Directors (if any); and
- (c) any other special business that the Directors consider relevant.

#### **19.7 Omission**

Subject to the Corporations Act, the accidental omission to give notice of a meeting to any Member will not invalidate the proceedings at any general meeting or Annual General Meeting of the Company.

## **20 PROCEEDINGS AT GENERAL MEETINGS**

### **20.1 Business of Annual General Meeting**

The business of an Annual General Meeting includes:

- (a) subject to Paragraph 24, to elect the Member-nominated Directors;
- (b) to elect the Board-nominated Directors (if any); and
- (c) to deal with any other business which will be deemed to be special business under Paragraph 19.5.

### **20.2 Quorum**

No business shall be transacted at any general meeting (including the Annual General Meeting) unless a Quorum of Primary Members is present in person or by Proxy at the time when the meeting proceeds to business. A member who is exercising a right of Direct Voting is also deemed to be present at the meeting.

### **20.3 Meeting Reconvened**

If, within half an hour from the time appointed for a meeting, a Quorum of Primary Members is not present, the meeting, if convened upon the requisition of Primary Members, must be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine and the meeting will proceed at that time providing if at the adjourned meeting a Quorum of Primary Members is present within half an hour from the time appointed for the meeting.

#### **20.4 Chair**

- (a) The chair of any general meeting or Annual General Meeting will be the Chair and in the absence of the Chair, the Deputy Chair will chair the meeting.
- (b) If at a general meeting or Annual General Meeting, the Chair (or in the absence of the Chair, the Deputy Chair) is not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act as chair, then the Primary Members present must elect one of their number to be the chair of the general meeting.

#### **20.5 Adjournment**

The Chair may, with the consent of any meeting at which a Quorum of Primary Members is present, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Save as aforesaid it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

#### **20.6 Voting/Polls**

##### **(a) Means of voting**

Votes by members at a meeting may be given:

- (1) personally at the meeting
- (2) by proxy, representative or attorney at the meeting, or
- (3) by a valid notice of their voting intention (Direct Vote).

A member who is exercising a right of voting by proxy or Direct Voting is also deemed to be present at the meeting.

##### **(b) One vote**

A member may only vote by one of the permitted methods in Clause 20.6(a). If a member casts a Direct Vote on a particular resolution they are taken to have revoked the authority of a previously authorised proxy to vote on their behalf on that resolution.

An Associate Member shall not be entitled to vote.

##### **(c) Priority of votes**

If a member attempts to cast more than one vote on a particular resolution, only the last vote received by the returning office is to be taken to have been cast, irrespective of whether the vote is by way of Direct Vote or proxy.

##### **(d) Objections to voting**

- (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

- (2) Any such objection must be referred to the Chair of the meeting, whose decision is final.
- (3) A vote not disallowed pursuant to such an objection is valid for all purposes.

(e) Direct votes

(1) Direct Voting

Pursuant to Clause 20.6(a) a member is entitled to cast a Direct Vote prior to the relevant general meeting. Every member who is entitled to attend that general meeting is entitled to cast a Direct Vote.

(2) Direct Voting instrument

If sent by post or fax, the Direct Vote must be signed by the member or, if the member is a corporation, either under seal or by a duly authorised officer, attorney or representative.

If sent by electronic transmission the Direct Vote is to be taken to have been signed if it has been signed or authorised by the member in the manner approved by the directors or specified in the notice of meeting.

A Direct Vote includes any form of vote that the directors may prescribe or accept including by any electronic means.

(3) Deposit of instrument

At least 48 hours before the time for holding the relevant general meeting, an adjourned meeting or a poll at which a person proposes to cast a notice of their voting intention, there must be received at the Office or such other place as is specified for that purpose in the notice of meeting, or be transmitted to a facsimile number at the Office or a facsimile number or electronic address specified for that purpose in the notice of meeting:

- a) notice of their voting intention, and
- b) any authority or power under which that Direct Vote was signed or a certified copy of that power or authority.

