

CONSTITUTION

of

SA RURAL HEALTH NETWORK LIMITED

ACN 152 430 914

PART 1 - INTRODUCTION

1. DICTIONARY

In this document:

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

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

Advisory Committee means any Committee established by the Board under clause 46.

Board means the Directors, acting as the board of the Company.

CEO means a person appointed by the Board as the chief executive officer of the Company.

Commonwealth means the Commonwealth Government of Australia, as represented by the Department of Health.

Company means SA Rural Health Network Limited (ACN 152 430 914).

Current Directors means current Directors of the Company, being the individuals appointed as at the date of the adoption of this document.

Director means a director of the Company.

General Meeting means a meeting of Members and includes an AGM.

ITAA97 means the *Income Tax Assessment Act 1997* (Cth).

Member means a member of the Company.

Nominations and Appraisal Committee means the committee to be established by the Board pursuant to clause 45.

Region means the area within which it is agreed from time to time with the Commonwealth that the Company's activities will be primarily undertaken.

Registered Charity means a charity that is registered under the ACNC Act.

Replaceable Rule means any provision of those sections and sub-sections of the Act which are designated under section 141 as "replaceable rules", and so capable of being displaced or modified by a company's constitution.

Secretary means a person appointed by the Board to perform the duties of a secretary of the Company.

Special Resolution means a resolution passed by the Members of the Company which complies with the Act as a special resolution.

Transition Directors means the Directors holding office following the retirements and appointments specified in clause 34.1 and any additional Directors appointed under clause 34.2.

Transition Meeting means the AGM of the Company in 2017.

2. INTERPRETATION

In this document: the singular includes the plural and *vice versa* and words importing a gender include other genders; words importing natural persons include corporations; reference to a clause is to a clause of this document; reference to a section is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; headings are for ease of reference only and do not affect the construction of this document; subject to clause 1, words and expressions in this document have the same meaning as in a provision of the Act which deals with the same matter.

3. REPLACEABLE RULES

All the Replaceable Rules are displaced by this document.

4. ACT & THE ACNC ACT

Despite any other provision in this document:

- 4.1 if the Act prohibits a thing being done, the thing may not be done;
- 4.2 if the Act requires a thing to be done, authority is given for that thing;
- 4.3 while the company is a Registered Charity, the ACNC Act and the Act override any clauses in this document which are inconsistent with those Acts; and
- 4.4 If the company is not Registered Charity (even if it remains a charity), the Act overrides any clause in this constitution which is inconsistent with that Act.

5. CIRCUMSTANCES NOT PROVIDED FOR

In any circumstances in which this document is silent, incapable of taking effect or being implemented according to its strict provisions, the Board may determine what action may be taken to ensure the effective administration and objects of the Company.

PART 2 – COMPANY

6. COMPANY

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

7. OBJECTS

The objects and charitable purposes for which the Company is established and must be operated are to:

- 7.1 Work directly to relieve sickness, suffering or disability in the Region.
- 7.2 Improve patient outcomes in the Region by working directly with general practitioners, other primary health care providers, secondary health care providers and hospitals to develop integrated and coordinated services.
- 7.3 Increase the efficiency and effectiveness of medical services for patients in the Region, particularly those at risk of poor health outcomes.
- 7.4 Provide support to clinicians and service providers in the Region to improve patient care.
- 7.5 Improve coordination of care in the Region to ensure patients receive the right care in the right place at the right time.
- 7.6 Identify the health needs of local areas in the Region and develop locally-focused and responsive services.
- 7.7 Contribute to addressing national health priorities.
- 7.8 Be efficient and accountable with strong governance and effective management.

- 7.9 Do all such things as are incidental, convenient or conducive to the attainment of all or any of the above objects.

8. POWERS

Subject to clause 9, the Company has the following powers, which may only be used to carry out its objects set out in clause 7:

- 8.1 the powers of an individual, and
- 8.2 all the powers of a company limited by guarantee under the Act.

9. NOT FOR PROFIT

- 9.1 The assets and income of the Company must be applied solely in furtherance of its abovementioned objects and no portion may be distributed directly or indirectly to the Members, except as provided for in clause 9.2 or 12.
- 9.2 To avoid doubt, this clause 9 does not prevent a *bona fide* payment:
- 9.2.1 of reasonable and proper remuneration to any Member for any services actually rendered or goods supplied in the ordinary and usual course of business to the Company;
- 9.2.2 of reasonable and proper rent for premises let by a Member to the Company;
- 9.2.3 of reasonable and proper interest on money borrowed from a Member;
- 9.2.4 reimbursement of expenses reasonably incurred by any Member on the Company's behalf with the consent of the Board; or
- 9.2.5 to a Member in that person's capacity as a Director so far as this document allows.
- 9.3 Nothing in this clause 9 prevents the Company from providing services or information to the Members on terms which are different from the terms on which services or information are provided to persons who are not Members.

