



Merri Health

Healthcare that moves with you

Constitution

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Constitution

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution unless the contrary intention appears:

Auditor means the person appointed for the time being as the auditor of Merri Health.

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

Board Meeting means a meeting of the Directors.

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

Charities Act means any law, rule, Act, ordinance, regulation, order or statutory instrument from time to time regulating the registration, reporting or governance obligations of Merri Health as a charity.

Chief Executive Officer means a person appointed as a chief executive officer of Merri Health.

Commissioner means a commissioner under the Charities Act or Tax Act having responsibility for the tax or charitable status or registration of Merri Health.

Committee means a committee established by the Directors in accordance with this Constitution.

Constitution means this Constitution, and a reference to an article is a reference to an article of this Constitution.

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

Co-opted Director means a Director appointed by the Directors under this Constitution, other than to fill a vacant Elected Director position.

Director means a person holding office as a director of Merri Health.

Elected Director means a Director elected by the Members under this Constitution or where the context permits, any person appointed by the Directors to fill a vacancy.

Election Year means each year in which the term of office of an Elected Director expires and if the office of an Elected Director has been vacated early, any other year prescribed by the Directors as a year in which elections are to occur.

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

General Meeting means an annual general meeting or a special general meeting of Merri Health.

Member means a Person or Organisation who is as a member of Merri Health.

Merri Health means Merri Community Health Services Limited.

Purpose has the meaning given in article 2.1.

Organisation means a company, association, partnership, body corporate or other unincorporated body:

- (a) with written governing documents on terms acceptable to the Directors;

- (b) with an Australian Business Number; and
- (c) whose activities or interests do not conflict with the Purpose or interests of Merri Health or any other criteria set by the Directors.

Person means a natural person who is at least 18 years of age.

Registered Office means the registered office of Merri Health.

Representative means a Person appointed to represent an Organisation that is a Voting Member at a General Meeting in accordance with the Corporations Act.

Secretary means a person appointed as, or to perform the functions of, a secretary of Merri Health.

Tax Act means any law, rule, Act, ordinance, regulator, order or statutory instrument from time to time regulating the tax, taxation concession or deductible gift recipient status of Merri Health.

Voting Member means a Person or Organisation who has been a Member for at least 12 months.

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- 1.2.1 **(year)** where a Director's term is expressed as years, it means to the end of next annual general meeting in the given year or if there is no annual general meeting in a given year, the end of the process for electing Elected Directors, not a calendar year;
- 1.2.2 **(headings)** headings are inserted for convenience and are not to affect the interpretation of this Constitution;
- 1.2.3 **(gender)** words importing any gender include all other genders;
- 1.2.4 **(attorney)** a reference to an 'attorney' means a Person appointed under a power of attorney or court order to represent a Person or Organisation, but excludes a legal practitioner;
- 1.2.5 **(singular includes plural)** the singular includes the plural and vice versa;
- 1.2.6 **(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;
- 1.2.7 **(regulations)** a reference to a law includes regulations and instruments made under the law;
- 1.2.8 **(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;
- 1.2.9 **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, Merri Health in General Meeting or a Member may be exercised at any time and from time to time;
- 1.2.10 **(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;

1.2.11 **(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

1.2.12 **(currency)** a reference to \$ is a reference to the lawful currency of Australia.

1.3 Corporations Act

1.3.1 This Constitution is to be interpreted subject to the Corporations Act, but none of the replaceable rules in the Corporations Act apply to Merri Health.

1.3.2 Unless the contrary intention appears, a word or expression in this Constitution that is defined in an applicable part of the Corporations Act, has the same meaning in the Constitution as in that part of the Corporations Act;

1.4 Charities and Tax Act

This Constitution is to be interpreted subject to the Charities Act and the Tax Act and any provision of the Charities Act or Tax Act which:

1.4.1 must be provided for in the governing documents of Merri Health, forms part of this Constitution; and

1.4.2 which is inconsistent with this Constitution, prevails to the extent of the inconsistency,

to the extent necessary to maintain the taxation concession, deductible gift recipient endorsement and/or charitable status of Merri Health.

