



Merri Health

Healthcare that moves with you

**MERRI COMMUNITY HEALTH SERVICES
LIMITED**

ACN 135 261 988

ABN 24 550 946 840

Adopted: October 22, 2024

CONSTITUTION

A public company limited by guarantee under
the *Corporations Act 2001* (Cth)

A charity registered with the Australian Charity
and Not-for-profits Commission

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CONSTITUTION

1 PURPOSE OF THE COMPANY

The Company is a not-for-profit registered charity and public benevolent institution established and operated in Australia to improve the health and wellness of people in need, in particular people who suffer sickness, disability, disadvantage or poverty, through the provision of benevolent, charitable and not-for-profit community based services in Australia that relieve their needs (**Purpose**).

2 BENEVOLENT, CHARITABLE AND NOT-FOR-PROFIT NATURE OF THE COMPANY

2.1 Powers

In order to further the Purpose, the Company has all the powers of an individual and a company limited by guarantee under the Corporations Act.

2.2 Income applied for the Purpose

The Company's income and property:

2.2.1 must be applied towards the Purpose; and

2.2.2 must not be paid or given to a Member, directly or indirectly, by way of dividend, bonus or otherwise, unless permitted by clause 2.3 or 2.5.

2.3 Permitted payments to Members

The Company may pay a Member in good faith with prior Board approval, up to a fair and reasonable amount for:

2.3.1 expenses properly incurred for the Company;

2.3.2 goods or services supplied to the Company;

2.3.3 interest on money lent to the Company; or

2.3.4 rent for premises let to the Company.

The Company may also provide services to Members or officers where services are provided in a manner consistent with the provision of services to the general public.

2.4 Winding up

Subject to clause 2.7, the Company's surplus assets, after satisfying all liabilities on winding up or dissolution:

2.4.1 must not be paid or given to current or former Members unless eligible under clause 2.5; and

2.4.2 must be paid to eligible recipients selected under clauses 2.5 and 2.6.

2.5 Eligible recipients

A fund, authority or institution is eligible to receive any surplus under clause 2.7 if it:

- 2.5.1 has not-for-profit, charitable and benevolent purposes similar to the Purpose;
- 2.5.2 prohibits its income and property from being paid to members on at least the terms of this clause 2;
- 2.5.3 is a charity registered under Relevant Laws, if the Company had been;
- 2.5.4 is income tax exempt under Commonwealth taxation Laws, if the Company had been; and
- 2.5.5 can receive deductible gifts under the Commonwealth taxation Laws, if the Company could and on the same basis.

2.6 Selection of eligible recipients

Eligible recipients to receive any surplus referred to in clause 2.5 must be selected:

- 2.6.1 by Member special resolution;
- 2.6.2 failing clause 2.6.1, by Board resolution; and
- 2.6.3 failing clause 2.6.2, by application to the Supreme Court in the state or territory in which the Company's registered office is located.

2.7 Surplus gifts

Any surplus gifts, fundraising contributions under Commonwealth taxation Laws and money received because of those gifts or contributions, must be transferred to eligible recipients selected under clauses 2.5 and on the earlier of:

- 2.7.1 the Company's deductible gift recipient endorsement being revoked; or
- 2.7.2 the winding up of the Company.

3 PATRONS

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

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

4 MEMBERSHIP

4.1 Limited liability of Members / guarantee

- 4.1.1 A Member's liability is limited to the guaranteed amount in clause 4.1.2.
- 4.1.2 If the Company is wound up, each Member and former Member in the previous year must contribute up to \$2 towards:

- (a) the Company's liabilities contracted before the person ceased to be a Member; and
- (b) costs, charges and expenses of winding up and the adjustment of the rights of the contributories among themselves.

4.2 Classes of Members and eligibility

The Members of the Company comprise the classes of Members with the eligibility and rights set out in the table below and such other voting or non-voting categories whose rights, benefits, privileges, entitlements, obligations, liabilities, eligibility and status will be determined by the Board.

Class	Eligibility	Rights (see also clause 4.3)
Ordinary Member	Any individual 16 years of age or over who supports the purpose and interests of the Company.	Voting, except for: <ul style="list-style-type: none"> • new members, who are non-voting for the first 12 months of membership, before assuming full voting rights; and • individuals under 18 years of age; • employees of the Company, who are non-voting for the duration of their employment; and • former employees of the Company, who are non-voting for a period of 12 months after termination of employment, at which their voting rights revert to Ordinary Member rights
Life Member	The Board may from time to time elect as Honorary Member individuals who have made a distinguished contribution to the Company.	Voting (exempt from membership fee)

4.3 Member rights and obligations

- 4.3.1 Voting Members have the right to receive notice of, participate in the requisition of, attend, speak at, vote at and join in the demand for a poll at general meetings.
- 4.3.2 Non-voting Members have the right to receive notice of and attend the annual general meeting, but may not participate in the requisition of, speak at, vote at or join in the demand for a poll at that meeting.
- 4.3.3 Members have the right to appoint a Representative to exercise all the Member's rights.