10. PAYMENTS TO DIRECTORS

No payments may be made by the Company to a Director apart from:

- 10.1 payments made in accordance with clause 37.1.
- 10.2 payment or reimbursement of out-of-pocket expenses incurred by a Director in accordance with clause 37.2, where the amount payable does not exceed an amount previously approved by the Board;
- 10.3 payment for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity of Director, where the provision of the service has the prior approval of the Board, the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
- 10.4 a grant within the objects of the Company to an organisation in which a Director has a direct or indirect interest or involvement, provided the Director has made full disclosure of the nature and extent of the interest in accordance with this document and the organisation also prohibits the distribution of income and property on terms substantially similar to clause 8 and this clause 10; and
- 10.5 indemnification of, or payment of premiums on contracts of insurance for, any Director to the extent permitted by law and this document.

11. TAX STATUS

The Company may do all things necessary consistent with its objects:

- 11.1 for the income and gains of the Company to be exempt from income tax;

- 11.2 to be endorsed as a deductible gift recipient under the ITAA 97; and
- 11.3 for the Company to qualify for any concession under any tax law of Australia or any State or Territory of Australia.

12. WINDING UP OR REVOCATION OF ENDORSEMENT

- 12.1 If on the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatever - that property must not be paid to or distributed among any Members, but will be given or transferred to another institution or institutions each of which:
 - 12.1.1 has objects similar to the objects of the Company;
 - 12.1.2 is a deductible gift recipient under the ITAA97; and
 - 12.1.3 has constituent documents which prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this document,

such institution or institutions to be determined by Members at or before the time of dissolution or, failing such a determination, by application to the Supreme Court of South Australia.

PART 3 – MEMBERS

13. LIABILITY OF MEMBERS

- 13.1 The liability of Members is limited to the amount of the guarantee in clause 13.2.
- 13.2 Every Member agrees to contribute up to ten dollars (\$10.00) to the property of the Company if the Company is wound up while the Member is a Member, or within twelve (12) months after the Member ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before the Member ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

14. ELIGIBILITY

- 14.1 The Members are the Members at the date of adoption of this document and any other person the Board admits to membership in accordance with this document.
- 14.2 The Company has the following categories of Members:
 - 14.2.1 *Ordinary Member* - any natural person of at least eighteen (18) years of age who has applied for membership in the correct form and whose application has been approved by the Board;
 - 14.2.2 *Body Corporate Member* – any body corporate which has applied for membership in the correct form and whose application has been approved by the Board; and
 - 14.2.3 Such other categories of membership as may be determined by the Board upon terms and conditions stipulated by the Board.
- 14.3 The register of Members must show the kind of membership of each Member, and is conclusive of the kind of membership.

15. SUBSCRIPTIONS

- 15.1 The Board may from time to time prescribe:
 - 15.1.1 a joining fee payable by all applicants for membership; and / or
 - 15.1.2 annual subscription fees payable by all any class of Members and the terms of payment of such annual subscriptions.
- 15.2 If an annual subscription has been set for a particular class of Members, each Member of that class must pay the annual subscription.

- 15.3 At any time the Board may vary the amount of, and terms of payment of, any annual subscription and may determine that a different amount is payable by different classes of Members, or is payable at different times by different classes of Members.
- 15.4 Unless notified otherwise, an annual subscription fee is as last prescribed by the Board and notified to the Members concerned.

16. APPLICATION FOR MEMBERSHIP

- 16.1 Every application for membership of the Company after the date of adoption of this document must be:
- 16.1.1 in the form prescribed by the Board;
 - 16.1.2 accompanied by all relevant applicant details required by that form; and
 - 16.1.3 accompanied by the subscription fee (if any) for the relevant category of membership
- 16.2 At the next meeting of the Board after the receipt of an application for membership in proper form, the Board must consider the application and decide whether to admit or reject the admission of the applicant. The Board need not give any reason for rejecting an application.
- 16.3 An applicant will become a Member when they are entered on the register of Members