2 PURPOSE OF MERRI HEALTH

2.1 Charitable purpose

The purpose of Merri Health is to improve the health and wellness of people in need, in particular people who suffer sickness, disability, helplessness, disadvantage or poverty, through the provision of benevolent, charitable and not-for-profit community based services in Australia that relieve their needs.

2.2 Powers

In order to further the Purpose, Merri Health has the general powers given by the Corporations Act.

3 INCOME AND PROPERTY

3.1 Application of income and property for Purpose only

The income and property of Merri Health:

3.1.1 must be applied solely towards the promotion of the Purpose; and

3.1.2 must not be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise.

3.2 Payments by Merri Health in good faith

Subject to articles 8.10, 8.11 and 8.12, article 3.1 does not prevent a payment approved by the Directors in good faith to an officer of Merri Health or a Member, or to an associated entity of an officer or Member:

- 3.2.1 of reasonable remuneration for services provided to Merri Health, including pursuant to an employment relationship;
- 3.2.2 for goods supplied in the ordinary course of business;
- 3.2.3 of interest at a commercial rate on money borrowed; or
- 3.2.4 of reasonable rent for premises let.

3.3 Provision of services

Article 3.1 does not prevent an officer of Merri Health or a Member being the recipient of services from Merri Health in furtherance of the Purpose, where services are provided in a manner consistent with the provision of services to the general public.

3.4 Surplus gifts

If Merri Health is not required to maintain a gift fund, on winding up of Merri Health or Merri Health's deductible gift recipient endorsement being revoked (whichever is the earlier), any surplus gifts, fundraising contributions or money received because of them as set out in section 30-125(6)(b) of the *Income Tax Assessment Act 1997* (Cth) must be transferred to one or more funds, authorities or institutions determined according to article 18 which is also endorsed as a deductible gift recipient on the same basis as Merri Health.

4 MEMBERSHIP

4.1 Becoming a Member

The Members of Merri Health are:

- 4.1.1 any Person or Organisation who was a Member immediately prior to the adoption of this Constitution; and
- 4.1.2 any Person or Organisation who meets the eligibility requirements for membership in the relevant class and is admitted as a Member under this Constitution.

A Member is not entitled to vote unless and until the Member becomes a Voting Member.

4.2 Admission as a Member

- 4.2.1 Applications for membership must be in a form and submitted in a manner specified by the Directors from time to time.
- 4.2.2 The Directors will determine whether to approve an application for membership, with the decision of the Directors being final.

4.3 Register of Members

The Secretary must keep a register of Members in accordance with the Corporations Act and the Charities Act 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 Merri Health during normal business hours.

4.4 Member to notify of any changes

- 4.4.1 Members must promptly notify Merri Health if their details change.
- 4.4.2 Membership is not transferable, and ends when the Member ceases to be a Member.

4.5 Directors may create and vary classes and class rights

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

- 4.5.1 prescribe (and revoke or amend) the eligibility 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;
- 4.5.2 establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
- 4.5.3 vary or cancel the rights, restrictions and obligations of Members in any new or existing class, if:
 - (a) at least 75% of the Members of that class give their written consent; or
 - (b) a special resolution to that effect is passed at a separate meeting of those Members.

