

Constitution

Merri Community Health Services Limited
A Company Limited by Guarantee

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Constitution

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Constitution

1 Definitions and interpretation

1.1 Definitions

In this Constitution unless the contrary intention appears:

Alternate Director means a person appointed as an alternate director under article 10.8.

Auditor means a person appointed under article 13 as an auditor of the Company.

Board Meeting means a meeting of the board of Directors.

Chair means the chairperson of a General Meeting or of a Board Meeting.

Charitable Fundraising Legislation means the *Fundraising Appeals Act 1998* (Vic), the *Patriotic Funds Act 1958* (Vic) and corresponding legislation in other Australian States and Territories.

Chief Executive Officer means a person appointed as an executive Director under article 11.

Committee means a committee of Directors constituted under article 9.6.

Company means Merri Community Health Services Limited.

Constitution means this Constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

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

Director means a person holding office as a Director, and where appropriate includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Financial Year means the period from 1 July to 30 June.

General Meeting means an annual general meeting or a special general meeting of the Company.

Health Services Act means the *Health Services Act 1988* (Vic).

Member means a person entered in the register of Members as a member of the Company.

Principal Objects has the meaning given in article 2.2.

Registered Office means the registered office of the Company.

Representative means a person appointed to represent a corporate Member at a General Meeting in accordance with the Corporations Act.

Secretary means a person appointed under article 12 as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Specialist Directors means each and any of the three Directors appointed by the board of Directors in accordance with article 8.4.

Standard Conditions of Funding means the conditions imposed by the Victorian Department of Human Services (or its replacement) as standard conditions of funding applying to all registered funded agencies.

Tax Act means the Income Tax Assessment Act 1997 (Cth).

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(meaning not limited)** a reference to the words “include”, “including”, “for example” or “such as”, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (e) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (f) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (g) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in General Meeting or a Member may be exercised at any time and from time to time;
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;

- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (j) **(currency)** a reference to \$ is a reference to the lawful currency of Australia.

1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (b) in the case of a conflict between the Constitution Rule and the Corporations Act, the Corporations Act prevails to the extent of the conflict; and
- (c) “section” means a section of the Corporations Act.

1.4 Headings and articles

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into articles as indicated by its Contents.

1.5 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2 Objects and purposes of Company

2.1 Charitable purpose

The Company may only pursue charitable purposes associated with its objects, and must do so predominantly in Australia.

2.2 Principal Objects

The principal objects of the Company are to meet the health and welfare needs of individuals by:

- (a) using a social model of health which recognises the needs of individuals who cannot readily access the health and welfare system;
- (b) focussing on individuals who have complex health care needs, in particular those who are frail, aged, youth, disabled or mentally ill;
- (c) giving priority to individuals who, aside from illness, are suffering from distress, misfortune, helplessness or poverty; and

- (d) providing these services in a culturally appropriate, effective and empowering manner.

2.3 Further Objects

In furtherance of the Principal Objects described in article 2.2, the further objects of the Company are to:

- (a) directly provide and facilitate the provision of a range of health, welfare and support services to individuals;
- (b) assess the needs of individuals and to develop and implement care plans to meet individual and carer needs;
- (c) co-ordinate, implement and monitor the quality and effectiveness of care provided to individuals and modify as appropriate; and
- (d) directly provide a range of community-based services to individuals.

2.4 Guiding Principles

The guiding principles for which the Company is established are outlined in Appendix 1.

2.5 Powers

In order to further the purposes set out above, the Company has the general powers given by the Corporations Act and, in addition, has the following specific powers to:

- (a) enter into arrangements with any government, authority or agency including local government, that are incidental or conducive to the attainment of the purposes of the Company set out in article 2;
- (b) tender for services and seek grants from local, state and Commonwealth governments or private and public health service providers;
- (c) appoint, employ, remove or suspend such employees as may be necessary or convenient for the purposes of the Company;
- (d) undertake commercial activities for the purpose of raising funds to undertake the Principal Objects set out in article 2.2;
- (e) amalgamate with any other agency with similar objects or purposes or enter into strategic alliances or partnerships; and
- (f) become a member of any association and/or participate in any joint venture.

3 Income and property of Company

3.1 Application of income and property for objects only

The profits (if any), other income and property of the Company, however derived, must be applied solely towards the promotion of the Objects of the Company as set out in article 2.