17. OUTGOING MEMBERS

- 17.1 A Member may resign membership by notice in writing given to the Company.
- 17.2 A person ceases to be a Member if the person dies or, being a body corporate, is dissolved.
- 17.3 The Board may cancel the Membership of a Member if:
- 17.3.1 in the opinion of the Board (acting reasonably) the Member is untraceable, meaning the Member failed to respond to at least two (2) letters from the Company sent at least six (6) months apart to their registered address;
 - 17.3.2 the Member does not pay when due any annual subscription within thirty (30) clear days after notice to the Member requesting payment; or
 - 17.3.3 the Member is a natural person and becomes an insolvent under administration;
 - 17.3.4 the Member is body corporate and becomes an externally-administered body corporate (or would be an externally-administered body corporate if the Member was a company registered under the Act); or
 - 17.3.5 in the opinion of the Board the Member is guilty of conduct detrimental to the Company provided that:
 - (a) at least thirty (30) days before the Directors meet to decide the matter the Directors give the Member notice of written particulars of the alleged misconduct and an opportunity to be heard or to make a written submission to the Company;
 - (b) after considering any submission by the Member, the Board notifies the Member of their decision to expel the Member; and
 - (c) within fourteen (14) days after that notice from the Directors the Member does not give written notice to the Secretary that the Member appeals the decision to a General Meeting or, having so appealed the Members in a General Meeting confirm the Board's decision.
- 17.4 There will be no liability for loss or injury suffered by a Member as a result of any decision made in good faith under clause 17.3.

18. REGISTER OF MEMBERS

- 18.1 A register of the Members of the Company must be kept in accordance with the Act.
- 18.2 The following must be entered in the register in respect of each Member:
- 18.2.1 the full name of the Member (including the ABN);
 - 18.2.2 the address, telephone and facsimile numbers and e-mail address of the Member;
 - 18.2.3 the category of Membership held by the Member;
 - 18.2.4 the date of admission to and cessation of Membership;
 - 18.2.5 the full name, address, telephone and facsimile numbers and e-mail address of the corporate representative of the Member; and
 - 18.2.6 such other information as the Directors require.
- 18.3 The company must give current Members access to the register of Members. Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members.

19. ADDRESS OF MEMBERS

Every Member promptly must communicate any change in their address, telephone, e-mail and facsimile numbers to the Company in writing, and any such change must be promptly entered in the register of Members. The latest address in the register of Members is deemed to be the Member's registered address for all purposes.

20. NO TRANSFER OF MEMBERSHIP

Membership of the Company is personal to the Member and is not transferable.

PART 4 – MEETINGS OF MEMBERS**21. CALLING OF MEETINGS OF MEMBERS BY A DIRECTOR**

- 21.1 An AGM of the Company must be held in 2017, 2018 and 2019.
- 21.2 An AGM of the Company must be held in accordance with the Act if the Company ceases to be a Registered Charity.
- 21.3 Any Director may call a General Meeting.
- 21.4 The Directors must call and arrange to hold a General Meeting if required to do so by the Act.

22. NOTICE OF MEETINGS OF MEMBERS

- 22.1 Written notice of a General Meeting must specify the place, the day and the hour of meeting and if the General Meeting is to be held in two (2) or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.
- 22.2 A notice of a General Meeting may be given by any form of communication permitted by the Act.
- 22.3 Subject to the provisions of the Act in relation to short notice and otherwise, not less than twenty one (21) days' notice of a General Meeting must be given to each Member and Director.
- 22.4 A notice of a General Meeting sent by post is taken to be given three (3) days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.
- 22.5 When a General Meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one (1) month or more.

23. POSTPONEMENT OR CANCELLATION

- 23.1 A General Meeting may be postponed or cancelled at any time before the day of the meeting:
- 23.1.1 if called by the Directors on the request of a Member or Members under section 249D, by that Member or those Members so notifying the Company;
 - 23.1.2 if called by a Member or Members under section 249E, by that Member or those Members so notifying the Company;
 - 23.1.3 if called by a Member or Members under section 249F, by that Member or those Members so notifying the Company; or
 - 23.1.4 if called by the Directors of their own volition, by the Directors as they may determine.
- 23.2 The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices of that meeting at least two (2) business days prior to the time of the meeting as specified in the notice of the meeting.

24. QUORUM OF MEETINGS OF MEMBERS

- 24.1 Business may not be transacted at a General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- 24.2 The quorum for a General Meeting is fifty percent (50%) of the total number of Members:
- 24.2.1 rounded up to the nearest whole number where there is a fraction; and
 - 24.2.2 plus one (1) where there is no fraction,
- and the quorum must be present at all times during the meeting.
- 24.3 In determining whether a quorum is present:
- 24.3.1 individuals attending as a proxy or body corporate are to be counted;
 - 24.3.2 if a Member has appointed more than one person as their proxy or body corporate representative, only one (1) person is to be counted; and
 - 24.3.3 individuals attending as a proxy or body corporate may be counted more than once if they are also a Member or if they have been appointed as a proxy or body corporate representative for more than one (1) Member.
- 24.4 A General Meeting that does not have a quorum present within thirty (30) minutes after the time for the meeting set out in the notice of meeting:
- 24.4.1 is dissolved if the meeting was called:
 - (a) on the request of Members under section 249D;
 - (b) by Members under section 249E; or
 - (c) by Members under section 249F; otherwise
 - 24.4.2 is adjourned to the date, time and place the Directors specify. If the Directors do not specify one (1) or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified — the same day in the next week; and
 - (b) if the time is not specified — the same time; and
 - (c) if the place is not specified — the same place.