4.4 **Limit on number of Members**

The number of Members is unlimited unless the Members set a limit in a general meeting.

4.5 **Rights not transferrable**

A person's membership rights and privileges:

4.5.1 apply only whilst the person is a Member; and

4.5.2 are personal and may not be transferred or transmitted.

4.6 **Membership period and fees**

The Board may determine:

4.6.1 the membership period (which as at the commencement of this Constitution is three years) and common expiry dates as well as how and when membership is renewed;

4.6.2 fees payable by Members, including any fee to apply for membership or be admitted as a Member; and

4.6.3 whether fees are refundable or non-refundable.

4.7 **Register of Members, including closure of register**

4.7.1 The Company must maintain a register of Members in accordance with the Corporations Act which contains the name, addresses for notices and membership start/end dates for current and recent former Members.

4.7.2 The Board may establish Regulations to close the register to new Members for up to 60 days per year.

4.7.3 The Secretary must make the register available for inspection by Members at the office of the Company during normal business hours.

4.7.4 The Company may maintain a database of other Member details which is separate to the register of Members.

4.8 **Change of Member details**

A Member must notify the Company if the Member's addresses for notices change within 28 days of the change.

5 **BECOMING AND CEASING TO BE A MEMBER**

5.1 **Admission of Members**

5.1.1 The Board may admit in its absolute discretion a person as Member upon application in accordance with any requirements specified in the Regulations.

5.1.2 The Board must consider membership applications as soon as reasonably practicable.

5.1.3 The Board need not provide reasons for refusing to admit a person as Member.

5.1.4 Successful applicants become Members when added to the register of Members.

5.2 Resignation of Members

- 5.2.1 A person may resign as Member by written notice to the Company.
- 5.2.2 The resignation takes effect when the Company receives the Member's notice or on a later date specified in the notice.

5.3 Ceasing to be a Member

A person automatically ceases to be a Member if the person:

- 5.3.1 does not renew the membership by the due date;
- 5.3.2 ceases to be eligible to be a Member in the relevant class;
- 5.3.3 dies or is wound up or deregistered;
- 5.3.4 becomes bankrupt, or makes any arrangement or composition with the Member's creditors generally; or
- 5.3.5 no longer has capacity to give informed consent as defined under mental health legislation which provides for the decision-making capacity of an individual. Nevertheless, the Board 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.

5.4 Disciplining Members

The Board may warn, censure, suspend or expel a Member if the Member:

- 5.4.1 engages in Unacceptable Conduct, subject to:
- (a) the decision being made by two-thirds majority of all Directors (excluding Directors who are conflicted) whether they are all present and voting;
 - (b) the Member being afforded a reasonable opportunity to respond, in accordance with any Regulations, to the Board's allegations; and
 - (c) the Member's appeal rights (if any) set out in the Regulations;
- 5.4.2 does not comply with the provisions of this Constitution or the Regulations;
- 5.4.3 is found guilty by a court of an indictable offence; or
- 5.4.4 has a debt to the Company which remains unpaid for six months or more.

5.5 Disputes and Grievances

- 5.5.1 If a dispute arises between a Member and another Member (in their capacity as Members) or a Member and the Company relevant to this Constitution, the parties must meet within 14 days to discuss the matter and attempt to resolve it as soon as possible.
- 5.5.2 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 clause 5.5.1, hold a meeting in the presence of an impartial mediator (appointed in accordance with clause 5.5.5). 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.
- 5.5.3 The parties to the dispute at all times have the right to appoint another person to act in conjunction or on their behalf.
- 5.5.4 This clause 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.
- 5.5.5 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 Board (which may without limitation be all or some of the Directors or a committee of the Board); or
 - (2) in the case of a dispute between a Member and the Company, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice) or any equivalent body nominated by the Board.
- 5.5.6 The costs of a mediator must be met by the parties to dispute equally, unless agreed otherwise by those parties.