3.2 No dividend, bonus or profit paid to Members

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise.

3.3 Payments by Company in good faith

Subject to articles 8.11, 8.13 and 8.14, article 3.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner:

- (a) of remuneration for services provided by that officer or Member to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of interest at a rate not exceeding the rate fixed for the purposes of this article by the Company in General Meeting on money borrowed from an officer of the Company or a Member; or
- (d) of reasonable rent for premises let by an officer of the Company or a Member.

3.4 Provision of Services

Article 3.2 does not prevent an officer of the Company or a Member being the recipient of services from the Company in furtherance of the Company's objects.

3.5 Charitable Fundraising Legislation

Funds raised by means of a collection within the meaning of the Charitable Fundraising Legislation must be maintained in accordance with those Acts.

3.6 Government grants

The funds of the Company are to be derived from government grants, donations and such other sources as the board of Directors determines, including undertaking commercial activities for the purpose of raising funds to undertake the Principal Objects. The Company may tender for services from private or public sector providers or agencies as determined by the board of Directors.

3.7 Compliance with Conditions for Funding

If the Company becomes a registered funded agency (as that term is defined in the Health Services Act):

- (a) it must comply with the Department's Standard Conditions of Funding in respect of any funds obtained in accordance with article 3.6; and
- (b) the Directors must make appropriate arrangements to ensure that the Company's procedures are in accordance with the Standard Conditions of Funding,

for as long as it remains a registered funded agency.

4 Membership

4.1 Becoming a Member

- (a) Subject to article 4.1(b), a person may only become a Member under article 4.2.
- (b) To avoid doubt, persons who were members of the Company immediately prior to its registration as a company limited by guarantee under the Corporations Act remain Members of the Company.

4.2 Admission as a Member

- (a) Except where article 4.1(b) applies, a person wishing to be admitted as a Member must make an application for membership in the form approved by the board of Directors from time to time, and lodge it with the Secretary.
- (b) The Directors may admit as a Member any person who is over the age of 18 and who agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.
- (c) The Directors will determine whether to approve the membership of the applicant at a Board Meeting.

4.3 Register of Members

The Secretary must keep a register of Members and must enter in the register the full name, address and date of entry of the name of each Member. The Secretary must make the register available for inspection by Members at the office of the Company during normal business hours.

4.4 Member to notify changes

A Member must promptly notify the Company of any change in the details with respect to that Member which are recorded in the register of Members.

4.5 Directors may create and vary classes and class rights

The Directors may, subject to this Constitution and the Corporations Act:

- (a) prescribe (and revoke or amend) the criteria for membership (including for any classes of membership) but, by doing so, do not become obliged to accept persons fulfilling those criteria as Members or Members of a class;
- (b) establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
- (c) vary or cancel the rights, restrictions and obligations of Members in any new or existing class, if:
 - (i) at least 75% of the Members of that class give their written consent; or
 - (ii) a special resolution to that effect is passed at a separate meeting of those Members.

The articles on General Meetings apply to meetings of a class of Members so far as they are capable of application and with the necessary changes to every separate meeting.

4.6 Ceasing to be a Member

A person ceases to be a Member on:

- (a) resignation; or
- (b) in the case of a natural person:
 - (i) death;
 - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (iii) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
 - (iv) the termination of the person's membership by the Directors or by the Company in General Meeting in accordance with this Constitution; and
- (c) in the case of a body corporate:
 - (i) being dissolved or otherwise ceasing to exist;
 - (ii) having a liquidator or provisional liquidator appointed to it; or
 - (iii) being insolvent.

4.7 Resignation

A Member may by written notice to the Company resign from membership with immediate effect or with effect from a specified date occurring not more than three months after the service of the notice. A Member remains liable for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under article 18.1.