- 24.5 If a meeting has been adjourned to another time and place determined by the Directors, not less than seven (7) days notice of the adjourned meeting must be given in the same manner as given for the original meeting.
- 24.6 If no quorum is present at the resumed meeting within thirty (30) minutes after the starting time appointed for the meeting, the meeting must be dissolved.

25. CHAIRING MEETINGS OF MEMBERS

- 25.1 The Directors may elect an individual to chair meetings of the Members.
- 25.2 The Directors at a General Meeting must elect one of their number to chair the meeting (or part of it) if:
- 25.2.1 a person has not already been elected by the Directors to chair it; or
- 25.2.2 a person having been elected, is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or declines to act, for the meeting (or part of the meeting).
- 25.3 The Members present at a General Meeting must elect one of their number to chair the meeting if:
- 25.3.1 there are no Directors present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
- 25.3.2 all Directors present decline to take the chair.

26. GENERAL CONDUCT

The chair of a General Meeting has general conduct of the meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.

27. ADMISSION TO A MEETING

A person not a Member requested by the Board to attend a General Meeting is entitled to be present at the meeting and, at the request of the chair of the meeting, to speak at that meeting.

28. ADJOURNMENT

- 28.1 The chair must adjourn a General Meeting if the Members present with a majority of votes at the meeting agree or direct that the chair must do so. The chair may adjourn a meeting with the meeting's consent on a show of hands.
- 28.2 A poll cannot be demanded on a resolution concerning the adjournment of a meeting except by the chair.
- 28.3 Only unfinished business is to be transacted at a General Meeting resumed after an adjournment.
- 28.4 When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as given for original meeting. Except when a meeting is adjourned for thirty (30) days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

29. VOTING

- 29.1 Subject to any rights or restrictions attached to any class of membership, at a General Meeting, each Member has one (1) vote, both on a show of hands and on a poll.
- 29.2 The chair at a General Meeting has a casting vote, and also, if they are a Member, any vote they have in their capacity as a Member.
- 29.3 A challenge to a right to vote at a General Meeting:
- 29.3.1 may only be made at the meeting; and
- 29.3.2 must be determined by the chair, whose decision is final.

- 29.4 A resolution put to the vote at a General Meeting must be decided on a show of hands unless a poll is demanded. The demand for a poll may be withdrawn.
- 29.5 On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 29.6 A poll may be demanded by:
- 29.6.1 the chair; or
- 29.6.2 fifty percent (50%) of the Members entitled to vote on the resolution, rounded up to the nearest whole number where there is a fraction and plus one (1) where there is no fraction.
- 29.7 The demand for a poll may be withdrawn.
- 29.8 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 29.9 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 29.10 A demand for a poll does not prevent a meeting continuing for the transaction of any business except the question on which the poll has been demanded.

30. **MODE OF MEETING**

A General Meeting may be called or held using any technology which enables all Members the opportunity to speak and be heard by other Members.

31. **RESOLUTION IN WRITING**

- 31.1 A resolution in writing signed by all Members, excluding Members who have been given leave of absence, is to be treated as a determination of the Members passed at a General Meeting duly convened and held.
- 31.2 A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.
- 31.3 If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.
- 31.4 In relation to a resolution in writing:
- 31.4.1 a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing; and
- 31.4.2 a document bearing a facsimile of a signature is to be treated as signed.

32. **PROXY VOTING AT A GENERAL MEETING**

- 32.1 At meetings of Members each Member entitled to vote may vote in person or by proxy.
- 32.2 A member which is a body corporate, body politic or incorporated association may, by written notice to the Secretary, appoint an individual as a representative to attend and vote on behalf of the Member at meetings of Members.
- 32.3 Subject to the terms of their appointment, a person attending as a proxy or as representative of a body corporate, body politic or incorporated association has all of the powers of a Member, except where expressly stated to the contrary.
- 32.4 In relation to proxies:
- 32.4.1 A proxy need not be a Member.

- 32.4.2 An instrument appointing a proxy must be in writing and signed by the Member or by the Member's attorney duly authorised in writing, but may otherwise be in any form (including electronic) that the Board may accept or stipulate.
- 32.4.3 Where the instrument does not specify the name of a proxy, the instrument is taken to be in favour of the meeting chair.
- 32.4.4 Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, the document appointing the proxy must be deposited with the Company. Those documents must be either:
- (a) received at the Company's registered office, at a fax number at the registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than twenty four (24) hours before the time for holding the meeting; or
 - (b) produced to the meeting chair before the meeting.
- 32.4.5 If a General Meeting has been adjourned, an appointment and any authority received by the Company at least twenty four (24) hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 32.4.6 A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- 32.4.7 A proxy appointment may specify the way the proxy must vote on a particular resolution. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated
- 32.4.8 A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a member on a show of hands).
- 32.4.9 When a poll is demanded, 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 Member or holds more than one proxy, may cast the votes held in different ways.
- 32.4.10 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- (a) the appointing Member dies; or
 - (b) the Member is mentally incapacitated; or
 - (c) the Member revokes the proxy's appointment; or
 - (d) the Member revokes the authority under which the proxy was appointed by a third party.
- 32.4.11 A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

PART 5 – DIRECTORS

33. NUMBER

- 33.1 Following the retirements and appointments specified in clause 34.1, the number of Directors must be not less than four (4) and not more than ten (10), unless otherwise determined in accordance with this document.