6 GENERAL MEETINGS

6.1 Convening an annual general meeting

- 6.1.1 The Board must convene an annual general meeting to be held at least once every year in accordance with the Corporations Act. The requirements for convening an annual general meeting may otherwise be set out in the Corporations Act or Relevant Laws.
- 6.1.2 The business of an annual general meeting is to:
- (a) consider the Board's, financial and auditor's report;
 - (b) present and consider the Director's report;
 - (c) declare the Director election results;
 - (d) appoint an auditor if that office is, or will become, vacant;
 - (e) consider any other matter required by the Corporations Act or Relevant Laws; and
 - (f) consider any special business, the general nature of which is specified in the notice of meeting.

6.2 Convening a special general meeting

- 6.2.1 General meetings other than annual general meetings are called special general meetings.
- 6.2.2 The Board must convene and hold special general meetings of the Members if required by the Corporations Act or Relevant Laws, or if requested by a Director or Voting Members holding at least 10% of the votes in the Company.
- 6.2.3 The Board or two Directors may convene special general meetings of the Members.
- 6.2.4 The notice of special general meeting must specify the general nature of special business, unless the Corporations Act or Relevant Laws require otherwise.

6.3 Notice of meeting

- 6.3.1 At least 21 days' notice of any general meeting must be given specifying the meeting's place, date and time, unless the Corporations Act or Relevant Laws require or permit some other period of notice.
- 6.3.2 Notice of a general meeting must specify the meeting's format (including if it is a Hybrid Meeting), place, date and time, and include Electronic Voting instructions if applicable.
- 6.3.3 Notice of every general meeting must be given in writing in accordance with clause 11.6 to:
 - (a) every Director;
 - (b) every Member entitled to attend who has supplied an address for notices to the Company; and
 - (c) the Company's auditor.
- 6.3.4 No other person is entitled to receive notices of general meetings.
- 6.3.5 A general meeting and any resolution passed at the meeting is not invalid merely because of:
 - (a) the accidental omission to give notice of the meeting; or
 - (b) the non-receipt of any such notice.

6.4 Postponement

- 6.4.1 The Board may postpone, relocate or cancel a general meeting which it convened by giving at least 5 days' notice to the Members.
- 6.4.2 Clause 6.4.1 does not apply to a meeting requisitioned by Members or convened by the Members, by individual Directors under clause 6.2.3 or by court order.

6.5 Quorum

- 6.5.1 A general meeting may not transact business unless a quorum is present when the meeting proceeds to business.

- 6.5.2 The quorum for general meetings is 10 voting Members present in person or by Representative.
- 6.5.3 If a quorum is not present within 30 minutes of the time scheduled to start the general meeting:
- (a) the meeting, if requisitioned by Members, is dissolved; and
 - (b) in any other case, the meeting is adjourned to such other place, date and time as the Board determines and notifies to Members (if required to do so by clause 6.7).
- 6.5.4 If a quorum is not present within 30 minutes of the time scheduled to start the adjourned general meeting, the meeting is dissolved.

6.6 Meeting chair

- 6.6.1 The Chair may chair a general meeting.
- 6.6.2 If the Chair is not present and willing to act, the Deputy Chair may chair.
- 6.6.3 If the Chair and Deputy Chair are not present and willing to act:
- (a) the Directors present may choose one of their number to chair the meeting; and
 - (b) if no Director is present, or if all the Directors present decline to chair, the Members present must choose one of their number to chair.
- 6.6.4 In addition to powers conferred by law, the meeting chair may:
- (a) determine the meeting's conduct and procedures to ensure proper and orderly discussion or debate;
 - (b) make rulings without putting a question to the vote, or terminate discussion or debate and require that matter to be put to a vote;
 - (c) refuse to allow debate or discussion on any matter which is not ordinary or special business; and
 - (d) refuse any person admission to a general meeting (including for causing offence or disruption), or expel the person from the general meeting and not permit them to return.
- 6.6.5 All procedural decisions by the meeting chair are final.

6.7 Adjournment

- 6.7.1 The meeting chair:
- (a) may, with the consent of any general meeting at which a quorum is present; and
 - (b) must, if so directed by the meeting,
- adjourn the meeting to some other time or place.

- 6.7.2 The adjourned meeting may only transact unfinished business from the original meeting.
- 6.7.3 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as required for the original meeting. It is not otherwise necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

6.8 **Voting – show of hands / poll**

- 6.8.1 By default, resolutions at general meetings must be voted on by a show of hands. Voting at a Hybrid Meeting or a wholly virtual meeting will be by ballot, which may occur via Electronic Voting.
- 6.8.2 In the event of an equality of votes the meeting chair has a second or casting vote.
- 6.8.3 The meeting chair must declare whether resolutions were carried, carried unanimously, carried by particular majority or lost. These voting results must be minuted.
- 6.8.4 The minutes of the voting results are final without the need to record the number or proportion of, or manner in which votes were cast.
- 6.8.5 A poll may be demanded by the meeting chair, or at least two Members present in person and entitled to vote.
- 6.8.6 A demand for a poll must be made on or before the result being declared, and may be withdrawn.
- 6.8.7 A poll to elect a meeting chair or adjourn the meeting must be taken immediately. Polls must otherwise be taken at that meeting in the manner directed by the meeting chair.
- 6.8.8 The meeting chair must decide all voting disputes, and that decision is final.