4.8 Disputes and grievances

- (a) In the event that a dispute arises between a Member and another Member (in their capacity as Members) or a Member and the Company, the parties must meet within 14 days to discuss the matter and attempt to resolve it as soon as possible.
- (b) If the parties are unable to resolve the dispute on their own, the parties must within a further 10 days after the meeting referred to in paragraph 4.8(a), hold a meeting in the presence of an impartial mediator (appointed in accordance with 4.8(e)). At that meeting, the mediator must:
- (i) give each party a reasonable opportunity to be heard;
 - (ii) allow due consideration by all parties of any written statement submitted by any party; and
 - (iii) ensure that natural justice is accorded to the parties to the dispute through the mediation process.
- (c) The parties to the dispute at all times have the right to appoint another person to act in conjunction or on their behalf.
- (d) This article does not deprive the parties of their right to resolve a dispute in accordance with the Corporations Act or otherwise at law if the mediator process does not result in the dispute being resolved
- (e) The mediator must be:
- (i) a person chosen by agreement between the parties; or
 - (ii) in the absence of agreement:
 - (A) in the case of a dispute between a Member and another Member, a person appointed by the board of Directors; or
 - (B) in the case of a dispute between a Member and the Company, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice).

4.9 Censuring, suspension or expulsion of Member

If any Member wilfully refuses or neglects to comply with the provisions of this Constitution, or acts in a manner which in the opinion of the Directors is

prejudicial to the interests of the Company, the Directors may by resolution censure, suspend or expel the Member from the Company, provided that the following procedure is observed:

- (a) at least 14 days and no more than 28 days before the Board Meeting at which the resolution is passed, the Member must be given notice of the meeting setting out:
 - (i) what is alleged against the Member;
 - (ii) stating the date, place and time of the meeting; and
 - (iii) informing the Member that the Member may do one or more of the following:
 - (A) give to the Directors before the date of that meeting a written statement seeking the revocation of the resolution; and
 - (B) not later than 24 hours before the date of the meeting, lodge with the Secretary a notice to the effect that the Member wishes to appeal against the resolution.
- (b) at the Board Meeting and before the passing of the resolution, the Directors:
 - (i) shall give to the Member an opportunity to be heard;
 - (ii) shall give due consideration to any written statement submitted by the Member; and
 - (iii) shall by resolution determine whether to confirm or revoke the resolution.
- (c) if the Member gives a notice under article 4.9(a)(iii)(B), a General Meeting must be called for the purpose of considering the resolution set out in the notice originally given to the Member under this article.
- (d) Where the Secretary receives a notice of appeal against the resolution under article 4.9(a)(iii)(B), the Secretary shall notify the Directors and the board of Directors shall convene a General Meeting of Members to be held within 21 days after the date on which the Secretary received the notice.
- (e) At a General Meeting convened under article 4.9(d);
 - (i) no business other than the question of the appeal shall be transacted;
 - (ii) the Directors may place before the Members details of the grounds for the resolution and the reasons for passing the resolution;
 - (iii) the Member shall be given an opportunity to be heard; and

- (iv) the Members present shall vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- (f) If at the General Meeting:
 - (i) two-thirds of the Members vote in person or by proxy in favour of the confirmation of the resolution, the resolution is confirmed; and
 - (ii) in any other case the resolution is revoked.
- (g) in the case of a resolution passed by the Directors or in General Meeting for the Member's expulsion under this article, the membership of the Member automatically terminates, in which case the Member ceases to be a Member.

4.10 Termination

The Directors may by written notice to the Member terminate the Member's membership with immediate effect or with effect from a specified date occurring not more than 10 days after service of the notice.

4.11 Honorary members

The Directors may admit any persons to, and remove any persons from, honorary membership of the Company. The Directors may not give an honorary member the right to vote on a matter concerning the Company, but may otherwise determine the rights and obligations of an honorary member. An honorary member is not a Member for the purposes of this Constitution or the Corporations Act.

4.12 Patrons

The Directors may appoint and remove any persons as a patron or any other honorary title-holder of the Company on any terms the Directors think fit. A patron (or other honorary title-holder) may, in the discretion of the Directors, be given the right to:

- (a) attend and speak (but not vote) at any General Meeting of the Company and be given notice of the meeting as if a Member; and
- (b) receive accounts of the Company when available to Members.

4.13 Limited liability

A Member has no liability as a Member except as set out in this article 4 and article 18.1.

5 General Meetings

5.1 Annual General Meeting

- (a) Subject to article 5.1(b), annual General Meetings must be held within five months of the end of the Financial Year.
- (b) Annual General Meetings of the Company are to be held in accordance with the Corporations Act.

5.2 Convening a General Meeting

The Directors may convene and arrange to hold a General Meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.

5.3 Members have power to convene General Meeting

A Director or Members holding at least 10% of the votes in the Company may convene a General Meeting at the cost of the Company.

5.4 Notice of General Meeting

Notice of a General Meeting must be given in accordance with Part 16 and the Corporations Act and may be given as set out below.