(4) Form of the Direct Vote

A notice of a voting intention is valid if it contains the following information:

- the member's name and address or any applicable identifying notations such as the holder identification number or similar approved by the directors or specified in the notice of the meeting, and
- the member's voting intention on any or all of the resolutions to be put before the meeting.

(5) Validity

A vote cast in accordance with a Direct Vote is valid even if before the vote was cast the member:

- died
- became of unsound mind, or
- wishes to change their vote,

unless written notification of the relevant event is received at the Office before the meeting, adjourned meeting or the taking of the poll in respect of which the Direct Vote was to have been cast.

## (6) Chair's decision

The Chair's decision as to whether a Direct Vote is valid is conclusive.

## (7) Attendance by member who has cast a Direct Vote

A person who has cast a Direct Vote is entitled to attend the meeting. The member's attendance cancels the Direct Vote, unless the member instructs the company otherwise.

## (8) Counting of Direct Votes

If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the Chair of the meeting must:

- on a vote by show of hands, exclude each member who has submitted a Direct Vote for, against or abstained the resolution, and
- on a poll, count the votes cast by each member who has submitted a Direct Vote directly for, against or abstained the resolution, by the number of shares held by each member.

## (9) Call for a poll

The Chair of a meeting should call for a poll on a resolution where he or she believes that, having regard to the Direct Votes cast or directed proxies received, the result may differ from that obtained on a show of hands.

## (10) Certificate of Direct Votes cast

The Chair of a meeting must ensure that a certificate signed by the returning officer of Direct Votes received is available at the meeting ahead of any vote being taken.

## 20.7 Poll Procedure

(a) At a general meeting or Annual General Meeting of the Company, a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (1) by the Chair, or
- (2) by at least three (3) Primary Members present in person or by Proxy.

(b) Unless a poll is so demanded a declaration by the Chair 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 shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

(c) A poll on the election of a chair or on the question of an adjournment shall be taken immediately. A poll demanded on a matter other than the election of a chair or the question of an adjournment shall be taken when and in the manner the Chair directs.

## 20.8 Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a second or casting vote, in addition to his or her deliberative vote at his or her discretion.

#### **20.9 Objections to voting**

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any such objection must be referred to the Chair of the meeting, whose decision is final.
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

### **21 PROXIES**

#### **21.1 Right to Appoint Proxies to General Meetings (including Annual General Meetings)**

- (a) Any Primary Member may appoint the Chair, a Director or a Primary Member as his or her Proxy to attend and vote on his or her behalf at a general meeting or Annual General Meeting of the Company.
- (b) A Primary Member may not appoint more than one person to act simultaneously as his or her Proxy to attend and vote on his or her behalf at a general meeting or Annual General Meeting.
- (c) Subject to the terms of their appointment, a person attending as a proxy has all the powers of a member, except where expressly stated to the contrary.

#### **21.2 Revoke Proxy**

A Primary Member may at any time revoke their appointment of any Proxy by notice to that Proxy or by appointing some other eligible Proxy in his or her place.

#### **21.3 Instrument to be in Writing**

An instrument appointing or revoking the appointment of a Proxy must be in writing and signed by the Primary Member making the appointment.

#### **21.4 Form**

- (a) A Proxy may be in any form permitted by the Corporations Act.
- (b) A Proxy may be appointed only for a single meeting, in which case the instrument must specify the day upon which the meeting, at which it is intended to be used, is to be held and shall only entitle the Proxy to attend and vote at the meeting so specified and any postponement or adjournment of it. A Proxy may also be appointed for more than one meeting.
- (c) A document appointing a Proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the

document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.

### **21.5 Notification of Proxy**

- (a) The instrument appointing a Proxy (or, if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority) must be either deposited at the registered office of the Company or such other place within the State as is specified for that purpose in the notice convening the meeting or given to the Secretary not less than forty eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- (b) The Chair of Directors (as elected pursuant to Paragraph 25, or the Deputy Chair as elected pursuant to Paragraph 26 in his or her absence) may in his or her discretion admit an instrument of appointment of a Proxy notwithstanding that it fails to comply strictly with the form set out in Paragraph 21.4.