6.9 **Proxies**

- 6.9.1 A Member may appoint a proxy to act on the Member's behalf at any general meeting at which that Member may attend and vote.
- 6.9.2 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. This clause does not apply to the appointment of the Chair or meeting chair as a proxy.
- 6.9.3 For the instrument appointing a proxy to be valid, it must be:
- (a) in writing and signed by the appointor;
 - (b) in the form complying with the Corporations Act or some other Board approved form; and
 - (c) lodged with the Company Secretary at least 48 hours before the time for holding the meeting or adjourned meeting.
- 6.9.4 A vote given according to the proxy instrument is valid for the relevant general meeting despite:

- (a) the death, or loss of decision making capacity, of the appointor; or
- (b) revocation of the instrument or of the authority under which the instrument was executed,

if no knowledge in writing of that fact was received by the Company before commencing the meeting or adjourned meeting at which the instrument is used.

6.10 Meeting format and use of technology

- 6.10.1 Subject to the Corporations Act, a general meeting may be held as a physical meeting in two or more places, as a wholly virtual meeting, or as a Hybrid Meeting, as determined by the Board acting reasonably.
- 6.10.2 Such meetings must be held using any technology, approved by the Board, that gives Members as a whole a reasonable opportunity to participate.

6.11 Ballot

- 6.11.1 The Board may submit any question or resolution to the vote of all Members entitled to a vote at a general meeting by postal or electronic ballot (**Ballot**) without a general meeting, unless the Corporations Act or Relevant Laws require a general meeting.
- 6.11.2 The Board may determine in the Regulations:
 - (a) the form of the Ballot;
 - (b) the polling date;
 - (c) the method for responding to the Ballot; and
 - (d) whether voting on the Ballot is to be secret.
- 6.11.3 A resolution approved by a majority or specific majority of the Members taken to be present and voting has the same force and effect as such a resolution passed in a general meeting.

7 BOARD

7.1 Structure of Board / Number of Directors

- 7.1.1 The Board will comprise no more than 9 Directors, consisting of 4 Elected Directors and 5 Appointed Directors:
 - (a) 1-4 Directors elected by the Members in accordance with clause 7.2 (**Elected Directors**); and
 - (b) 2-5 Directors appointed by the Board in accordance with clause 7.3 (**Appointed Directors**),
- 7.1.2 The Board must ensure an appropriate ratio of Elected Directors and Appointed Directors is maintained. The Board may establish Regulations for this purpose.

7.2 Election of Elected Directors

- 7.2.1 In each election year, the Board must determine and notify the Members of each vacancy or upcoming vacancy in the position of an Elected Director to be filled in

that year and the applicable eligibility and/or selection criteria, and seek nominations for those positions.

- 7.2.2 Nominations of candidates for election as a Director must be signed by the candidate and supported by at least five Voting Members, and contain a consent to act as a Director signed by the candidate. A Voting Member cannot nominate or support more than one candidate. A candidate's inclusion in the ballot paper is subject to clauses 7.2.3 to 7.2.5.
- 7.2.3 The Board may, subject to nominees executing a deed of confidentiality in favour of the Company, invite nominees to attend and observe one or more Board meetings.
- 7.2.4 The Board 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.
- 7.2.5 Following a reasonable opportunity to ask questions, the Board must ask the nominees whether they wish to proceed with their nomination.
- 7.2.6 If the number of nominations of candidates for election does not exceed the number of vacancies, those candidates will be declared elected at the annual general meeting. However, where vacancies are for different terms of office, an election must proceed to determine which candidates receive which terms of office.
- 7.2.7 If candidates are not declared elected pursuant to clause 7.2.6, then balloting lists must be printed containing candidate names in alphabetical order and sent to each Member before the annual general meeting.
- 7.2.8 On any ballot to elect an Elected Director:
- (a) all votes must be on the form prescribed by the Board;
 - (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.
- 7.2.9 Vacancies (from longest to shortest term of office) will be filled by candidates with the most votes according to the election system previously approved by the Board.