If a Member nominates:

- (a) an electronic means by which the Member may be notified that notices of meeting are available; and
- (b) an electronic means the Member may use to access notices of meeting,

the Company may give the Member notice of the meeting by notifying the Member (using the notification means nominated by the Member):

- (c) that the notice of meeting is available; and
- (d) how the Member may use the access means nominated by the Member to access the notice of meeting.

A notice of meeting given to a Member by this electronic means is taken to be given on the day after the day on which the Member is notified that the notice of meeting is available.

5.5 Calculation of period of notice

In computing the period of notice under article 5.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

5.6 Directors entitled to notice of General Meeting

A Director is entitled to receive notice of and to attend all General Meetings of the Company and is entitled to speak at those meetings.

5.7 Cancellation or postponement of General Meeting

Where a General Meeting (including an annual General Meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

5.8 Notice of cancellation, postponement or change of place of General Meeting

Written notice of cancellation or postponement or change of place of a General Meeting must be given to all persons entitled to receive notices of General Meetings from the Company. The notice must be given at least five days before the date for which the meeting is convened and must specify the reason for the cancellation, postponement or change of place. A notice of a change of place of a General Meeting must specify the different place for the holding of the meeting.

5.9 Contents of notice postponing General Meeting

A notice postponing the holding of a General Meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

5.10 Number of clear days for postponement of General Meeting

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the General Meeting required to be given by this Constitution or the Corporations Act.

5.11 Business at postponed General Meeting

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

5.12 Non-receipt of notice

The non-receipt of, or accidental omission to give, a notice of a General Meeting or cancellation, postponement or change of place of a General Meeting by, or to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed or changed place meeting or the cancellation or postponement of a meeting.

5.13 Proxy, attorney or Representative at postponed General Meeting

Where by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

6 Proceedings at General Meetings

6.1 Reference to a Member

Unless the contrary intention appears, a reference to a Member in this article 6 means a person who is a Member, or:

- (a) a proxy;
- (b) an attorney; or
- (c) a Representative,

of that Member.

6.2 Number for a quorum

Subject to article 6.5, the quorum for a General Meeting is the lesser of 20 Members or five per cent of the Members.

6.3 Requirement for a quorum

An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of

business unless the Chair of the meeting (on the Chair's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

6.4 If quorum not present

If within one hour after the time appointed for a General Meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

6.5 Adjourned meeting

At a meeting adjourned under article 6.4(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

6.6 Ordinary business at a General Meeting

The ordinary business of the annual General Meeting is:

- (a) to confirm the minutes of the previous annual General Meeting and any special General Meetings held in the preceding Financial Year; and
- (b) to consider any resolution of which at least 28 days written notice has been given.

6.7 Appointment of Chair of General Meeting

If the Directors have elected one of their number as Chair of the Board Meetings, that person is entitled to preside as Chair at a General Meeting of the Company.

6.8 Absence of Chair at General Meeting

If a General Meeting is held and:

- (a) a Chair has not been elected by the Directors; or
- (b) the elected Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as Chair of the meeting (in order of precedence):

- (c) the deputy Chair (if any);

- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

6.9 Conduct of General Meetings

The Chair of a General Meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the Chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chair under this article is final.

6.10 Adjournment of General Meeting

The Chair of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- (a) in exercising this discretion, the Chair may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the Chair, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

6.11 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

6.12 Questions decided by majority

Subject to the requirements of the Corporations Act and any express terms in this Constitution, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

6.13 Equality of votes - casting vote for Chair

If there is an equality of votes, whether on a show of hands or on a poll, the Chair of the General Meeting is entitled to a casting vote in addition to any votes to which the Chair is entitled as a Member or proxy, attorney or Representative of a Member.

6.14 Voting on show of hands

At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. 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, is conclusive evidence of the fact. Neither the Chair nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

6.15 Entitlement to vote

Subject to the rights and any restrictions attached to any class of Members and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as proxy, attorney or Representative of a Member has one vote for each Member that the person represents.

6.16 Objection to voting qualification

An objection to the right of a person to attend or vote at a General Meeting or adjourned General Meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the Chair of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

6.17 Chair to determine voting dispute

If there is a dispute as to the admission or rejection of a vote, the Chair of the General Meeting must decide it and the Chair's decision made in good faith is final and conclusive.