### **21.6 Incapacity**

A vote given in accordance with the terms of an instrument appointing a Proxy will be valid despite the previous death or unsoundness of mind of the appointor or revocation of the instrument or of the authority under which the instrument was executed providing no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

### **21.7 Validity of Proxies**

A Proxy document is invalid if it is not deposited or produced prior to a meeting or a vote is exercised contrary to the requirements of the document.

## **22 DIRECTORS**

### **22.1 Board**

With the exception of the first Directors of the Company appointed by the original subscribers and subject to the Corporations Act the Board of Directors must consist of no less than seven and no more than ten Directors comprising:

- (a) up to five Member-nominated Directors, and
- (b) such other Board-nominated Directors as appointed or nominated by the Board under Paragraph 22.3, provided that
- (c) Member-nominated Directors must comprise a minimum of 50% of Directors,
- (d) Member-nominated Directors must not all come from the same Health Practitioner professional group as defined by AHPRA



with such appointments to be made at each Annual General Meeting in accordance with Paragraphs 22 and 24, and to the extent any vacancies arise at any other time, in accordance with Paragraph 28.

## **22.2 Member-nominated Directors**

- (a) All Member-nominated Directors must be Primary Members.
- (b) If the number of Member-nominated Directors nominated in accordance with Paragraph 24 is less than 5, the Board may nominate persons to fill the remaining vacancy or vacancies on the ballot referred to in Paragraph 24, with such persons to be considered for election as Member-nominated Directors, provided the person(s) so appointed to fill the vacancy is a Primary Member of the Company and consents to the appointment.

## **22.3 Board-nominated Directors**

- (a) Subject to Paragraph 22.3(b), the Board may, at its sole discretion:
  - nominate up to 5 additional directors of the Company, as Board-nominated Directors to be eligible for election by the Primary Members at the next Annual General Meeting of the Company in accordance with this Constitution.
- (b) Subject to Paragraph 22.1, at no time may the sum of Board-nominated Directors currently holding the office of Director of the Company be greater than 5.
- (c) All Board nominated Directors must be appointed as either an Associate Member or a Primary Member by the conclusion of the next Board meeting following their appointment as a Board-nominated Director. Any Director appointed as an Associate Member following their appointment as a Board-nominated Director may remain an Associate Member, if eligible, when that Director ceases to be a Director.
- (d) All Board-nominated Directors appointed by the Board since the previous Annual General Meeting will come up for election at the Annual General Meeting following their appointment.

## **22.4 Natural Person**

Directors must be natural persons all of whom must ordinarily reside in Australia.

## **22.5 Term of Appointment**

Subject to Paragraphs 27 and 28, all Directors, will hold office until the conclusion of the third Annual General Meeting after the meeting at which they are elected but are eligible for re-election in accordance with this Constitution. The Board has the discretion to vary the term of appointment of Directors within the range of one to three years for the purpose of achieving rolling terms, with at least one Member-nominated and one Board-nominated Director position coming up for election each year. The guiding principle is that the longest serving Director in each category

would come up for election first. If two Directors in the same category have equal tenure the decision will be determined by lot, if required.

## **23 REMUNERATION**

### **23.1 Determination**

The Directors must be paid such remuneration as is from time to time determined by the Company in general meeting.

### **23.2 Accrual**

That remuneration will be deemed to accrue from day to day.

### **23.3 Other Expenses**

The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors, any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.