Article 5 (General Meetings) applies 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 Member ceases to be a Member on:

- 4.6.1 resignation;
- 4.6.2 their membership being terminated by the Directors in accordance with this Constitution;
- 4.6.3 ceasing to meet the eligibility requirements for membership;
- 4.6.4 failing to renew their membership every three years;
- 4.6.5 in addition in the case of a Person:
 - (a) death;
 - (b) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
 - (c) is a person whose estate or person is managed, supervised or dealt with by a court, tribunal or other similar body exercising judicial or statutory powers under the law relating to mental health or legal disability. Nevertheless, the Directors may allow Membership to be retained if the matter is considered unlikely to adversely affect the Member's ability to properly exercise the rights of a Member; and
- 4.6.6 in addition in the case of an Organisation:
 - (a) the governing documents, activities or structure of the Organisation changes to an extent or in a manner which the Directors consider to be:

- (1) inconsistent with the basis upon which that Organisation was first admitted; or
- (2) otherwise unacceptable having regard to the Purpose and activities of Merri Health;
- (b) being dissolved or otherwise ceasing to exist;
- (c) having a liquidator or provisional liquidator appointed to it; or
- (d) being insolvent.

4.7 Resignation

A Member may by written notice to Merri Health resign from membership with immediate effect or within three months after the service of the notice. A Member remains liable for all money due by the Member to Merri Health, in addition to any sum for which the Member is liable as a Member under article 18.1.

4.8 Disputes and grievances

- 4.8.1 If a dispute arises between a Member and another Member (in their capacity as Members) or a Member and Merri Health relevant to this Constitution, the parties must meet within 14 days to discuss the matter and attempt to resolve it as soon as possible.
- 4.8.2 If the parties are unable to resolve the dispute on their own, the parties must within a further 10 days after the expiry of the period referred to in article 4.8.1, hold a meeting in the presence of an impartial mediator (appointed in accordance with article 4.8.5). At that meeting, the mediator must:
- (a) give each party a reasonable opportunity to be heard;
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties to the dispute through the mediation process.
- 4.8.3 The parties to the dispute at all times have the right to appoint another person to act in conjunction or on their behalf.
- 4.8.4 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 mediation does not result in the dispute being resolved.
- 4.8.5 The mediator must be:
- (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement:
 - (1) in the case of a dispute between a Member and another Member, a person appointed by the Directors (which may without limitation be all or some of the Directors or a committee of the Directors); or
 - (2) in the case of a dispute between a Member and Merri Health, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice) or any equivalent body nominated by the Directors.

- 4.8.6 The costs of a mediator must be met by the parties to dispute equally, unless agreed otherwise by those parties.

4.9 Censuring, suspension or expulsion of a Member

If a Member wilfully refuses or neglects to comply with this Constitution, or acts in a manner which in the opinion of the Directors is prejudicial to the interests of Merri Health, the Directors may by resolution censure, suspend or expel the Member from Merri Health, provided that the following procedure is observed:

- 4.9.1 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 proposed meeting setting out:
- (a) what is alleged against the Member;
 - (b) stating the date of the meeting; and
 - (c) informing the Member that the Member may attend and/or provide a written statement concerning the matter in question (as determined and notified by the Directors);
- 4.9.2 at the Board Meeting and before the passing a resolution, the Directors must:
- (a) give the Member an opportunity to be heard; and/or
 - (b) give due consideration to any written statement submitted by the Member;
- 4.9.3 the Directors must notify the Member of the Directors' resolution and inform the Member that they may within two days of that resolution being communicated lodge with the Secretary a notice to the effect that the Member wishes to appeal against the resolution;
- 4.9.4 if the Member submits an appeal notice within the prescribed time frame, a General Meeting must be called within 21 days for the purpose of considering the Directors' resolution;
- 4.9.5 at a General Meeting convened to consider an appeal:
- (a) the only business is the question of the appeal;
 - (b) the Directors may place before the Members details of the grounds for the resolution and the reasons for passing the resolution;
 - (c) the Member must be given an opportunity to be heard; and
 - (d) the Voting Members present are to vote by secret ballot on the question whether the Director's resolution should be confirmed or revoked;
- 4.9.6 if at the General Meeting:
- (a) two-thirds of the Voting Members vote in person or by proxy in favour of the confirmation of the resolution, the resolution is confirmed; and
 - (b) in any other case the resolution is revoked; and
- 4.9.7 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 Merri Health. The Directors may not give an honorary member the right to vote on a matter concerning Merri Health, 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 titleholder of Merri Health on any terms the Directors think fit. A patron (or other honorary titleholder) may, in the discretion of the Directors, be given the right to:

- 4.12.1 attend and speak (but not vote) at any General Meeting of Merri Health and be given notice of the meeting as if a Member; and
- 4.12.2 receive accounts of Merri Health 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

An annual General Meeting must be held in accordance with the Corporations Act and the Charities Act.

