

Constitution of Hunter Primary Care Limited

ACN 061 783 015

A company limited by guarantee

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Constitution of Hunter Primary Care Limited

Date: 14 November 2023

Preliminary

1 Name of the Company

The name of the company is Hunter Primary Care Limited.

2 Type of Company

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3 Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4 The guarantee

Each member must contribute an amount not more than \$20 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. This contribution is required to pay for any:

- (a) debts and liabilities of the Company incurred before the member stopped being a member; or
- (b) costs of winding up.

5 Definitions

In this constitution, words and phrases have the meaning set out in clauses 79 and 81.

Charitable purposes and powers

6 Object

6.1 The Company is established to be a health promotion charity with the primary object of promoting the prevention or control of diseases in human beings.

6.2 In carrying out the Company's primary object, the Company will undertake the following activities:

- (a) provide primary and allied health care services to support health, well-being and better community health outcomes;
- (b) facilitate access to primary and allied health services after hours and in regional, rural and remote locations;
- (c) develop programs and services that support people with particular health needs including children and young persons, older persons,

persons living with disabilities and persons with mental health challenges;

- (d) develop programs and services that are specifically directed for the benefit of Aboriginal and Torres Strait Islander peoples, LGBTIQ+ people, people from culturally and linguistically diverse backgrounds and socially disadvantaged people;
- (e) facilitate activities supporting education, illness prevention, health promotion and professional development opportunities in primary and allied health;
- (f) improve the efficiency and effectiveness of primary and allied health services through research and innovation;
- (g) procure funding for the purpose of facilitating the objects set out in (a) to (f) above;
- (h) engage in trading activities which generate revenue for the purpose of facilitating the activities set out in (a) to (f) above; and
- (i) do all such acts as are incidental and conducive to the furtherance of the objects in this clause.

7 Powers

Subject to clause 8, the Company has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

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

8 Not-for-profit

8.1 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 77.

8.2 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:

- (a) 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
- (b) making a payment to a member in carrying out the Company's charitable purpose(s).

9 Amending the constitution

9.1 Subject to clause 9.2, the members may amend this constitution by passing a Special Resolution.

9.2 The members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

Members

10 Membership and register of members

- 10.1 The members of the Company are:
- (a) Initial Members; and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 10.2 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member whether the member is a Primary Member or an Associate Member:
 - (i) name;
 - (ii) address;
 - (iii) an electronic address (for the service of notices);
 - (iv) a mobile phone number nominated by the member (including for the purpose of facilitating electronic voting); and
 - (v) the date the member was entered on to the register.
 - (b) for each person who stopped being a member in the last seven years:
 - (i) name;
 - (ii) address;
 - (iii) an electronic address (for the service of notices);
 - (iv) a mobile phone number; and
 - (v) the dates the membership started and ended.
- 10.3 The Company must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11 Who can be a member

- 11.1 A person who meets the eligibility criteria to be a Primary Member or an Associate Member (as set out in clause 12) is eligible to apply to be a member of the Company under clause 15.
- 11.2 In this clause, “person” means an individual or incorporated body.

12 Categories of membership

- 12.1 The Company shall have the following membership categories:
- (a) Primary Member - being any person being a Primary Health Care Clinician, or such other person working in Primary Health Care as is approved by the directors; or

- (b) Associate Member – being any person wishing to support the aims and objects of the Company (whether being a Primary Health Care Clinician or not)

13 Rights of Primary Members

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

14 Rights of Associate Members

An Associate Member shall have the right to attend and speak at, but not to vote at, General Meetings.

15 How to apply to become a member

- 15.1 A person (as defined in clause 11.2) may apply to become either a Primary Member or an Associate Member of the Company by writing to the secretary stating that they:

- (a) want to become either a Primary Member or an Associate 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 4 if required.

- 15.2 Applications for membership of the Company shall be in the form prescribed by the directors, if any.

16 Directors decide whether to approve membership

- 16.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.

- 16.2 If the directors approve an application, the secretary must as soon as possible:

- (a) enter the new member on the register of members; and
- (b) write to the applicant to tell them that their application was approved and the date that their membership started (see clause 17).