- 33.2 The Members may, by resolution, increase or reduce the number of Directors and may also determine in what rotation the increased or reduced number are to go out of office.

34. APPOINTMENT OF DIRECTORS

- 34.1 Within one (1) week following the adoption of this document:
- 34.1.1 Four of the Current Directors must retire. The Current Directors may decide amongst themselves who is to retire. If they cannot agree on who must retire, it must be decided by lot.
- 34.1.2 The reconstituted Board must appoint at least one (1) additional Director.

- 34.2 Until the Transition Meeting, the Board may appoint a person as a Director either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not exceed the number fixed in accordance with clause 33.1.

- 34.3 The Transition Directors must retire progressively as follows:

- 34.3.1 one third (1/3) at the end of the Transition Meeting;
- 34.3.2 if any remaining, one third (1/3) at the end of the Company's AGM in 2018; and
- 34.3.3 if any remaining, one third (1/3) at the end of the Company's AGM in 2019.

The Transition Directors may decide amongst themselves who is to retire. If they cannot agree on who must retire, it must be decided by lot.

- 34.4 From the Transition Meeting, the Board may appoint a person as a Director either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not exceed the number fixed in accordance with clause 33.1.

- 34.5 A Director appointed under clause 34.4 must retire:

- 34.5.1 at the end of any General Meeting convened in their third year of office thirty six (36) months, whichever is later; or
- 34.5.2 if appointed to fill a casual vacancy, at the end of the balance of the term of the vacating Director.

- 34.6 A Director who is forced to retire under clause 34.3 or 34.5 shall be eligible for reappointment, unless disqualified by the Act, the ACNC Act or this document.

- 34.7 The Members may by ordinary resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement but so that the total number of Directors does not exceed the number fixed in accordance with clause 33.1 (in the absence of a further resolution under clause 33.2).

- 34.8 The CEO, while he or she is a Director:

- 34.8.1 is not subject to clause retirement by rotation under clause 34.5 and is not taken into account in determining the retirement by rotation of Directors;
- 34.8.2 is subject to any contract between him or her and the Company and to this document (including clause 0);
- 34.8.3 immediately ceases to be a Director if he or she ceases to be the CEO; and
- 34.8.4 shall be subject to the control of the Board.

35. QUALIFICATION

- 35.1 A Director need not be a Member.
- 35.2 Other than the CEO, a person may not be appointed as a Director under clause 34.4 or 34.7 unless that person has been recommended for appointment by the Nominations and Appraisal Committee.

36. RESIGNATION OF DIRECTORS AND VACATION OF OFFICE

- 36.1 Subject to clause 34.1 and 34.3, a Director may resign as a Director by giving at least one (1) month's written notice of resignation to the Company at its registered office, unless such resignation would result in the Company contravening section 201A(2). Resignation takes effect at the expiration of the notice period, or when the resignation is accepted, whichever is earlier.
- 36.2 In addition to any other circumstances in which the office of a Director becomes vacant by virtue of the Act or another provision of this document, the office of Director becomes vacant if the Director:
- 36.2.1 becomes an insolvent under administration;
 - 36.2.2 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under an administration order;
 - 36.2.3 is absent without the consent of the Board from the meetings of the Directors held during a continuous period of six (6) months and the Board resolves that the office of that Director be vacated; or
 - 36.2.4 becomes prohibited from being a Director under the Act or the ACNC Act or by reason of an order made under the Act or the ACNC Act.

37. DIRECTORS' REMUNERATION

- 37.1 The Directors are entitled to be paid, out of the funds of the Company an amount by way of remuneration which:
- 37.1.1 does not in any year exceed in aggregate the amount fixed by ordinary resolution of Members;
 - 37.1.2 is allocated among them on an agreed basis having regard to the proportion of the relevant year for which each Director held office or as otherwise decided by the Board.
- 37.2 The Company must pay the Directors' travelling and other expenses that they properly incur:
- 37.2.1 in attending Directors' meetings or any meetings of committees of Directors; and
 - 37.2.2 in attending any General Meetings; and
 - 37.2.3 in connection with the Company's business.