5.2 Convening a General Meeting

The Directors may convene and arrange to hold a General Meeting of Merri Health 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 Voting Members holding at least 10% of the votes in Merri Health may convene a General Meeting at the cost of Merri Health.

5.4 Notice of General Meeting

5.4.1 Subject to the Corporations Act and the Charities Act, at least 21 days' notice of any General Meeting must be given specifying the place, date and time of the meeting in the manner set out below or as permitted by the Corporations Act or Charities Act.

5.4.2 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,

Merri Health 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.

5.4.3 An electronic notice 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 Merri Health and is entitled to speak at those meetings.

5.7 Cancellation or postponement of General Meeting

5.7.1 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.

5.7.2 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. 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:

- 5.9.1 a date and time for the holding of the meeting, being at least 21 days after the notice of postponement;
- 5.9.2 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
- 5.9.3 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 Business at postponed General Meeting

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

5.11 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.

5.12 Proxy, attorney or Representative at postponed General Meeting

If a General Meeting is postponed and an instrument appointing a proxy or attorney or of an appointment of a Representative is expressed to expire or lapse before the General Meeting is reconvened, then, subject to law and any contrary written direction received by Merri Health at least 48 hours before the postponed meeting, the instrument of appointment is taken to be extended and applied to the postponed meeting.

6 PROCEEDINGS AT GENERAL MEETINGS

6.1 Use of technology

General meetings may be held at more than one place (which includes at least one physical place), provided that the technology that is used enables each Member present at all places the meeting is held to clearly and simultaneously communicate with every other such Member.

6.2 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:

- 6.2.1 a proxy;
- 6.2.2 an attorney; or
- 6.2.3 a Representative, of that Member.

6.3 Number for a quorum

Subject to article 6.6, the quorum for a General Meeting is 20 Voting Members.

6.4 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 Voting Member, who is present) declares otherwise.

6.5 If quorum not present

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

- 6.5.1 if convened by a Director, or at the request of Members, is dissolved; and
- 6.5.2 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.

6.6 Adjourned meeting

At a meeting adjourned under article 6.5.2, 20 Voting Members is a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

6.7 Ordinary business at a General Meeting

The ordinary business of the annual General Meeting is:

- 6.7.1 to consider the minutes of the previous annual General Meeting and any special General Meetings held in the preceding Financial Year; and
- 6.7.2 to consider any other matter required by the Corporations Act or the Charities Act.

6.8 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.

6.9 Absence of Chair at General Meeting

If a General Meeting is held and:

- 6.9.1 a Chair has not been elected by the Directors; or
- 6.9.2 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):

- 6.9.3 the deputy Chair (if any);
- 6.9.4 a Director chosen by a majority of the Directors present;
- 6.9.5 the only Director present; or
- 6.9.6 a Voting Member chosen by a majority of the Voting Members present in person or by proxy, attorney or Representative.

6.10 Conduct of General Meetings

The Chair of a General Meeting:

- 6.10.1 has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- 6.10.2 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
- 6.10.3 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.

6.11 Adjournment of General Meeting

- 6.11.1 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.

6.11.2 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.

6.12 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.

6.13 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.

6.14 Equality of votes - casting vote for Chair

If there is an equality of votes, whether on a show of hands, on a poll or a ballot, the Chair of the General Meeting or in the event of a decision outside of a General Meeting, the Chair of Board Meetings, 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.

6.15 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 of the Voting Members 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 Merri Health, 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.