- 16.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

- 16.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 15.1(a), 15.1(b) or 15.1(c). In that case, by applying to be a member, the applicant agrees to those three matters.

17 Membership fees

- 17.1 Subject to clause 17.2, a member must pay such annual subscriptions as the directors may determine from time to time.

- 17.2 The directors are empowered to set subscriptions and application fees and the mode of payment of such fees, in such manner as they may think fit.

18 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.

19 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 (in the case of an incorporated member);
- (c) resign, by writing to the secretary;
- (d) are expelled under clause 22;
- (e) no longer fulfil any of the requirements of membership and in the case of a Primary Member, is no longer registered and working as a Primary Health Care Clinician;
- (f) has not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member;
- (g) has not provided, within three months of receiving a written request from the secretary, any of the particulars set out in clause 10.2(a) and the directors have agreed to the cancellation of the membership;
- (h) has not paid its annual subscription fee within 3 months of such amounts falling due; or
- (i) do not consent to, or withdraw their consent to, receive notice, including but not limited to a notice of General Meeting, from the Company electronically.

20 Representatives of members that are incorporated bodies

- 20.1 A member that is an incorporated body may appoint one individual to represent the member and exercise all rights that apply to the member.
- 20.2 The appointment of a representative by a member must:
- (a) be in writing;
 - (b) include the name of the representative;
 - (c) be signed on behalf of the member; and
 - (d) be given to the Company.
- 20.3 A representative has all the rights of the member that appointed them.
- 20.4 The appointment of a representative may be standing.

Dispute resolution and disciplinary procedures

21 Dispute resolution

- 21.1 The dispute resolution procedure in this clause applies to disputes under this constitution between a member or director and:
- (a) one or more members;
 - (b) one or more directors; or
 - (c) the Company.
- 21.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 22 until the disciplinary procedure is completed.
- 21.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 21.4 If those involved in the dispute do not resolve it under clause 21.3, they must within 10 days:
- (a) tell the directors about the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 21.5 The mediator must be chosen:
- (a) by agreement of those involved; or
 - (b) by the following, where those involved do not agree:
 - (i) for disputes between members, the directors; or
 - (ii) for all other disputes, either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the Law Society of New South Wales.
- 21.6 A mediator chosen by the directors under clause 21.5(b)(i):
- (a) may be a member or former member of the Company;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 21.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.

22 Disciplining members

- 22.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:
- (a) the member has breached this constitution; or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 22.2 At least 14 days before the directors' meeting at which a resolution under clause 22.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member;
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
 - (c) what the member is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 22.3 Before the directors pass any resolution under clause 22.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting; and/or
 - (b) speaking at the meeting.
- 22.4 After considering any explanation under clause 22.3, the directors may:
- (a) take no further action;
 - (b) warn the member;
 - (c) suspend the member's rights as a member for a period of no more than 12 months;
 - (d) expel the member;
 - (e) 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
 - (f) require the matter to be determined at a General Meeting.
- 22.5 The directors cannot fine a member.
- 22.6 The secretary must give written notice to the member of the decision under clause 22.4 as soon as possible.
- 22.7 Disciplinary procedures must be completed as soon as reasonably practical.

- 22.8 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.

General Meetings of members

23 General meetings called by directors

- 23.1 The directors may call a General Meeting.
- 23.2 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:
- (a) within 21 days of the members' request, give all members notice of a General Meeting; and
 - (b) hold the General Meeting within two months of the members' request.
- 23.3 The percentage of votes that members have (in clause 23.2) is to be calculated as at midnight before the members request the meeting.
- 23.4 The members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the Company.
- 23.5 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.

24 General meetings called by members

- 24.1 If the directors do not call the meeting within 21 days of being requested under clause 23.2, 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- 24.2 To call and hold a meeting under clause 24.1 the members must:
- (a) as far as possible, follow the procedures for General Meetings set out in this constitution;
 - (b) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost; and
 - (c) hold the General Meeting within three months after the request was given to the Company.
- 24.3 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.