38. CONVENING MEETINGS

- 38.1 Subject to the Act and this document, the Directors may meet together, adjourn and regulate their meetings as they think fit.
- 38.2 A Director may call a Directors' meeting. The Secretary must at the request in writing of a Director, call a Directors' meeting.
- 38.3 The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Directors to constitute a quorum constitutes a meeting of the Directors. All the provisions in this document relating to meetings of the Directors apply, so far as they can and with any necessary changes, to meetings of the Directors by telephone or other electronic means.
- 38.4 A Director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting and a meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.
- 38.5 Unless all Directors entitled to vote at the meeting agree otherwise, a person calling a Directors' meeting must give to each Director individually (except a Director on leave of absence approved by the Board) a notice of meeting that:
- 38.5.1 sets out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this);

- 38.5.2 states the general nature of the meeting's business and particularly any proposal to make a special decision;
 - 38.5.3 is accompanied by relevant information so far as reasonably available (if not already given to the Director); and
 - 38.5.4 is given at least two (2) clear days before the meeting (or such other period as all the Directors in office may as a matter of general policy determine otherwise).
- 38.6 A Director may waive notice of a meeting of Directors by notifying the Company to that effect in person or by post, telephone, fax or other electronic means.
- 38.7 Attendance by a Director at a Directors' meeting waives any objection which that Director might have for a failure to give notice of that meeting.

39. PROCEEDINGS OF DIRECTORS MEETINGS

- 39.1 The Board may elect a Director to chair their meetings. The Board may determine the period for which the Director is to be the chair. The Board must elect a Director present to chair a meeting, or part of it, if:
- 39.1.1 a Director has not already been elected to chair the meeting; or
 - 39.1.2 a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.
- 39.2 A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 39.3 The chair has a casting vote if necessary in addition to any vote they have in their capacity as a Director.
- 39.4 Directors will not be entitled to appoint a proxy to attend any meeting of the Directors or to vote on any resolution of Directors.

40. QUORUM

- 40.1 No business may be transacted at a meeting of the Directors unless a quorum of Directors is present at the time the business is dealt with.
- 40.2 The quorum for a meeting of the Directors is fifty percent (50%) of the Directors, rounded up to the nearest whole number where there is a fraction and plus one (1) where there is no fraction, and the quorum must be present at all times during the meeting.
- 40.3 In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or convening a General Meeting in accordance with this document.

41. DIRECTOR'S INTERESTS

- 41.1 A Director is not disqualified from the Director's office by contracting with the Company in any capacity by reason of holding the office of Director.
- 41.2 If a Director is interested in a contract or proposed contract with the Company and the financial benefit to the Director under the contract is authorised by the Act, then subject to the Director disclosing their interest as required by this document and the Act:
- 41.2.1 the Director is not disqualified by holding office as Director from contracting or entering into any arrangement with the Company, whether as vendor, purchaser or otherwise;
 - 41.2.2 a contract or arrangement entered into by or on behalf of the Company in which the Director is in any way, whether directly or indirectly, interested, is not liable to be avoided; and

- 41.2.3 the Director is not liable to account to the Company for a profit realised from that contract or arrangement by reason of the Director holding that office.
- 41.3 Subject to clause 41.4, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.
- 41.4 A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
- 41.4.1 if all of the following conditions are met:
- (a) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
 - (b) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
 - (c) the nature or extent of the interest has not materially increased above that disclosed in the notice;
- 41.4.2 if the Director has given a standing notice of the nature and extent of the interest in accordance with the Act and that standing notice is still effective in relation to the interest; or
- 41.4.3 as otherwise permitted under the Act.
- 41.5 Notices of material personal interest given by Directors must:
- 41.5.1 give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
- 41.5.2 be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
- 41.5.3 be recorded in the minutes of the Directors' meeting at which the notice is given.
- 41.6 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
- 41.6.1 if the material personal interest is not required to be disclosed under this clause or under the Act; or
- 41.6.2 if the Directors who do not have a material personal interest in the matter have passed a resolution that:
- (a) identified the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the Company; and
 - (b) stated that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
- 41.6.3 as otherwise permitted under the Act;
- 41.7 If there are not enough Directors to form a quorum as a result of a Director having a material personal interest then one (1) or more of the Directors (including those who have a material personal interest in the matter) may call a General Meeting and the General Meeting may pass a resolution to deal with the matter.
- 41.8 Nothing in this clause affects the duty of a Director:
- 41.8.1 who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Directors, the fact and the nature, character and extent of the conflict; or

41.8.2 to comply with the Act or any policy prescribed by the Board.

42. CIRCULATING RESOLUTIONS

- 42.1 The Directors may pass a resolution without a meeting of the Directors being held if a majority of the Directors entitled to vote on the resolution (and being not less than the number required for a quorum at a Directors' meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 42.2 The resolution is passed when the last Director required to make up a majority signs.
- 42.3 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.
- 42.4 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, including the text of the resolution in their reply.
- 42.5 A document referred to in this clause must be sent to every Director who is entitled to vote on the resolution (whether or not the Director signs the document).