6.16 Entitlement to vote

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

6.16.1 on a show of hands, each Voting Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote; and

6.16.2 on a poll, each Voting 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.

6.17 Objection to voting qualification

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

6.17.1 may not be raised except at that meeting or adjourned meeting; and

6.17.2 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.

6.18 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.

6.19 Proxies

- 6.19.1 A Voting Member may appoint a proxy to act on the Voting Member's behalf at any General Meeting at which that Voting Member may attend and vote.
- 6.19.2 A proxy must be a Voting Member, provided that each Voting Member may be appointed proxy by no more than 5 Voting Members. Any additional proxy appointments will be invalid.
- 6.19.3 Without limiting article 6.19.2, for the instrument appointing a proxy to be valid, it must be:
- (a) in writing and signed by the appointor;
 - (b) in a form approved by the Directors, consistent with the Corporations Act and the Charities Act; and
 - (c) lodged with Merri Health at least 48 hours before the time for holding the General Meeting or adjourned meeting.

6.20 Circulating resolutions of Members (without meetings)

- 6.20.1 Unless the Corporations Act or Charities Act requires otherwise, the Directors may if they think fit submit any question or resolution to the vote of all Voting Members entitled to a vote at a General Meeting by circular resolution or ballot.
- 6.20.2 The Board may determine:
- (a) the form of the circular resolution;
 - (b) the polling date;
 - (c) the method for responding to the circular resolution, which may include the use of technology or other electronic means for voting; and
 - (d) whether voting on the circular resolution is to be by secret ballot.
- 6.20.3 A resolution approved by a majority or specific majority of the Voting Members has the same force and effect as such a resolution passed in a General Meeting.

6.21 Right to appoint attorney

- 6.21.1 A Voting Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of Merri Health or of any class of Members.
- 6.21.2 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 Merri Health 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 established by the Directors.

8 DIRECTORS

8.1 Number of Directors

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

8.2 Composition of Directors

The Directors consist of:

- 8.2.1 up to six Elected Directors appointed by the Members in accordance with article 8.6; and
- 8.2.2 up to four Co-opted Directors appointed by the Directors in accordance with article 8.3.

8.3 Appointment of Co-opted Directors

- 8.3.1 The Directors may appoint a person to fill a Co-opted Director position.
- 8.3.2 On selecting suitable applicants for the position of Co-opted Director, the Directors must strive to ensure that the Board has:
 - (a) the essential and desired generalist skills, specialist skills, qualifications, experience and expertise set out in a skills matrix previously approved by the Directors in respect of:
 - (1) each individual Co-opted Director; and
 - (2) the overall composition of the Board as a whole;
 - (b) regard to representation from the geographical regions served by Merri Health; and
 - (c) diversity of gender and cultural representation.

8.4 Duration of office

- 8.4.1 The term of office of each Elected Director is three years.
- 8.4.2 Unless the Directors determine otherwise, a Co-opted Director is appointed for a period of three years.
- 8.4.3 A Director appointed to fill a casual vacancy holds office until the conclusion of the annual General Meeting following their appointment or if there is no annual General Meeting in a given year, the end of the process for electing Elected Directors in that year.
- 8.4.4 A Director who continuously holds office for more than nine years, whether as an Elected Director or Co-opted Director, and whether or not to fill a casual vacancy, may finish serving his or her current term of office but will not be eligible to be elected or appointed as a Director (whether or not to fill a casual vacancy) until he or she has been absent from the Board for at least one year.

8.5 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 8.4, is eligible for re-election.