## **24 ELECTION OF MEMBER-NOMINATED DIRECTORS**

### **24.1 General Election Procedure**

At an Annual General Meeting when an election of Directors is due, the Member-nominated Directors must be elected by the Primary Members of the Company in accordance with the following procedure:

- (a) each Member-nominated Director must be a Primary Member and must be elected by Primary Members of the Company;
- (b) the Company will no less than forty six (46) days prior to the Annual General Meeting call for nomination of Member-nominated Directors;
- (c) any two (2) Primary Members of the Company can nominate any other Primary Member of the Company, to be a Member-nominated Director on the Board;
- (d) the nomination must be in writing and signed by the Primary Member and his proposer and seconder and must be lodged with the Secretary at least thirty five (35) days before the Annual General Meeting at which the election is to take place;
- (e) a list of the candidates in order determined by lot with the proposers' and seconders' names must be posted in a conspicuous place in the registered office of the Company for at least fourteen (14) days immediately preceding the Annual General Meeting;
- (f) balloting lists must be prepared (if necessary) containing the names of the candidates in order determined by lot and each Primary Member may vote for the candidate by either:
  - (1) notifying and appointing his/her Proxy to attend and vote in the manner that such Primary Member instructs the Proxy;

- (2) a postal vote (in the form prescribed by the Directors from time to time) lodged with Secretary at the registered office of the Company at least 48 hours before the commencement of the Annual General Meeting; or
  - (3) by attending the Annual General Meeting and voting personally;
- (g) subject to the Corporations Act, the Company may, by way of Special Resolution of the Company, increase or decrease the number of Member-nominated Directors on the Board.
- (h) notwithstanding the above provisions, if the Board considers it convenient it may hold the ballot for Member-nominated Directors prior to the Annual General Meeting and announce at the Annual General Meeting the result of the ballot. Any such ballot shall be held in such manner as the Board may resolve and announce and this may include a postal ballot involving the use of any technology that the Board permits.

## **25 CHAIR**

- (a) Subject to Paragraphs 27 and 28, the Directors must elect one of their number to be Chair at the Board meeting following the Annual General Meeting of the Company who, subject to Paragraph 25(b), will hold office until the Board meeting following the next Annual General Meeting of the Company. A Chair will be eligible for re-election.
- (b) A Chair may be removed from their office as Chair by Resolution of the Board in relation to which the Chair is not entitled to vote and if a Chair is so removed or the office of Chair otherwise becomes vacant then the Board will elect one (1) of their number to fill that vacancy as replacement Chair until the Board meeting following the next Annual General Meeting.

## **26 DEPUTY CHAIR**

- (a) Subject to Paragraphs 27 and 28, the Directors must elect one (1) of their number to be Deputy Chair at the Board meeting following the Annual General Meeting who, subject to Paragraph 26(b) will hold office until the Board meeting following the next Annual General Meeting of the Company. A Deputy Chair will be eligible for re-election.
- (b) A Deputy Chair may be removed from their office as Deputy Chair by Resolution of the Board in relation to which the Deputy Chair is not entitled to vote and if a Deputy Chair is so removed or the office of Deputy Chair otherwise becomes vacant then the Board will elect one (1) of their number to fill that vacancy as replacement Deputy Chair until the Board meeting following the next Annual General Meeting .

## **27 REMOVAL OF A DIRECTOR**

The Company may, by ordinary resolution of Primary Members of which special notice has been given, remove any Director before the expiration of their period of office and may by an ordinary resolution appoint another Director in their stead. The person so appointed will hold office only until the next following Annual

General Meeting at which an election of Member-nominated Directors is to be held.

## **28 VACANCY IN THE OFFICE OF DIRECTOR**

### **28.1 Board may appoint to fill vacancy**

In the event of a vacancy in the office of a Director (“**Vacancy**”), the Board may appoint a person to fill the Vacancy provided that:

- (a) in the case of a Vacancy of a Member-nominated Director, the person so appointed:
  - (1) is a Primary Member of the Company; and
  - (2) will hold office until the next Annual General Meeting at which an election of Member-nominated Directors is to be held; and
- (b) in the case of a Vacancy of a Board-nominated Director, the Board may, at its sole discretion and subject to Paragraph 22.3, appoint a person to fill the Vacancy and the person so appointed will hold office until the next Annual General Meeting.