7.3 **Appointment of Appointed Directors**

- 7.3.1 Subject to this Constitution, and for the purpose of clause 7.1.1(b), the Board must determine any other procedures or matters in relation to the selection process to appoint Appointed Directors and may make Regulations for that purpose.

- 7.3.2 Unless the Board resolves otherwise, the Company Secretary:
- (a) is responsible for the conduct of the selection process of Appointed Directors; and
 - (b) may decide all matters in relation to the conduct of the selection process, subject to this Constitution and the Regulations.
- 7.3.3 The Regulations pursuant to clause 7.3.1 must be consistent with the following:
- (a) Before each annual general meeting, the Company Secretary must publicly call for Appointed Director candidates who need not be Members.
 - (b) The Board, by delegation to the Company Secretary, must convene a committee for the purpose of conducting the selection process.
 - (c) The committee may, but is not required to, interview all candidates for becoming an Appointed Director.
 - (d) The committee must recommend candidates to be appointed as Appointed Directors on the basis of their skills, background and expertise deemed necessary or desirable by the Board (including, without limitation, to complement the Elected Directors) for the effective operation of the Board.
 - (e) At the Board meeting preceding each annual general meeting, the Board may appoint Appointed Directors after considering the recommendations from the committee conducting the selection process.
 - (f) The meeting chair must announce the Appointed Directors at the annual general meeting. Appointments take effect at the end of the annual general meeting at which the appointments are announced.

7.4 **Eligibility to be a Director**

A person is eligible to become a Director if they:

- 7.4.1 are a Voting Member, or otherwise recommended for election by the Directors (for Elected Directors) or appointment to the Board in accordance with clause 7.3 (for Appointed Directors);
- 7.4.2 are 18 years of age or older;
- 7.4.3 consent in writing to become a Director;
- 7.4.4 hold or have applied for a Director Identification Number (**DIN**);
- 7.4.5 complete the relevant national police check, and relevant suitability requirements as set out in Regulations;
- 7.4.6 are not prohibited, disqualified or otherwise prevented from being a Director under the Corporations Act or Relevant Laws; and
- 7.4.7 are not an employee of the Company.

7.5 **Limits on period of office as a Director**

- 7.5.1 If a Director has served 9 Years or more continuously, then the Director may finish serving their current term of office but does not become eligible to be elected or

appointed (whether or not to a casual vacancy) until they have not been a Director for a subsequent continuous period of 3 Years.

- 7.5.2 Despite clause 7.5.1, a Director may have their term extended for up to an additional Year, if, in the case of an Appointed Director, the Board for good reason unanimously votes to extend their term, or, in the case of an Elected Director, the Elected Director is elected for an additional Year term.

7.6 Term of office of Directors

- 7.6.1 An Elected Director holds office for a term of three Years.

- 7.6.2 An Appointed Director holds office for a term of three Years, unless the Board determines a shorter term at the time of appointment.

Drafting note: See definition of Year, which is not 12 months, but rather the period between the end of an annual general meeting until the end of the next annual general meeting.

7.7 Casual vacancies

- 7.7.1 If a casual vacancy occurs for any Elected Director office, the Board may appoint another eligible person in their place until the end of the next annual general meeting. The Members must then elect a person to fill the Elected Director in accordance with clause 7.2. The person elected will serve only for the balance of the term of the original Elected Director.

- 7.7.2 If a casual vacancy occurs for any Appointed Director office, the Board may appoint another eligible person in their place until the end of the next annual general meeting.

- 7.7.3 The Board may continue to act despite vacancies on the Board. However, if there are less than 3 Directors or the composition of the Board does not comply with any ratio requirements under clause 7.1, the Board may only:

- (a) act in the case of emergencies;
- (b) appoint persons to fill casual vacancies; or
- (c) convene a general meeting.

7.8 Office bearers

The Board may elect and remove the following office bearers from the Directors:

- 7.8.1 Chair;

- 7.8.2 Deputy Chair; and

- 7.8.3 such other office bearers with titles determined from time to time by the Board.

7.9 Resignation of Directors

- 7.9.1 A Director may resign as Director by written notice to the Company.

- 7.9.2 The resignation takes effect when the Company receives the Director's notice or on a later date specified in the notice.