6.18 Circulating resolutions of Members

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a General Meeting being held if all of the Members who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is taken to be passed (and if it is required to be a special resolution to be effective, passed as a special resolution), as if it had been passed unanimously at a duly convened General Meeting, at the time the Secretary has evidence that the last Member has signed it.

6.19 Right to appoint attorney

A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

To be effective, an instrument appointing an attorney under this article, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

7 Advisory council

7.1 Setting up an advisory council

The Directors may set up (and disband) an advisory council for the purposes of providing guidance and advice to the Directors (which advice will not be binding on the Directors) and for any other informal purposes as the Directors may decide from time to time.

7.2 Directors' discretion

The Directors have complete discretion as to the composition, functions and rules for proceedings (including frequency of meetings) of any advisory council set up under article 7.1.

8 Directors

8.1 Number of Directors

Unless otherwise determined by the Company in General Meeting, the number of Directors may not be more than nine or less than six.

8.2 Composition of Directors

Subject to article 8.3, the board of Directors consists of:

- (a) up to six Directors appointed by the Members in accordance with article 8.7; and

- (b) up to three Specialist Directors appointed by the board of Directors in accordance with article 8.4.

8.3 Existing Directors

To avoid doubt, persons who were Directors of the Company immediately prior to its registration as a company limited by guarantee under the Corporations Act remain Directors of the Company for the remainder of their current term.

8.4 Appointment of Specialist Directors

- (a) Specialist Directors may be appointed at the first Board Meeting following the Company's registration as a company limited by guarantee under the Corporations Act.
- (b) Each of the three Specialist Directors appointed by the board of Directors must represent one of the following professions:
 - (i) lawyer;
 - (ii) accountant; and
 - (iii) health professional or a person having academic experience in the health sector.

No two Specialist Directors appointed by the board of Directors may represent the same profession.

8.5 Duration of office

Subject to article 8.3, the term of office for a Director is three years and a Director cannot hold office for more than three successive terms.

8.6 Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting at which that Director retires but, subject to article 8.5, is eligible for re-election.

8.7 Directors elected by Members

If the term of office for a Director is to expire or a Director is to retire or otherwise vacate office with effect from or before an annual General Meeting, the Company may at that annual General Meeting fill the vacated office by electing a person to that office in the following manner:

- (a) the notice of the annual General Meeting given pursuant to article 5.4 must, among other matters:
 - (i) be given at least three months prior to the annual General Meeting; and
 - (ii) advise of the vacancy (or upcoming vacancy) in office of a Director, the manner in which nominations will be received

for that vacancy and the closing date for receipt of nominations;

- (b) nominations for election as a Director must be in writing on the prescribed form, signed by the nominated candidate and at least 5 Members entitled to vote, and must be delivered as advised pursuant to sub-paragraph 8.7(a)(ii) during normal office hours no later than 5pm on the closing date for receipt of nominations;
- (c) the board of Directors shall appoint an election officer, not being a Director, who shall be responsible for the remaining matters connected with the election of Directors as outlined in this article 8.7 (**Election Officer**);
- (d) if the number of candidates nominated for office is less than or equals the number of vacancies, the nominated candidates shall become elected Directors and take office from the end of that annual General Meeting;
- (e) if the number of candidates nominated for office is greater than the number of vacancies, the Election Officer shall prepare a ballot and send that ballot to the address of each Member specified in the register, specifying details of how the ballot should be completed, where it should be returned and the closing date for return of the ballot;
- (f) the Members subsequently vote for the candidates by completing the ballot and returning it to the Election Officer by 5pm on the date of closure of voting;
- (g) upon receipt of an envelope purporting to contain a ballot and before counting of the votes, the Election Officer shall examine the name or other particulars on the envelope to establish that:
 - (i) the sender was a Member as at the date on which the ballot was sent; and
 - (ii) if a Member, the sender, has not already voted in the ballot;
- (h) the Election Officer must examine and count the number of votes recorded for each candidate in the following manner:
 - (i) to secure election, a candidate must secure a quota of votes, which is determined by dividing the total number of formal first preference votes in the count by one more than the number of vacant positions for directorship and increasing the result by one;
 - (ii) if multiple vacancies exist, votes received in excess of the quota by successful candidates are redistributed to those candidates who have been ranked second by the Member on the excess ballot papers; and

- (iii) if insufficient candidates reach a quota after a distribution, the preferences of Members for the least successful candidates are progressively distributed until enough candidates reach a quota to fill the vacant positions;
- (i) once the votes have been counted and successful candidates elected, the Election Officer shall make and sign a declaration setting out the number of the votes given for each candidate and shall convey the report to the Chair;
- (j) the Chair shall at the annual General Meeting declare elected as Directors the candidates according to the report provided by the Returning Officer in accordance with sub-paragraph 8.7(i), and may disclose the results of the election to the Members; and
- (k) the Directors so elected shall take office from the end of the annual General Meeting.