### **28.2 Circumstances of vacancy**

The office of a Director of the Board will become vacant if the Director:

- (a) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (b) becomes prohibited from being a Director of a company by reason of an order made under the Corporations Act;
- (c) 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;
- (d) resigns his office by notice in writing to the Company;
- (e) for more than six months is absent without permission of the Board from meetings of the Board held during that period;
- (f) in the case of any Director who has been appointed on the basis that the person is a Primary Member, ceases to be a Primary Member of the Company; or
- (g) is directly or indirectly interested in any contract or proposed contract with the Company which interest has not been disclosed by the Director in accordance with section 191 or section 192 of the Corporations Act.
- (h) ceases to be either a Primary Member or an Associate Member.

## **29 MANAGEMENT POWERS AND DUTIES OF THE BOARD**

The business of the Company shall be managed by the Board who must attend to the payment of all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting; provided that any rule, regulation or by-law of the Company made by

the Board may be disallowed by the Company in general meeting and provided further that no resolution or regulation made by the Company in general meeting will invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.

### **30 POWERS OF THE BOARD**

Subject to Paragraph 29, the Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the Company or any other person. Subject to clause 29, the Board may delegate any of its powers to any person as the Board sees fit.

### **31 INTEREST**

For the purpose of Paragraph 4 of this Constitution, the rate of interest payable for money lent by Members to the Company must not exceed the Reserve Bank of Australia's overnight money market interest rate.

### **32 SIGNING**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) Directors or in such other manner as the Board from time to time determines.

### **33 MINUTES**

#### **33.1 Making minutes**

The Board must cause minutes to be made:

- (a) of all appointments of officers;
- (b) of names of members of the Board present at all meetings of the Company and of the Board; and
- (c) of all proceedings at all meetings of the Company and of the Board.

#### **33.2 Signing minutes**

All minutes must be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next succeeding meeting.

### **34 FINANCIAL LIMITS**

The Company may, in a general meeting, set financial limits for the exercise of all or any of the powers of the Directors set out in this Constitution in which case the Directors must not exercise the powers in a manner which exceeds these financial limits, without the prior approval of the Company in general meeting.

### **35 POWER OF ATTORNEY**

#### **35.1 Appointment**

- (a) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes with such powers and authorities and discretions (being powers,

authorities and discretions vested in or exercisable by the Board), for such period and subject to such conditions as the Board thinks fit.

- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## **36 PROCEEDINGS OF THE BOARD**

### **36.1 Board Meetings**

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit provided that at least two (2) meetings of the Board are held per year.

### **36.2 Requisition for Meeting**

A Director of the Board may at any time and the Secretary must, on the requisition of a Director of the Board, summon a meeting of the Board. Unless all Directors agree otherwise, all Directors must be given at least seven (7) days notice of a Board Meeting, setting out the proposed business of the meeting to be raised and the time and place of the meeting.

### **36.3 Notice of Board Meeting**

Any notice of a meeting of the Board may be given in writing or by facsimile, telegram, email or cable or by telephone or by any other means of communications.

### **36.4 Board Voting**

Subject to this Constitution questions arising at any meeting of the Board will be decided by a majority of votes of Directors present and entitled to vote on any resolution and determination by a majority of such Directors will for all purposes be deemed a determination of the Board.

### **36.5 Equality of Votes**

In case of an equality of votes the Chair of the meeting has a second or casting vote at his or her discretion.

### **36.6 Quorum**

The quorum necessary for the transaction of the business of the Board is 50% of the number of Directors appointed at that time (rounded up if the number is not a whole number).

### **36.7 Vacancy**

The continuing members of the Board may act despite any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of the Board, the continuing member or members may only act for the purpose of increasing the number of members of the Board to that number or of summoning a general meeting of the Company, but for no other purpose.

**36.8 Substitute Chair**

Where a meeting of the Board is held and the Chair (or in the absence of the Chair, the Deputy Chair) is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the Directors present may elect one of their number to be Chair of the meeting.