7.10 Ceasing to be a Director

7.10.1 The Members may remove any Director in accordance with the Corporations Act.

7.10.2 A directorship automatically ceases if the Director:

- (a) is no longer eligible to be a Director under clause 7.4;
- (b) dies or is physically incapable of fulfilling their duties as a Director;
- (c) becomes disqualified from being a Director pursuant to the Corporations Act or Relevant Laws;
- (d) for more than 3 consecutive board meetings or 6 continuous months, whichever is sooner, is absent without Board permission from Board meetings held during that period;
- (e) becomes a bankrupt or makes any arrangement or composition with personal creditors generally;
- (f) no longer has capacity to give informed consent as defined under mental health legislation which provides for the decision-making capacity of an individual;
- (g) is found guilty by a court of an indictable offence; or
- (h) is found to have engaged in Unacceptable Conduct by an independent decision made under clause 7.11.

7.11 Independent decision regarding Director's conduct

7.11.1 If the Board considers that a Director may have engaged in Unacceptable Conduct 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:

- (a) 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
- (b) a barrister with not less than 5 years' experience in relation to professional conduct matters.

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

7.12 Director remuneration and reimbursement

7.12.1 Despite clause 2, the Directors may be paid reasonable remuneration for undertaking the ordinary duties of a Director. The Board will review the reasonable remuneration every 3 years and submit its findings for approval at a general meeting. The Directors must not otherwise be paid any other remuneration for those duties.

- 7.12.2 Despite clause 2, the Directors may be reimbursed for reasonable travel and other expenses incurred by them when engaged in the Company's business, attending meetings or otherwise in carrying out the duties of a Director where payment does not exceed any amount previously approved by the Board.
- 7.12.3 Despite clause 2, the Directors may be paid for any service rendered to the Company in a professional or technical capacity outside the scope of the Director's ordinary duties where:
- (a) the service and amount payable is on reasonable and proper terms; and
 - (b) the provision of that service has the Board's prior approval.

7.13 **Transition**

On and from the transfer deed between the Company and Banyule Community Health ACN 135 660 454 ABN 87 776 964 889 (**Banyule Community Health**) becoming unconditional:

- 7.13.1 members of all classes of the Company and Banyule Community Health become members in the same class of the Company governed under this Constitution;
- 7.13.2 the Board will undertake a Director renewal program, beginning with the longest standing prior Director, and so on. The Board must determine any other procedures or matters in relation to the Director renewal program, subject always to this Constitution;
- 7.13.3 Despite clause 7, the Inaugural Board will comprise of the following:
- (a) 4 Directors from the Company's Board immediately before this Constitution takes effect;
 - (b) 4 Directors from Banyule Community Health Board immediately before completion; and
 - (c) 1 new director agreed by the Company and Banyule Community Health;
- 7.13.4 the term of office of the members of the Inaugural Board is three years; and
- 7.13.5 following the initial term of office of the members of the Inaugural Board, or upon a casual vacancy of the Inaugural Board, the Inaugural Board must determine any other procedures or matters in relation to the selection process to appoint members to the Inaugural Board, and must have the skills, background and expertise deemed necessary or desirable by the Inaugural Board (including, without limitation, to complement existing Inaugural Board members) for the effective operation of the Board.

8 **BOARD POWERS**

8.1 **Management vests in Board**

- 8.1.1 The Board is responsible for the governance, business and affairs of the Company. In addition to the specific powers conferred on the Board by this Constitution, the Board may exercise all the Company's powers which are not by the Corporations Act, Relevant Laws or this Constitution required to be exercised by the Members in general meeting.
- 8.1.2 The powers under clause 8.1.1 are subject to:

- (a) this Constitution;
- (b) the Corporations Act and Relevant Laws; and
- (c) such resolution, not being inconsistent with those provisions, as may be passed by the Members in a general meeting.

8.1.3 A resolution under clause 8.1.2 does not invalidate any prior act of the Board which would have been valid before the resolution was passed or made.

8.2 **Power to delegate**

8.2.1 The Board may delegate its powers and functions in writing to:

- (a) an officer or employee of the Company; or
- (b) a committee under clause 10.

8.2.2 The Board may amend or revoke the terms of its delegation at any time.

8.3 **Power to appoint Chief Executive Officer**

8.3.1 The Board may appoint a Chief Executive Officer on such terms and conditions as the Board determines from time to time.

8.3.2 The Board may remove a Chief Executive Officer for any lawful reason, subject to the Company complying with the terms of any agreement between the Company and the Chief Executive Officer.

8.3.3 The Chief Executive Officer is able to attend Board meetings and general meetings, if so directed by the Board.

8.3.4 The Chief Executive Officer will have responsibilities determined by the Board.

8.4 **Power to appoint Company Secretary**

8.4.1 The Board must appoint at least one Company Secretary on such terms and conditions as the Board determines from time to time.