43. DIRECTORS' POWERS

- 43.1 The business of the Company is to be managed by or under the direction of the Board.
- 43.2 The Board may exercise all the powers of the Company except any powers that the Act or this document requires the Company to exercise in General Meeting.

44. DELEGATION OF POWERS

- 44.1 A delegation of powers by the Directors:
- 44.1.1 may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;
- 44.1.2 may be concurrent with or to the exclusion of the exercise by the Board of those powers.
- 44.2 A Director to whom any powers of the Board have been delegated must exercise the powers delegated in accordance with any directions given by the Board.
- 44.3 A committee to which any powers of the Board have been delegated must exercise the powers delegated in accordance with any directions given by the Board.
- 44.4 Subject to clause 44.5, the provisions of this document that apply to Directors' meetings and resolutions of Directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of Directors.
- 44.5 At each meeting of the committee, the committee may elect any member of the committee to act as chair of the meeting.

45. NOMINATIONS AND APPRAISAL COMMITTEE

- 45.1 Without limiting clause 44, the Board will constitute the Nominations and Appraisal Committee with such terms of reference as they determine but carrying the following responsibilities:
- 45.1.1 ensuring the Board is made of Directors with sufficient skills, qualifications and experience to adequately discharge its responsibilities and duties;
- 45.1.2 identifying and recommending to the Board nominees for appointment as Directors;
- 45.1.3 identifying and assessing the necessary and desirable competencies and characteristics for Board membership and regularly assessing the extent to which those competencies and characteristics are represented on the Board;
- 45.1.4 developing and implementing processes to identify and assess necessary and desirable competencies and characteristics for Board members; and

45.1.5 ensuring succession plans are in place to maintain an appropriate balance of skills on the Board, and reviewing those plans.

45.2 The membership of the Nominations and Appraisal Committee shall be as follows:

45.2.1 the Directors who are from time to time nominated by the Board (on the basis that the Board may resolve at any time to remove any such Director from the Nominations and Appraisal Committee), and

45.2.2 other persons appointed by the Board from time to time to represent the Members or to provide skills or experience deemed necessary for the Nominations and Appraisal Committee.

45.3 At any time and from time to time the Members may in General Meeting determine by ordinary resolution to remove and replace any member of the Nominations and Appraisal Committee.

46. **OTHER COMMITTEES REQUIRED BY THE COMMONWEALTH**

46.1 The Board may establish one or more advisory committees to provide advice and recommendations to the Board on specified matters (among any other functions determined by the Board) including, without limitation, a clinical council and a community advisory committee, if required under contracts entered into by the Company and the Commonwealth.

46.2 The Board may, with respect to an Advisory Committee:

46.2.1 Specify in writing from time to time the terms of reference and functions of the Advisory Committee.

46.2.2 Appoint such persons as they consider appropriate to the Advisory Committee (including, if thought fit, one or more Directors), and remove any such person from the Advisory Committee at any time by written notice.

46.2.3 Specify the period and conditions (including as to remuneration, if any) of any such appointment to the Advisory Committee.

46.2.4 Terminate the Advisory Committee at any time.

46.3 The Board must not delegate any of its powers to an Advisory Committee, and an Advisory Committee must not exercise any powers of a Director or the Board.

47. **VALIDITY OF ACTS**

All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they, or any of them, were disqualified or were not entitled to vote.

PART 6 – OTHER MATTERS

48. **CEO**

48.1 The Board may appoint any person to be the CEO of the Company for the period and on the terms, including as to remuneration, as the Board sees fit.

48.2 The Board may revoke or vary an appointment of a CEO subject to any agreement made between the CEO and the Company.

48.3 Without limiting clause 44, the Board may delegate to the CEO any of its powers.

48.4 Provided that the Board has first determined that it is in the best interests of the Company, the Board may appoint the CEO as a Director pursuant to clause 34.1.2, 34.2 or 34.4.

48.5 If the CEO is not a Director, he or she may attend Board meetings at the Board's invitation.

49. SECRETARY

- 49.1 The Board must appoint a Secretary of the Company and may suspend or remove the Secretary of the Company. The Secretary may also be a Director.
- 49.2 A Secretary holds office on the terms and conditions (including as to remuneration) that the Board determine.

50. INDEMNITY AND INSURANCE

50.1 To the extent permitted by the Act but otherwise subject to the provisions of any agreement or deed between the Company and the relevant person relating, in whole or part, to indemnification of the person by the Company, the Company:

50.1.1 must indemnify every person who is or has been a Director of the Company;

50.1.2 may indemnify every other person who is or has been an officer of the Company; and

50.1.3 where the Board considers it appropriate to do so, may indemnify any person who is or has been an officer of a related body corporate of the Company,

against any liability incurred by that person in his or her capacity as a Director or officer of the Company or of the related body corporate (as the case may be).