25 Annual General Meeting

- 25.1 The Annual General Meeting must be held:
- (a) within 18 months after registration of the Company; and

- (b) after the first Annual General Meeting, at least once in every calendar year.
- 25.2 Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:
 - (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) an auditor's report;
 - (d) the election of directors; and
 - (e) the appointment and payment of auditors, if any.
- 25.3 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.
- 25.4 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.

26 Notice of General Meetings

- 26.1 Notice of a General Meeting must be given to:
 - (a) each member entitled to vote at the meeting;
 - (b) each director; and
 - (c) the auditor (if any).
- 26.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 26.3 Subject to clause 26.4, notice of a meeting may be provided less than 21 days before the meeting if:
 - (a) for an Annual General Meeting, all the members entitled to attend and vote at the Annual General Meeting agree beforehand; or
 - (b) for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 26.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 26.5 Notice of a General Meeting must include:
 - (a) 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);
 - (b) the general nature of the meeting's business;

- (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - (i) the proxy does not need to be a member of the Company;
 - (ii) the proxy form must be delivered to the Company at its registered address or an alternative address (including an electronic address), which must be specified in the statement; and
 - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 26.6 If a General Meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

27 Quorum at General Meetings

- 27.1 For a General Meeting to be held, at least 8 Primary Members, at least one of whom must be a director (a **quorum**) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 27.2 No business may be conducted at a General Meeting if a quorum is not present.
- 27.3 If 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:
- (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 27.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

28 Auditor's right to attend meetings

- 28.1 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.
- 28.2 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.

29 Using technology to hold meetings

- 29.1 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.

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

30 Chairperson for General Meetings

- 30.1 The Elected Chairperson will chair General Meetings, subject to clauses 30.2 and 30.3.
- 30.2 Subject to clause 30.3, the Elected Deputy Chairperson will chair General Meetings if the Elected Chairperson is:
- (a) not present within 30 minutes after the starting time set for the meeting; or
 - (b) present but says they do not wish to act as chairperson of the meeting.
- 30.3 If both the Elected Chairperson and Elected Deputy Chairperson are not present within 30 minutes after the starting time set for the meeting, or do not wish to act as chairperson for the meeting, then the Members Present and entitled to vote at a General Meeting may choose another director or member to be the chairperson for that meeting.

31 Role of the chairperson

- 31.1 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)).
- 31.2 In the case of an equality of votes, the chairperson does not have a casting vote.

32 Adjournment of meetings

- 32.1 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.
- 32.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

33 Members' resolutions and statements

- 33.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a General Meeting (**Members' Resolution**); and/or
 - (b) 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**).
- 33.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

- 33.3 A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the members making the request.
- 33.4 Separate copies of a document setting out a notice or a request may be signed by members if the wording is the same in each copy.
- 33.5 The percentage of votes that members have (as described in clause 33.1) is to be calculated as at midnight before the request or notice is given to the Company.
- 33.6 If the Company has been given notice of a Members' Resolution under clause 33.1(a) the resolution must be considered at the next General Meeting held no more than two months after the notice is given.
- 33.7 This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

34 Company to distribute Members' Resolution or Members' Statement

- 34.1 If the Company has been given a notice or request under clause 33:
- (a) in time to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, it must do so at the Company's cost; or
 - (b) too late to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, then the members that proposed the Members' Resolution or made the Members' Statement must pay the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement. However, the members may subsequently pass a resolution at a General Meeting for the Company to pay these expenses.
- 34.2 The Company does not need to send the notice of Members' Resolution or a copy of the Members' Statement to members if:
- (a) it is more than 1,000 words long;
 - (b) the directors consider it may be defamatory;
 - (c) clause 34.1(b) applies, and the members that proposed the Members' Resolution or made the Members' Statement have not paid the Company enough money to cover the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement; or
 - (d) in the case of a 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.

35 Circular Resolutions of members

- 35.1 Subject to clause 35.3, the directors may put a resolution to the members to pass a Circular Resolution.