**36.9 Defect**

All acts done by any meeting of the Board or a sub-committee of the Board or by any persons acting as a Director will, despite that it is afterwards discovered that there was some defect in the appointment of such Director or person acting as aforesaid, or that the Directors or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

**36.10 Participation where Directors interested**

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

**36.11 No disqualification**

36.11.1 Subject to compliance with the Corporations Act, a Director or any entity in which the Director has a direct or indirect interest (as applicable) may:

- (a) Enter into a contract or arrangement with an Associated Party.
- (b) Hold any office or place of profit (other than auditor) in an Associated Party.
- (c) Act in a professional capacity (or be a member of a firm that so acts) other than as auditor of an Associated Party.

36.11.2 Despite the fiduciary nature of a Director's office and the Director's fiduciary obligations:

- (a) Any contract or arrangement entered into in accordance with clause 36.11.1 (a) by the Director or any entity in which the Director has a direct or indirect interest is not invalid or voidable.
- (b) A Director may do any of things specified in clause 36.11.1 without any liability to account to the Company or any other person for any indirect or indirect benefit accruing to the Director or any entity in which the Director has a direct or indirect interest.

**37 DIRECTORS' SIGNED RESOLUTION****37.1 Circular resolutions**

If all Directors except Directors on formal leave of absence have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Directors held on the date and at the time at which the document was last signed by a Director or if the Directors signed the document on different days, on the day on which and at the time at which the document was last signed by the final Director to do so.

### **37.2 Counterparts**

For the purposes of this Constitution two (2) or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

## **38 TELECONFERENCE MEETING OF DIRECTORS**

### **38.1 Modes of Communication**

For the purpose of this Constitution the contemporaneous linking together by telephone, radio, video or other form of instantaneous audio and visual communication of a number of Directors constituting not less than the quorum required for the purpose of this Constitution whether or not one or more of the Directors is outside the Commonwealth of Australia will be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to the meetings of the Directors will apply to such meeting so long as the conditions set out in Paragraph 38.2 are met.

### **38.2 Conditions**

The conditions referred to are that:

- (a) all the Directors for the time being entitled to receive notice of a meeting of the Directors will be entitled to notice of the meeting to be conducted by telephone, radio, video or other form of instantaneous audio or audio and visual communication;
- (b) notice of any such meeting must be given in accordance with Paragraph 45;
- (c) each of the Directors taking part in the meeting may be linked by telephone, radio, video or other form of instantaneous audio or visual communication and must throughout the meeting be able to hear each of the other Directors so taking part;
- (d) at the commencement of the meeting each Director must acknowledge his presence to all the other Directors taking part; and
- (e) if the Secretary is not present at the meeting one of the Directors so present will take minutes of the meeting.

### **38.3 Exit from a meeting**

A Director must not leave a meeting conducted pursuant to this Paragraph 38 by disconnecting his/her telephone, radio, video or other form of



communication unless he has previously obtained the express consent of the Chair of the meeting.

#### **38.4 Contribution to Quorum**

A Director will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone, radio or other form of instantaneous audio or audio and visual communication unless he has previously obtained the express consent of the Chair of the meeting to leave the meeting.

#### **38.5 Minutes**

A minute of the proceedings at a meeting held by telephone, radio, video or instantaneous audio or visual communication will be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified on a correct minute by the Chair of the meeting or by the Secretary if present at the meeting.

### **39 SUB-COMMITTEES**

#### **39.1 Sub-committee powers**

The Board may appoint from among its members sub-committees for any purpose whatever which from time to time it may think desirable and may delegate to any such sub-committee such powers as it may think fit not being duties imposed on the Board as the Directors of the Company by the Corporations Act or the general law.

#### **39.2 Quorum**

Unless otherwise specified in the minute of the Board appointing the sub-committee, the quorum of all sub-committees will consist of a majority of the members of such sub-committee.

#### **39.3 Use of power**

Any sub-committee so formed must in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.

#### **39.4 Advisors**

The Board and any sub-committee may also co-opt advisors who are not Members of the Company but such advisors will have no vote.

#### **39.5 Chair**

A sub-committee may elect a chair of its meetings; if no such person is elected or if at any meeting the elected chair is not present within ten (10) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chair of the meeting.