8.8 Eligibility for election as Director

Except for:

- (a) a person who is eligible for election or re-election under article 8.7; or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a General Meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least 30 business days before the General Meeting or any other period permitted under the Corporations Act.

8.9 Requirement for Director

No holder of any paid office of the Company shall be eligible to become or remain a Director.

8.10 Casual vacancy

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number, if any, determined in accordance with article 8.1.

A Director appointed under this article holds office until the conclusion of the next annual General Meeting of the Company but is eligible for election at that meeting.

8.11 Reimbursement of expenses

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged in the business of the Company.

8.12 Sitting fees

Directors will be paid a sitting fee for attendance at Board Meetings. The sitting fee will be payable in accordance with Schedule C, Sessional Rates for Group C Organisations of the *Victorian Government Guidelines for Appointment and Remuneration of Part Time Non Executive Directors of State Government Board Members and Statutory bodies and Advisory Committees (Appointment Guidelines) 2008 Revision*, or as otherwise approved by the Members in General Meeting.

The sitting fee payable to the Chair will be the same as that payable to all other Directors.

8.13 Payments to Director

Any payment to a Director which is not prohibited under article 8.14 must be approved by the Directors.

8.14 Director's interests

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of Auditor unless being or becoming a Director would breach any law by reason of holding that office;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as Auditor;
- (f) if the other Directors determine that the Director's interest should not disqualify the Director from considering or voting on a matter, participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and

- (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this article is also a reference to each related body corporate of the Company.

8.15 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (b) resigns office by notice in writing to the Company; or
- (c) is not present personally or by Alternate Director at meetings of the Directors for a continuous period of 3 months without leave of absence from the Directors.

9 Powers and duties of Directors

9.1 Directors to manage Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.

9.2 Specific powers of Directors

Without limiting the generality of article 9.1, the Directors may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

9.3 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

9.4 Provisions in power of attorney

A power of attorney granted under article 9.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

9.5 Signing of cheques

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

9.6 Committees

The Directors may delegate (and revoke the delegation of) any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

9.7 Powers delegated to Committees

A Committee to which any powers have been delegated under article 9.6 must exercise those powers in accordance with any directions of the Directors.

9.8 Powers of delegation

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in addition the powers conferred by section 198D of the Corporations Act.

10 Proceedings of Directors

10.1 Board Meetings

The Directors must:

- (a) meet at least once each month for at least 10 months per year at the time and place that the board of Directors determines or, if the board of Directors has not determined a time or place, at a time and place fixed by the Chair; and
- (b) convene the first Board Meeting as soon as practical after each annual General Meeting.

10.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a Board Meeting.

10.3 Questions decided by majority

A question arising at a Board Meeting is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

10.4 Alternate Director or proxy and voting

A person who is present at a Board Meeting as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an

Alternate Director or proxy. If that person is also a Director, they have one vote as a Director in that capacity.

10.5 Chair of Board Meetings

The Directors may elect one of their number as Chair of their meetings and may also determine the period for which the person remains as Chair.

10.6 Absence of Chair at Board Meeting

If a Board Meeting is held and:

- (a) a Chair has not been elected under article 10.5; or
- (b) the Chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a Chair of the meeting.

10.7 Chair's casting vote at Board Meetings

In the event of an equality of votes cast for and against a question, the Chair of a Board Meeting has a second or casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

10.8 Appointment of Alternate Director

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period that the Director thinks fit.

10.9 Alternate Director and meetings

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

10.10 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

10.11 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

10.12 Alternate Director and remuneration

Articles 3.3, 8.11, 8.13 and 8.14 apply to an Alternate Director as if they were a Director.