8.4.2 A Company Secretary may, but need not, be a Director or the Chief Executive Officer.

8.4.3 A Company Secretary may attend Board meetings and general meetings, if so directed by the Board from time to time.

8.4.4 A Company Secretary will have the responsibilities set out in the Corporations Act and Relevant Laws.

8.5 **Power to make Regulations**

8.5.1 The Board may from time to time make, vary and rescind Regulations in relation to the Company.

8.5.2 The Regulations for the time being in force, and which are not inconsistent with this Constitution, are binding on Members and have full effect accordingly.

9 BOARD MEETINGS

Subject to this clause 9, the Board may meet to consider business, adjourn and otherwise regulate its meetings as it thinks fit.

9.1 Number of meetings

The Board must meet at least 6 times per year.

9.2 Convening meetings

The Company Secretary must arrange a Board meeting:

9.2.1 at the request of the Chair; or

9.2.2 on the requisition of 2 or more Directors.

9.3 Notice of meeting

9.3.1 At least 5 days' notice of any Board meeting must be given unless the Board decides otherwise, or in emergencies.

9.3.2 The notice must specify the business to be transacted. The Board may only transact business of a routine nature unless notice of any other business has been given either in the notice convening the meeting or in some other notice given at least 3 days before the meeting.

9.3.3 The decision of the meeting chair as to whether business is routine is final.

9.4 Quorum

9.4.1 The quorum for a Board meeting is 51% of Directors entitled to vote. A meeting at which a quorum is present may exercise all powers and discretions of the Board.

9.4.2 If a Board meeting is adjourned due to lack of quorum, the Chair must set a further date for the adjourned meeting.

9.5 Meeting chair

9.5.1 The Chair may chair a Board meeting.

9.5.2 If the Chair is absent the Deputy Chair may chair.

9.5.3 In the absence of the Chair and the Deputy Chair, the Directors may appoint a meeting chair from among their number.

9.6 Voting

9.6.1 Each Director present and entitled to vote at a Board meeting has one vote. Proxy voting and alternate Directors are not permitted.

9.6.2 Questions arising at a Board meeting must be decided by a majority of votes. Such a decision is for all purposes a decision of the Board.

9.6.3 In the event of an equality of votes the meeting chair has a second or casting vote.

9.7 Use of technology

The Board may hold a meeting in two or more places and conducted in a wholly virtual format or as a Hybrid Meeting if:

- 9.7.1 all Directors (other than any Director on leave of absence) have access to the technology to be used for the meeting;
- 9.7.2 those Directors participating by technological means can communicate with all other participating Directors; and
- 9.7.3 at the commencement of the meeting each Director must announce their presence to all the other Directors taking part in the meeting.

9.8 Circulating resolutions

- 9.8.1 A written resolution signed or approved by technological means by 75% of Directors (other than any Director on leave of absence) is taken to be a decision of the Board passed at a Board meeting convened and held.
- 9.8.2 The written resolution may consist of:
 - (a) several documents in the same form, each signed by one or more Directors and, such a resolution takes effect when the last Director signs such a document; or
 - (b) permanent records indicating the identity of each Director, the text of the resolution and the Director's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect when the last Director indicates their approval.

9.9 Conflicts and personal interests

- 9.9.1 A Director who has a material personal interest in a matter that relates to the Company's affairs must give the other Directors formal notice of the interest unless the Corporations Act or Relevant Laws require otherwise.
- 9.9.2 To the maximum extent required by Law, a Director who has a material personal interest in a matter that is being considered by the Board must not be present while the matter is being considered, or vote on the matter.

9.10 Minutes

- 9.10.1 The Board must ensure that minutes of all proceedings of general, Board, committee meetings (and meetings of any other Board entity) are recorded in a minute book within one month after the relevant meeting is held.
- 9.10.2 The minutes must be signed by the meeting chair at which the proceedings took place or by the meeting chair of the next succeeding meeting.
- 9.10.3 Minutes entered and signed are prima facie evidence of the proceedings to which they relate.

9.11 Validity of acts / procedural defects

- 9.11.1 A Board act or decision will not be invalid by reason only of a defect or irregularity in connection with the election or appointment of a Director.

- 9.11.2 For entered and signed minutes, unless the contrary is proved:
- (a) the meeting is deemed to have been convened and held;
 - (b) all proceedings that are recorded in the minutes as having taken place are deemed to have taken place; and
 - (c) all appointments that are recorded in the minutes as having been made are deemed to have been validly made.