- 35.2 The directors must notify the auditor (if any) as soon as possible that a Circular Resolution has or will be put to members and set out the wording of the resolution.
- 35.3 Circular Resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director;
 - (b) for passing a Special Resolution; or
 - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 35.4 A Circular Resolution is passed if all the members entitled to vote on the resolution sign or agree to the Circular Resolution, in the manner set out in clause 35.5 or clause 35.6.
- 35.5 Members may sign:
- (a) a single document setting out the Circular Resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 35.6 The Company may send a Circular Resolution by email to members and members may agree by sending a reply email to that effect.

Voting at General Meetings

36 How many votes a member has

- 36.1 Each Primary Member has one vote.
- 36.2 Associate Members do not have the right to vote at General Meetings.

37 Challenge to member's right to vote

- 37.1 A member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 37.2 If a challenge is made under clause 37.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

38 How voting is carried out

- 38.1 Voting must be conducted and decided by the chairperson and must be by:
- (a) a show of hands;
 - (b) a vote in writing; or
 - (c) another method that is fair and reasonable in the circumstances, including by using any suitable technology.
- 38.2 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.

- 38.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 38.4 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.

39 When and how a vote in writing must be held

- 39.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five Members Present and entitled to vote;
 - (b) Members Present and entitled to vote with at least 5% of the votes that may be passed on the resolution on the vote in writing (calculated as at the midnight before the vote in writing is demanded); or
 - (c) the chairperson.
- 39.2 A vote in writing must be taken when and how the chairperson directs, unless clause 39.3 applies.
- 39.3 A vote in writing must be held immediately if it is:
- (a) for the election of a chairperson under clause 30.3; or
 - (b) to decide whether to adjourn the meeting.
- 39.4 A demand for a vote in writing may be withdrawn.

40 Appointment of proxy

- 40.1 A Primary Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 40.2 A proxy does not need to be a member.
- 40.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
 - (b) vote (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 39.1.
- 40.4 An appointment of proxy (proxy form) must be signed by the Primary Member appointing the proxy and must contain:
- (a) the Primary Member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 40.5 A proxy appointment may be standing.

- 40.6 Proxy forms must be received by the Company at the Company's registered address or an alternative address (as stated in the notice of General Meeting in accordance with clause 26.5(d)(ii)) at least 48 hours before a meeting.
- 40.7 A proxy does not have the authority to speak and vote for a Primary Member at a meeting while the Primary Member is at the meeting.
- 40.8 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 Primary Member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 40.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

41 Voting by proxy

- 41.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Primary Member appointed as a proxy from voting as a Primary Member on a show of hands).
- 41.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a Primary Member or holds more than one proxy, may cast the votes held in different ways.

Directors

42 Number of directors

- (a) The Company must have at least 7 and no more than 10 directors comprising; up to 5 Member-nominated Directors, and
 - (b) subject to clause 42.1, such other Board-nominated Directors as nominated by the directors under clause 44.
- 42.1 Member-nominated Directors must comprise a minimum of 50% of directors.

43 Member-nominated Directors

- 43.1 Member-nominated Directors must not all come from the same Health Practitioner professional group (as defined by AHPRA).
- 43.2 All Member-nominated Directors must be Primary Members.

43.3 The procedure for appointment and election of Member-nominated Directors is set out in clause 45.

43.4 If there is a need to fill a casual vacancy for a Member-nominated Director position in any one year, the directors may nominate a person to fill the position who is a Primary Member of the Company provided that the person nominated meets the eligibility criteria for election as a Member-nominated Director as set out in clause 45.1(b)(i) and 45.1(b)(ii).

44 Board-nominated Directors

44.1 Subject to clause 44.3, the directors may, at their sole discretion, nominate and appoint up to 5 additional directors of the Company, as Board-nominated Directors.

44.2 A person is eligible for nomination as a Board-nominated Director if they:

- (a) have given the Company their signed consent to act as a director of the Company; and
- (b) are not ineligible to be a director under the Corporations Act or the ACNC Act.

44.3 All Board-nominated Directors must be appointed as either an Associate Member or a Primary Member by the conclusion of the next directors' 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 subject to clause 19.