8.6 Election of Elected Directors

8.6.1 In each Election Year, the Directors:

- (a) must determine and notify the Members of:
 - (1) each vacancy or upcoming vacancy in the position of an Elected Director to be filled in that year; and
 - (2) the applicable eligibility and/or selection criteria;
- (b) seek nominations for the notified positions in a form and manner determined by the Directors, based on a requirement that:
 - (1) a nomination must be supported by at least five Voting Members; and
 - (2) a Voting Member cannot nominate or support more than one candidate;
- (c) may, subject to nominees executing a deed of confidentiality in favour of the Company, invite nominees to attend and observe one or more meetings of the Directors or a Committee;
- (d) must give nominees a reasonable opportunity to ask questions and obtain information regarding the responsibilities and expectations of being an Elected Director, so that nominees can make an informed decision about whether to proceed with their nomination; and
- (e) must, after being given the opportunities referred to in articles 8.6.1(c) and 8.6.1(d), be asked to affirm whether the nominee wishes to proceed with his or her nomination.

8.6.2 If the number of eligible candidates nominated for office who wish to proceed with their nominations is less than or equals the number of notified vacancies to be filled in the given Election Year, the nominated candidates will be declared elected.

8.6.3 If the number of eligible candidates nominated for office who wish to proceed with their nominations is greater than the number of notified vacancies, an election must be conducted by means of a ballot in such form and returnable in such manner as the Directors determine.

8.6.4 On any ballot to elect an Elected Director:

- (a) all votes must be on the form prescribed by the Directors;
- (b) 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;
- (c) 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 Voting Member on the excess ballot papers;

- (d) if insufficient candidates reach a quota after a distribution, the preferences of Voting Members for the least successful candidates are progressively distributed until enough candidates reach a quota to fill the vacant positions; and
- (e) the successful candidate(s) will be declared elected.

8.6.5 Elections take effect at the end of the annual General Meeting in the Election Year or if there is no annual General Meeting in that year, on the date determined by the Directors for election purposes in that year.

8.7 Eligibility for election as Director

A nominee for the position of Elected Director:

- 8.7.1 must be a Voting Member, unless recommended for election by the Directors;
- 8.7.2 must have the essential and desired generalist skills, specialist skills, qualifications, experience and expertise set out in a skills matrix previously approved by the Directors in respect of nominees for Elected Director;
- 8.7.3 must attend an information and education session conducted by the Company to outline the activities of the Company, the structure of the Company and the anticipated workload of being a Director, unless otherwise exempted by the Directors; and
- 8.7.4 must otherwise satisfy the criteria for appointment under this Constitution.

8.8 Requirement for Director

A person is eligible to become a Director if he or she:

- 8.8.1 is over 18 years of age;
- 8.8.2 is not an employee of Merri Health;
- 8.8.3 has consented in writing to become a Director;
- 8.8.4 is not prohibited or disqualified or otherwise prevented from being a director of a company under the Corporations Act, the Charities Act, the Tax Act or any other applicable law; and
- 8.8.5 has not been convicted and is not under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer.

8.9 Casual vacancy

8.9.1 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 under article 8.1.

8.9.2 A Director appointed under this article holds office until the sooner of:

- (a) the conclusion of the next annual General Meeting;
- (b) the conclusion of an election of Elected Directors in an Election Year; or
- (c) twelve months after their appointment,

but, subject to article 8.4, is eligible for election or reappointment by the Directors.

8.10 Reimbursement of expenses

A Director is entitled to be reimbursed by Merri Health for their reasonable travelling, accommodation and other expenses incurred in connection with meetings of the Directors or a Committee or when otherwise engaged in the business of Merri Health.

8.11 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 Appointment and Remuneration Guidelines* (as amended, supplemented or replaced from time to time), or as otherwise approved by the Members in General Meeting.

8.12 Payments to Director

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

8.13 Director's interests

8.13.1 A Director who has a material personal interest in a matter that relates to the affairs of Merri Health must give the other Directors notice of the interest.

8.13.2 A Director who has a material personal interest in a matter that is being considered by the Directors must not be present while the matter is being considered, or vote on the matter.