50.2 In accordance with section 199A, the Company must not indemnify a person against:

50.2.1 any of the following liabilities incurred as an officer of the Company:

- (a) a liability owed to the Company or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H; or
- (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or

50.2.2 legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 50.2.1;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; and
- (d) in connection with proceedings for relief to the person under the Act, in which the Court denies the relief.

clause 50.2.2(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

50.2.3 For the purposes of clause 50.2.2 the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

50.3 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

50.3.1 conduct involving a wilful breach of duty in relation to the Company; or

50.3.2 a contravention of section 182 or 183.

50.4 Despite anything in this document, a Director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract indemnifies or insures or would indemnify or insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate.

50.5 No officer of the Company is liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

50.6 In this clause, **officer** includes:

50.6.1 a Director, a CEO and a Secretary; and

50.6.2 senior managers and employees of the Company as determined by the Board.

51. MINUTES & ACCOUNTS

51.1 The Directors must cause minutes of all proceedings of General Meetings, of meetings of the Directors and of committees formed by the Directors to be entered, within one (1) month after the relevant meeting is held, in books kept for the purpose.

51.2 The Directors must cause all minutes, except resolutions in writing treated as determinations of the Directors, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

51.3 The Directors shall cause:

51.3.1 the Company to keep accounting records and to prepare the financial statements required by the Act; and

51.3.2 the accounts to be sent to Members and laid before General Meetings of the Company as required by the Act.

52. AUDIT

52.1 The Directors must cause the accounts of the Company to be audited by one or more auditors as required by the Act.

52.2 Subject to the Act, the Company shall appoint an auditor or auditors and their appointment, remuneration, rights and duties shall be regulated in accordance with the Act.

52.3 If any casual vacancy occurs in the office of auditor the Directors shall appoint an auditor to fill the vacancy in accordance with the Act.

52.4 The Company shall give the auditor or auditors for the time being notice of any General Meeting and any other communications relating to General Meetings that a Member is entitled to receive.

53. INSPECTION OF BOOKS

A Member (who is not a Director) has no right to inspect books of the Company except as may be authorised:

53.1 by a resolution of the Board;

53.2 by a resolution passed at a General Meeting; or

53.3 by the Act or other law or by a court having jurisdiction to do so.

The Company may enter into contracts with its Directors agreeing to provide continuing access for a specified period after the Director ceases to be a Director to Board papers, books, records and documents of the Company which relate to the period during which the Director was a Director on such terms and conditions as the Board thinks fit.

54. EXECUTION OF DOCUMENTS

- 54.1 The Company shall not have a common seal.
- 54.2 Provided that the execution of a document has been validly approved by the Directors, the Company may execute a document if the document is signed by:
- 54.2.1 two (2) Directors; or
- 54.2.2 a Director and a Secretary.

55. NOTICES

- 55.1 The Company may give to a Member or former Member a notice required under this document or the Act:
- 55.1.1 personally; or
- 55.1.2 by sending it by post to the address for the person in the register of Members or an alternative address (if any) nominated by the person; or
- 55.1.3 by sending it to the fax number or electronic address (if any) nominated by the person; or
- 55.1.4 by any other means the Act permits.
- 55.2 A notice sent by post is taken to be given 3 days after it is posted. A notice sent by fax, or other electronic means, is taken to be given on the business day after it is sent.
- 55.3 A certificate in writing signed by a Director or Secretary that a notice or its envelope or wrapper was addressed and stamped and was posted is sufficient evidence of posting.

56. JURISDICTION

Each Member and each present and past Director and Secretary submits to the non-exclusive jurisdiction of the Supreme Court of the State of South Australia, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

57. AMENDMENT OF CONSTITUTION

- 57.1 This document may only be amended by Special Resolution.
- 57.2 The Members may not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

58. TRANSITIONAL PROVISIONS

- 58.1 This document shall be read and construed in a manner such that:
- 58.1.1 subject to clause 34.1, every Director and Secretary in office as such immediately before the adoption of this document shall continue in office subject to and shall be taken to have been appointed or elected under this document;
- 58.1.2 any register maintained by the Company immediately before the adoption of this document shall be taken to be a register maintained pursuant to this document;
- 58.1.3 unless a contrary intention appears in this document, all persons, things and circumstances appointed or created by or under the constitution of the Company in force before the adoption of this document shall continue to have the same status, operation and effect after the adoption of this document.
- 58.2 Every Member admitted before the adoption of this document shall, notwithstanding any failure to comply with or observe in connection with its admission any of the provisions of the constitution of the Company for the time being in force, be taken for all purposes to have been validly and effectually admitted in conformity with all such provisions.