44.4 All Board-nominated Directors appointed by the directors since the previous Annual General Meeting shall have their appointments confirmed by Primary Members at the Annual General Meeting following their appointment.

45 Election of Member-nominated Directors

45.1 At an Annual General Meeting when an election of directors is due, any available positions arising in respect of 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) a Primary Member is eligible for election as a Member-nominated Director if they:
 - (i) have given the Company their signed consent to act as a director of the Company; and
 - (ii) are not ineligible to be a director under the Corporations Act or the ACNC Act;
- (c) the Company will no less than 46 days prior to the Annual General Meeting call for nomination of Member-nominated Directors to fill the available positions;

- (d) any 2 Primary Members of the Company can nominate any other Primary Member of the Company, to be a Member-nominated Director;
 - (e) 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 35 days before the Annual General Meeting at which the election is to take place;
 - (f) a list of the candidates in order determined by lot with the proposers' and seconders' names must be emailed to all members at least 14 days prior to the Annual General Meeting;
 - (g) 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:
 - (i) notifying and appointing his/her proxy to attend and vote in the manner that such Primary Member instructs the proxy; or
 - (ii) a 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
- 45.2 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.
- 45.3 Notwithstanding the above provisions, if the directors consider it convenient they may hold the ballot for Member-nominated Directors prior to the Annual General Meeting solely in accordance with clause 45.1(g)(ii) (meaning that no votes for the appointment of Member-nominated Directors may be cast in person or by proxy at 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 directors may otherwise resolve and announce and this may include a ballot involving the use of any technology that the directors permits.

46 Casual vacancies

- 46.1 Any Member-nominated Director appointed to fill a casual vacancy under clause 43.4 shall hold office until the next Annual General Meeting.

47 Election of chairperson

- 47.1 The directors must elect a director as the Company's Elected Chairperson at the directors' meeting following the Annual General Meeting of the Company who, subject to clause 47.2 will hold office until the directors' meeting following the next Annual General Meeting of the Company. The Elected Chairperson will be eligible for re-election.
- 47.2 The Elected Chairperson may be removed from their office as Elected Chairperson by directors' resolution. The Elected Chairperson is not entitled to vote on the resolution. In such circumstances, the office of Elected

Chairperson becomes vacant and the directors must elect one of their number to fill that vacancy until the directors' meeting following the next Annual General Meeting.

48 Election of deputy chairperson

- 48.1 The directors must elect one of their number as the Company's Elected Deputy Chairperson at the directors' meeting following the Annual General Meeting who, subject to clause 48.2, will hold office until the directors' meeting following the next Annual General Meeting of the Company. The Elected Deputy Chairperson will be eligible for re-election.
- 48.2 The Elected Deputy Chairperson may be removed from their office as Elected Deputy Chairperson by directors' resolution. The Elected Deputy Chairperson is not entitled to vote on the resolution. In such circumstances the office of Elected Deputy Chairperson becomes vacant and the directors must elect one of their number to fill that vacancy until the directors' meeting following the next Annual General Meeting.

49 Term of office

- 49.1 Subject to clause 50, 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 directors have 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. 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.
- 49.2 At each Annual General Meeting any director appointed by the directors to fill a casual vacancy or as an additional director must retire.
- 49.3 A director who has held office for a continuous period of 12 years or more may only be re-appointed or re-elected by a Special Resolution.

50 When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the Company;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the Company;
- (e) are absent for three consecutive directors' meetings without approval from the directors; or
- (f) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act.

Powers of directors

51 Powers of directors

- 51.1 The directors are responsible for managing and directing the activities of the Company to achieve the purpose(s) set out in clause 6.
- 51.2 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.
- 51.3 The directors must decide on the responsible financial management of the Company including:
 - (a) any suitable written delegations of power under clause 52; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 51.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a Members' Resolution at a General Meeting.
- 51.5 If the number of directors is reduced to fewer than seven 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 seven (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.
- 51.6 All acts done at any meeting of directors or by any person acting as a director will be valid as if every such person has been duly appointed and every director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or that any director was disqualified or not entitled to vote.