8.14 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the Charities Act, the Tax Act or any other applicable law, the office of a Director becomes vacant if the Director:

8.14.1 is a person whose estate or person is managed, supervised or dealt with by a court, tribunal or other similar body exercising judicial or statutory powers under the law relating to mental health or legal disability. Nevertheless, the Board may allow the Director to continue if the matter is considered unlikely to adversely affect the Director's ability to discharge their duties as director to Merri Health;

8.14.2 resigns office by notice in writing to Merri Health;

8.14.3 is not present personally at meetings of the Directors for a continuous period of 3 months without leave of absence from the Directors;

8.14.4 reaches the maximum term of office under this Constitution; or

8.14.5 is found by an independent decision maker under article 8.15 to have either:

(a) breached any Directors' code of conduct approved by the Directors; or

(b) engaged in conduct that has brought Merri Health into disrepute.

8.15 Independent decision regarding Director's conduct

If the Board considers that a Director may have:

8.15.1 breached any Directors' code of conduct approved by the Directors; or

8.15.2 engaged in conduct that has brought Merri Health into disrepute;

the Board may refer the matter to an independent decision maker to consider and make a finding as to whether the allegation is made out. The independent decision maker must abide by the principles of procedural fairness and natural justice, but otherwise may determine the procedures and rules of evidence to be followed. The independent decision maker must be one of the following persons as determined by the Board:

- 8.15.3 a retired judicial officer of the Magistrates Court, County Court or Supreme Court of Victoria or of the Federal Circuit, Federal or High Courts of the Commonwealth of Australia, having experience in relation professional conduct matters; or
- 8.15.4 a barrister with not less than 5 years' experience in relation to professional conduct matters.

A finding made by the independent decision maker is final and binding on the Company and the Director involved.

9 POWERS AND DUTIES OF DIRECTORS

9.1 Directors to manage Company

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

9.2 Regulations

- 9.2.1 Without limitation, the Directors may exercise all the powers of Merri Health to create, vary or rescind by-laws or regulations.
- 9.2.2 The regulations for the time being in force, and which are not inconsistent with this Constitution, are binding on the Directors and/or the Members and have full effect accordingly.
- 9.2.3 Any regulation made by the Directors may be set aside by the Directors or the Members.

9.3 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of Merri Health 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 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. The Directors must identify the membership and terms of reference of each Committee.

9.5 Powers of delegation

The powers of delegation conferred on the Directors under this Constitution are in addition the powers conferred by the Corporations Act.

10 PROCEEDINGS OF DIRECTORS

10.1 Board Meetings

The Directors must:

10.1.1 meet at least 10 times per year at a time and place that the Directors determine or as fixed by the Chair; and

10.1.2 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

10.3.1 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.

10.3.2 A Director is not entitled to appoint an alternate director or a proxy to exercise a vote or any powers of a Director.

10.4 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.

10.5 Absence of Chair at Board Meeting

If a Board Meeting is held and:

10.5.1 a Chair has not been elected under article 10.4; or

10.5.2 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.

10.6 Chair's casting vote at Board Meetings

In the event of an equality of votes, the Chair of a Board Meeting has a second or casting vote.

10.7 Quorum for Board Meeting

The quorum for a Board Meeting is five Directors. No business can be transacted unless a quorum is present. If a Board Meeting is adjourned due to lack of quorum, the Chair must set a further date for the adjourned meeting.

10.8 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.

10.9 Circulating resolutions

10.9.1 The Directors may pass a resolution without a Board Meeting being held if 75% of the Directors entitled to vote on the resolution (other than any Director on leave of absence or who has a conflict of interest) by signing or electronically endorsing a document in a usual or prescribed manner.

10.9.2 The resolution is passed when the last Director signs or endorses the resolution.

10.10 Validity of acts of Directors

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

10.10.1 there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or

10.10.2 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.

10.11 Meeting by use of technology

The Board may hold a technology enabled meeting if:

10.11.1 all Directors (other than any Director on leave of absence) have access to the technology to be used for the meeting; and

10.11.2 those Directors participating by technological means can hear, or can hear and read the communications of all other participating Directors.

11 CHIEF EXECUTIVE OFFICER

11.1 Appointment of Chief Executive Officer

The Directors must appoint a Chief Executive Officer on such terms and conditions as the Directors determine from time to time.