10.13 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

10.14 Appointment or termination in writing

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

10.15 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

10.16 Director attending and voting by proxy

A Director may participate in and vote by proxy at a Board Meeting if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as proxy of another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

10.17 Quorum for Board Meeting

At a Board Meeting, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is five. No business can be transacted unless a quorum is present. If within half an hour of the time appointed for a Board Meeting a quorum is not present, the Board Meeting stands adjourned. In this case the Chair must call another Board Meeting to be held not more than 10 days thereafter.

10.18 Remaining Directors may act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 8.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

10.19 Chair of Committee

The members of a Committee may elect one of their number as Chair of their meetings. If a meeting of a Committee is held and:

- (a) a Chair has not been elected; or
- (b) the Chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be Chair of the meeting.

10.20 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

10.21 Determination of questions

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

In the event of an equality of votes the Chair of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote at the meeting on the question.

10.22 Circulating resolutions

The Directors may pass a resolution without a Board Meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs. The document may be sent or circulated by facsimile or electronic transmission.

10.23 Validity of acts of Directors

All acts done at a Board Meeting or meeting of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

10.24 Meeting by use of technology

A Director may not leave a telephone meeting by disconnecting the telephone without the consent of the Chair of the meeting and a Director is deemed to be present and form part of the quorum throughout the meeting unless the Director obtains the consent of the Chair of the meeting to leave the meeting.

11 Chief Executive Officer

The Directors must appoint a Chief Executive Officer. The Directors may give a Chief Executive Officer any of the powers conferred on them by this Constitution, subject, at the Directors' discretion, to:

- (a) any time period;
- (b) specific purposes; and
- (c) any other terms and restrictions.

All or any of those powers may be given collaterally with the powers of the Directors and may be revoked or varied by the Directors.

12 Secretary

12.1 Appointment of Secretary

The Company must have at least one Secretary who is to be appointed by the Directors.

12.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

12.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

13 Auditor

13.1 Appointment of Auditor

- (a) An Auditor shall be appointed and the remuneration fixed by the board of Directors and confirmed at the next annual General Meeting. The Auditor shall hold office unless he or she retires or is removed in accordance with this Constitution.
- (b) An Auditor shall not be a member of the board of Directors but shall:
 - (i) be a certified member of one of the recognised associations or institutions of accountants, preference in appointment being given to a person registered as an Auditor with the Australian Securities and Investment Commission in accordance with the Corporations Law;
 - (ii) carry out such continuous audit as is required by the board of Directors and government authorities.

- (c) If no person so qualified is available for election the appointee shall have had such financial and business experienced as is approved by the board of Directors.
- (d) The Directors may fix the remuneration of the Auditor.

13.2 Removal of Auditor

- (a) Only the Members in a General Meeting may remove an Auditor from office.
- (b) The Directors may fill any casual vacancy in the office of Auditor.

14 Seals

14.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company.

14.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

15 Inspection of records

15.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

15.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

16 Service of documents

16.1 Document includes notice

In this article 16, a reference to a document includes a notice.

16.2 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by sending it to the Member by other electronic means nominated by the Member.

16.3 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

16.4 Fax or electronic transmission

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

16.5 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

17 Indemnity and insurance

17.1 Indemnity

The Company may indemnify any current or former Director, Secretary or executive officer of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an

administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

17.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

17.3 Contract

The Company may enter into an agreement with a person referred to in articles 17.1 and 17.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

18 Winding up

18.1 Contributions on winding up

Each Member undertakes to contribute to the Company's property if the Company is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
 - (b) the costs of winding up; and
 - (c) adjustment of the rights of the contributories among themselves,
- an amount not to exceed A\$2.

18.2 Application of property on winding up

If any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid

to or distributed among the Members but must be given or transferred to some other institution:

- (a) having objects and/or purposes similar to those of the Company;
- (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution; and
- (c) being an institution accepted as a deductible gift recipient under subdivision 30 of the Tax Act by the Commissioner of Taxation or otherwise approved for these purposes by the Commissioner of Taxation.

The institution is to be determined by the Members at or before the time of dissolution and in default by application to the court.

19 Accounts

The Directors must cause the accounts of the Company to be maintained and audited in accordance with the requirements of the Corporations Act and the Charitable Fundraising Legislation.

Constitution

Appendix 1 - Guiding Principles

The Company aspires to being an innovative and leading provider of integrated health, community and advocacy services.

The Company aspires to make a social difference that is proactive, wellness focused, preventative and enabling.