52 Delegation of directors' powers

- 52.1 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.
- 52.2 The delegation must be recorded in the Company's minute book.

53 Payments to directors

- 53.1 The directors may be paid such remuneration as is from time to time determined by the Company at a General Meeting. The Company may also:
 - (a) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- 53.2 Any payment made under clause 53.1 must be approved by the directors.

- 53.3 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

54 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.

Duties of directors

55 Duties of directors

The directors must comply with their duties as directors under legislation and common 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 6;
- (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 56;
- (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.

56 Conflicts of interest

- 56.1 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):
- (a) to the other directors; or
 - (b) 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.
- 56.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 56.3 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 clause 56.4:
- (a) be present at the meeting while the matter is being discussed; or

- (b) vote on the matter.

56.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the Company, and the other members have the same interest;
- (b) 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 74);
- (c) their interest relates to a payment by the Company under clause 73, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) 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
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

57 When the directors meet

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

58 Calling directors' meetings

58.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

58.2 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.

59 Chairperson for directors' meetings

59.1 The Elected Chairperson will chair directors' meetings, subject to clause 59.2 and 59.3.

59.2 Subject to clause 59.3, the Elected Deputy Chairperson will chair directors' meetings if the Elected Chairperson is:

- (a) not present within 30 minutes after the starting time set for the meeting; or
- (b) present but does not want to act as chairperson of the meeting.

59.3 If both the Elected Chairperson and the Elected Deputy Chairperson are not present within 30 minutes after the starting time set for the meeting, or do not

wish to act as chairperson for the meeting, then the directors at a directors' meeting may choose another director to be the chairperson for that meeting.

60 Quorum at directors' meetings

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

61 Using technology to hold directors' meetings

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

62 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.

63 Circular Resolutions of directors

- 63.1 The directors may pass a Circular Resolution.
- 63.2 A Circular Resolution is passed if all the directors entitled to vote on the resolution, except directors on formal leave of absence, sign or otherwise agree to the resolution in the manner set out in clause 63.3 or clause 63.4.
- 63.3 Each director may sign:
 - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 63.4 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.
- 63.5 A Circular Resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 63.3 or clause 63.4.

Secretary

64 Appointment and role of secretary

- 64.1 The Company must have at least one secretary, who may also be a director.
- 64.2 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.

- 64.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 64.4 The role of the secretary includes (but is not limited to):
- (a) maintaining a register of the Company's members; and
 - (b) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and Circular Resolutions.

Minutes and records

65 Minutes and records

- 65.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of General Meetings;
 - (b) minutes of Circular Resolutions of members;
 - (c) a copy of a notice of each General Meeting; and
 - (d) a copy of a Members' Statement distributed to members under clause 34.
- 65.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
 - (b) Circular Resolutions of directors.
- 65.3 To allow members to inspect the Company's records:
- (a) the Company must give a member access to the records set out in clause 65.1; and
 - (b) the directors may authorise a member to inspect other records of the Company, including records referred to in clause 65.2 and clause 66.1.
- 65.4 The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
 - (b) the chairperson of the next meeting.
- 65.5 The directors must ensure that a record of a Circular Resolution is signed by a director within a reasonable time after the resolution is passed.

66 Financial and related records

- 66.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) enable true and fair financial statements to be prepared and to be audited.

- 66.2 The Company must retain its financial records for at least seven years after completion of the transaction to which the record relates.
- 66.3 The Company must also keep written records that correctly record its operations.

By-laws

67 By-laws

- 67.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 67.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

68 What is notice

- 68.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 69 to 71, unless specified otherwise.
- 68.2 Clauses 69 to 71 do not apply to a proxy form under clause 40.6.

69 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 an alternative address notified by the Company to the members as the Company's alternative address;
- (c) sending it to an electronic address notified by the Company to the members as the Company's electronic address; or
- (d) sending it to the fax number notified by the Company to the members as the Company's fax number.