#### **39.6 Adjournment of meetings**

A sub-committee may meet and adjourn as it thinks proper. Questions arising at any meeting will be determined by a majority of votes of the members of the sub-committee entitled to vote at general meetings of the Company who are present, and in the case of an equality of votes, the chair

in addition to his or her deliberative vote will have a casting vote at his or her discretion.

#### **40 ADVISORY BOARD**

##### **40.1 Appointment of advisory boards**

The Board may appoint one or more advisory boards consisting of such Directors of the Board or Members of the Company as the Board thinks fit. Such advisory boards must act in an advisory capacity only. They must conform to any regulations that may be imposed by the Board and, subject thereto, will have power to co-opt any Member or Members of the Company.

##### **40.2 Consultants**

The Board may appoint a consultant to advise the Board on any matter the Board sees fit. The remuneration of consultants will be determined by the Board.

#### **41 SECRETARY**

The Secretary will, in accordance with the Corporations Act, be appointed by the Board for such term, upon such conditions as it thinks fit, and any secretary so appointed may be removed by the Board by ordinary resolution. Nothing in this Constitution will prevent the Board from appointing a Primary Member of the Company as Secretary and any Primary Member so appointed will immediately become Secretary of the Company.

#### **42 SEAL**

The Board must provide for the safe custody of the seal which may only be used by the authority of the Board or of a sub-committee of members of the Board authorised by the Board in that regard, and every instrument to which the seal is affixed must be signed by a Director and must be countersigned by the Secretary or by a second Director or by some other person appointed by the Board for that purpose.

#### **43 ACCOUNTS**

##### **43.1 Proper Accounting Records**

The Board must cause proper accounting and other records to be kept and will distribute to the Primary Members copies of every profit and loss account and balance-sheet (including every document required by law to be attached to it) accompanied by a copy of the Auditors Report thereon as required by the Corporations Act provided, however, that the Board must cause to be made out and laid before each Annual General Meeting a balance-sheet and profit and loss account made up to a date not more than five months before the date of the meeting.

##### **43.2 Inspection of Records by Members**

Subject to the Corporations Act, the Board must from time to time determine at what times and places under what conditions or regulations

the accounting and other records of the Company will be open to the inspection of Primary Members.

#### **44 AUDIT**

A properly qualified Auditor must be appointed as required by the Corporations Act and may be removed as provided in the Corporations Act. His or their remuneration will be fixed and duties regulated in accordance with the Corporations Act and this Constitution.

#### **45 NOTICES**

##### **45.1 Service**

Without limiting any method of notice permitted by law, a notice may be given by the Company to any Member either by serving on the Member personally or by sending it by post or by electronic means to the Member at his or her registered address, (including email address, fax number or mobile number) or to an address, if any, supplied by the Member to the Company for the giving of notices to such Member. A notice may direct a person to information on a webpage.

##### **45.2 Receipt**

(a) Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected:

- (1) in the case of a notice of a meeting, on the day after the date of its posting; and
- (2) in any other case, on the third (seventh, if sent outside the country in which the notice is posted) business day after the date of posting.

(b) If a notice is sent by fax, it will be taken to be received by the recipient:

- (1) on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the fax number of the recipient; and
- (2) if the time of dispatch of a facsimile is not on a business day, or is after 5.00 pm (local time) on a business day, it will be taken to have been received at the commencement of business on the next business day.

(c) If a notice is sent by electronic means, it will be taken to be received by the recipient:

- (1) on the date of sending, providing the sender does not receive an error message which indicates that the notice sent by electronic means was not delivered; and
- (2) if the time of dispatch of a notice sent by electronic means is not on a business day, or is after 5.00 pm (local time) on a business day, it will be taken to have been received at the commencement of business on the next business day.

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

Notice of every general meeting must be given in any manner hereinbefore authorised to:

- (a) every Member; and
- (b) the Auditor or Auditors for the time being of the Company.