11.2 Attendance at meetings

The Chief Executive Officer is entitled to attend Board Meetings and General Meetings, if so directed by the Directors from time to time.

12 SECRETARY

12.1 Appointment of Secretary

Merri Health 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.

13 AUDITOR

13.1 Appointment of Auditor

13.1.1 A properly qualified auditor must be appointed and the auditor's duties regulated in accordance with the requirements of the Corporations Act and the Charities Act

13.1.2 The Directors may fix the remuneration of the Auditor.

13.2 Removal of Auditor

13.2.1 An Auditor may only be removed in accordance with the requirements of the Corporations Act and Charities Act.

13.2.2 The Directors may fill any casual vacancy in the office of Auditor

14 MINUTES**14.1 Minutes of proceedings**

The Directors must ensure that minutes of all proceedings of General Meetings, Board Meetings and Committee meetings are recorded in a minute book.

14.2 Reliance on minutes

Minutes entered and signed are prima facie evidence of the proceedings to which they relate.

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 Merri Health 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 Merri Health except as provided by law or authorised by the Directors or by Merri Health 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

Merri Health may give a document to a Member:

16.2.1 personally;

16.2.2 by sending it by post to the address for the Member in the register or an alternative address nominated by the Member;

16.2.3 by sending it to a fax number or electronic address nominated by the Member;
or

16.2.4 by sending it to the Member by other electronic means nominated by the Member.

16.3 Post

A document sent by post:

16.3.1 if sent to an address in Australia, may be sent by ordinary post; and

16.3.2 if sent to an address outside Australia, must be sent by economy airmail (or equivalent),

and in either case is taken to have been received 5 Business Days 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:

16.4.1 to be effected by properly addressing and transmitting the fax or electronic transmission; and

16.4.2 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

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

17.1.1 every liability incurred by the person in that capacity (except a liability for legal costs); and

17.1.2 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:

17.1.3 Merri Health is forbidden by statute to indemnify the person against the liability or legal costs;

17.1.4 an indemnity by Merri Health of the person against the liability or legal costs would, if given, be made void by statute; or

17.1.5 the liability arises out of conduct involving a lack of good faith or a pecuniary penalty order.

17.2 Insurance

Merri Health may pay or agree to pay, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of Merri Health against liability incurred by the person in that capacity, including a liability for legal costs, unless:

17.2.1 Merri Health is forbidden by statute to pay or agree to pay the premium; or

17.2.2 the contract would, if Merri Health paid the premium, be made void by statute.

17.3 Deed of indemnity

Merri Health 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 Merri Health conferred by the Corporations Act or otherwise by law.

18 WINDING UP

18.1 Contributions on winding up

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

- 18.1.1 payment of Merri Health's debts and liabilities contracted before they ceased to be a Member;
- 18.1.2 the costs of winding up; and
- 18.1.3 adjustment of the rights of the contributories among themselves, an amount not to exceed \$2.

18.2 Application of property on winding up

Merri Health's surplus assets, after satisfying all liabilities on wind up or dissolution, must not be paid to or distributed among the Members but must be given or transferred to one or more funds, authorities or institutions:

- 18.2.1 having charitable and benevolent objects and/or purposes similar to those of Merri Health;
- 18.2.2 who prohibit their income and property from being paid to its members to an extent at least as great as imposed on Merri Health under this Constitution;
- 18.2.3 who are registered with or recognised by the Commissioner as being income tax exempt if Merri Health had been;
- 18.2.4 who are registered with or recognised by the Commissioner as being entitled to receive deductible gifts if Merri Health could; and
- 18.2.5 who are selected at or before wind up or dissolution by the Members, or failing that, by resolution of the Board or by application to the court.

19 ACCOUNTS

The Directors must cause the accounts of Merri Health to be maintained and audited in accordance with the requirements of the Corporations Act and the Charities Act.