70 Notice to members

- 70.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (c) sending it to an electronic address nominated by the member as an alternative address for service of notices (if any);
 - (d) sending it to the fax number nominated by the member as an alternative address for services of notices (if any); or

- (e) if agreed to by the member, by notifying the member at an electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 70.2 If the Company does not have an electronic address for the member, the Company is not required to give notice in person.

71 When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 70.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

72 Company's financial year

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

Indemnity, insurance and access

73 Indemnity

- 73.1 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, expenses and charges) incurred by that person as an officer of the Company.
- 73.2 In this clause, "officer" means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 73.3 In this clause, "to the relevant extent" means:
- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
 - (b) 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).
- 73.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

74 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.

75 Directors' access to documents

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

Winding up

76 Surplus Assets not to be distributed to members

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 77.1.

77 Distribution of Surplus Assets

- 77.1 Subject to the Corporations Act, any other applicable legislation and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6;
 - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company; and
 - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth) or other applicable law.
- 77.2 If the Company is not a deductible gift recipient when it is wound up, the Company does not need to comply with clause 77.1(c).
- 77.3 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.

Revocation of deductible gift recipient endorsement

78 Revocation of the Company's deductible gift recipient endorsement

- 78.1 If the Company's endorsement of the Company as a deductible gift recipient is revoked (whether or not the Company is to be wound up or dissolved) any surplus of the following assets must be transferred to one or more charities

that meet the requirements of clauses 77.1(a) to 77.1(c) as decided by the directors:

- (a) gifts of money or property for the principal purposes of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (c) money received by the Company because of such gifts and contributions which are unspent.

Definitions and interpretation

79 Definitions

In this constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

AHPRA means the Australian Health Practitioners Regulation Agency established by the Health Practitioner Regulation National Law (NSW).

Annual General Meeting means the General Meeting held annually pursuant to clause 25.1.

Associate Member means a person that meets the requirements set out at clause 12.1(b) who is granted membership of the Company as an Associate Member and is registered on the Company's register as an Associate Member.

Board-Nominated Director means a director nominated by the directors of the Company in accordance with clause 44.

Circular Resolution means a resolution of members or directors passed without a meeting being held in the manner outlined in clause 35 (for members' resolutions) or clause 63 (for directors' resolutions).

Company means the company referred to in clause 1.

Corporations Act means the *Corporations Act 2001* (Cth).

Elected Chairperson means a person elected by the directors to be the Company's chairperson under clause 47.

Elected Deputy Chairperson means a person elected by the directors to be the Company's deputy chairperson under clause 48.

General Meeting means a meeting of members.

Initial Member means a person who is named in the application for registration of the Company, with their consent, as a proposed member of the Company.

Member-nominated Director means a director nominated by the Primary Members in accordance with clause 43 and elected in accordance with clause 45.

Members Present means, in connection with a General Meeting, each member present in person, by representative or by proxy at the venue or venues for the meeting.

Members' Resolution has the meaning given to that term in clause 33.1(a).

Members' Statement has the meaning given to that term in clause 33.1(b).

Primary Health Care means socially appropriate, universally accessible, scientifically sound, first level care provided by health services and systems with a suitable trained workforce comprised of multi-disciplinary teams supported by integrated referral systems in a way that:

- (a) gives priority to those most in need and addresses health inequalities;
- (b) maximises community and individual self-reliance, participation and control; and
- (c) involves collaboration and partnership with other sectors to promote public health.

Primary Health Care Clinician means a clinician delivering Primary Health Care services who has registration as a health practitioner with the Australian Health Practitioner Regulation Agency.

Primary Member means a person that meets the requirements set out at clause 12.1(a) and who is granted membership of the Company as a Primary Member and is registered on the Company's register as a Primary Member.

Special Resolution means a resolution:

- (a) of which notice has been given under clause 26.5(c); and
- (b) that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution.

Surplus Assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

80 Reading this constitution with the Corporations Act

80.1 The replaceable rules set out in the Corporations Act do not apply to the Company.

80.2 While the Company is registered as a charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.

80.3 If the Company is not registered as a charity, the Corporations Act overrides any clause in this constitution which is inconsistent with the Corporations Act.

80.4 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.

81 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).