### **45.4 Entitlement to Notice**

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

## **46 INDEMNITY**

### **46.1 Indemnity**

- (a) To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been a Director or a Secretary of the Company (Officer) against any liability (other than for legal costs) incurred by that person as an Officer of the Company (including liabilities incurred by the Officer as an Officer of a subsidiary of the Company where the Company requested the Officer to accept that appointment).
- (b) To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an Officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred or allegedly incurred by that person as an Officer of the Company (including such legal costs incurred by the Officer as an Officer of a subsidiary of the Company where the Company requested the Officer to accept that appointment).
- (c) The amount of any indemnity payable under clauses 46.1(a) or 46.1(b) will include an additional amount (GST Amount) equal to any GST payable by the Officer being indemnified (Indemnified Officer) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- (d) The Board may agree to advance to an Officer an amount which it might otherwise be liable to pay to the Officer under clause 46.1(a) on such terms as the Board thinks fit but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Company is in fact liable to indemnify the Officer under clause 46.1(a). If after the Company makes the advance, the Board forms the view that the Company is not liable to indemnify the Officer, the Company may recover any advance from the Officer as a debt due by the Officer to the Company.

- (e) This clause 46.1 does not exclude or limit any other powers the Company may have, including powers to grant indemnities to any person, including Officers.

#### **46.2 Insurance**

- (a) To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company shall enter into or agree to enter into a contract of insurance, and pay or agree to pay premiums for, under or in respect of a contract of insurance, insuring a person who is or has been:
- (1) an “officer” of the Company (as that term is defined in the Corporations Act); or
  - (2) an employee of the Company,
- against liability incurred by the person in that capacity, including a liability for legal costs.
- (b) This clause 46.2 does not exclude or limit any other powers the Company may have, including powers to enter into or agree to enter into, or pay or agree to pay premiums for, under or in respect of, contracts of insurance of any kind or insuring any person, including the persons referred to in clauses 46.2(a)(1) and (2).

#### **46.3 Deeds of access, insurance and indemnity**

- (a) To the extent permitted by law and subject to the restrictions in sections 199A and 199B of the Corporations Act, the Company may enter into deeds or agreements of access, indemnity and insurance with any person on such terms as the Board thinks fit.
- (b) This clause 46.3 does not exclude or limit any other powers the Company may have to enter into contracts of any kind with any person.

### **47 GIFT FUND REQUIREMENTS**

#### **47.1 Company to maintain a Gift Fund**

The Company must maintain a Gift Fund in accordance with this clause 47 for so long as it seeks or has obtained endorsement as a DGR from the Australian Taxation Office, or the Company is named as a DGR in ITAA 97.

#### **47.2 Rules Applying to the Gift Fund**

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

47.2.1 The Gift Fund must have a name.

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

47.2.3 The Company must maintain a separate bank account for the Gift Fund or be able to distinguish in its accounts the receipt and expense of these funds

47.2.4 The following must be credited to the Gift Fund:

- (a) all Gifts of money or property to the Company for the Principal Purpose; and
- (b) all money or property received by the Company because of those gifts.

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

47.2.6 The Company must use any gifts, money or property of the kind referred to in clause 47.2.4 only for the Principal Purpose.

### **47.3 Winding up of Gift Fund**

Despite clause 48, if the Gift Fund is wound up or the Company ceases to be a DGR for any reason, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made. For the avoidance of doubt, if a Gift Fund operated by the Company is wound up but the Company remains a DGR and operates any other gift fund in accordance with this clause 47, any surplus assets of the Gift Fund that is being wound up may be transferred to any other gift fund operated by the Company.

## **48**

### **SURPLUS ASSETS ON WINDING UP OR DISSOLUTION**

Subject always to clause 47.3, upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities will not be paid to or distributed to Members, but will be given or transferred to some other institution or company which satisfies both of the following requirements:

- (a) It has objects similar to the Company; and
- (b) Its constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 4.

This is to be determined by the Members at or before the time of winding up or the dissolution of the Company and, in default of any determination, by the Supreme Court of the State or Territory in which the Office is located.