10 COMMITTEES

10.1 Board's power to establish committees, advisory groups, councils or bodies

- 10.1.1 The Board must, if required by Relevant Laws, establish and maintain committees and advisory bodies, councils or groups. This must, if required by Relevant Laws, include quality care advisory and consumer advisory bodies. Any committee, advisory body, council or group established under this clause 10.1.1 must be established in accordance with the requirements set out in Relevant Laws as to the committee, advisory body, council or group's composition, objects and powers.
- 10.1.2 In addition to clause 10.1.1, the Board may establish other committees, advisory bodies, councils or groups. Any committee, body, council or group that is established under clause 10.1.2:
- (a) will comprise two or more committee members, of which at least one must be a Director unless otherwise determined by the Board;
 - (b) the members otherwise need not be a Director or Member;
 - (c) has the purpose set out in its charter approved by the Board, and may undertake the powers and functions delegated to it by the Board (if any); and
 - (d) in the absence of any provision in the charter, meetings and proceedings are governed by the provisions of clause 9.

11 ADMINISTRATION

11.1 Change of name

- 11.1.1 The Members may change the Company's name by special resolution in accordance with the Corporations Act. Such a resolution authorises the Board to update all references to the Company's name in this Constitution.
- 11.1.2 Despite clause 11.1.1, the Board may apply under the Corporations Act to omit from or reinstate "Limited" in its name.

11.2 Amendment of Constitution

- 11.2.1 The Members may amend this Constitution by special resolution in accordance with the Corporations Act and Relevant Laws.
- 11.2.2 If the Company is registered under Relevant Laws, a special resolution under clause 11.2.1 (unless it expressly provides otherwise) does not take effect if it would cause the Company to lose any entitlements to registration under Relevant Laws.

11.3 **Accounts**

The Board must cause:

- 11.3.1 proper accounting and other records to be kept in accordance with the requirements of the Corporations Act and Relevant Laws, and
- 11.3.2 financial statements to be made and laid before each annual general meeting as required by the Corporations Act and Relevant Laws.

11.4 **Audits**

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

11.5 **Records and inspection**

A Member (other than a Director) is not entitled to inspect any document of the Company, except as provided by law or authorised by the Board.

11.6 **Service of notices**

- 11.6.1 Notices must be in writing and may be given by the Company to any Member:
 - (a) in person;
 - (b) by sending it by post to the Member at the Member's registered address; or
 - (c) by sending it to the postal, e-mail or other address supplied for receiving notices.
- 11.6.2 A notice sent by post is deemed to have been given 2 Business Days after it was posted. A notice sent by electronic or other means, is deemed to have been given on the next business day after it was sent.

11.7 **Indemnity of officers**

- 11.7.1 Subject to clause 11.7.4, the Company indemnifies current and former Officers (**Indemnified Officer**) out of its assets against any Liability incurred by the Indemnified Officer in or arising out of:
 - (a) the conduct of the Company's affairs or business; or
 - (b) the discharge of the Indemnified Officer's duties.
 but only to the extent that:
 - (c) the Indemnified Officer:
 - (1) has acted in good faith;
 - (2) has not engaged in conduct which is fraudulent, criminal, dishonest or a wilful default of the Indemnified Officer's duties as an Officer;
 - (3) has not engaged in conduct attributable to a pecuniary penalty order against the Indemnified Officer for non-compliance with the Indemnified Officer's duties under the Relevant Law;

- (4) has not engaged in misconduct under the Indemnified Officer's terms and conditions of appointment or engagement as an Officer or a breach of those terms and conditions (if any); and
 - (5) is not otherwise entitled or actually indemnified by a third party;
 - (d) the Company is not precluded by Law from doing so;
 - (e) there is no non-indemnification order of a Court that precludes the Company from doing so;
 - (f) the Liability does not arise in connection with a Claim against the Indemnified Officer by the Company; and
 - (g) the Liability is not a cost or expense for an unsuccessful application to a Court for relief under the Corporations Act, or the defence of civil or criminal proceedings where judgement is given against the Indemnified Officer or in which the Indemnified Officer is not acquitted.
- 11.7.2 The Company may execute any deed in favour of any Indemnified Officer to confirm the indemnities conferred by clause 11.7.1 in relation to that person.
- 11.7.3 Clause 11.7.1 applies whether or not any deed is executed under clause 11.7.2.
- 11.7.4 The obligations of the Company to indemnify the Indemnified Officer as set out in this clause 11.7 are extinguished and terminated immediately prior to the Company taking any steps required under the Corporations Act for the Company to be voluntary de-registered or wound up.

11.8 Insurance

- 11.8.1 The Company may pay or agree to pay premiums for directors and officers insurance to insure Indemnified Officers against any Liability incurred by the Indemnified Officer referred to in clause 11.7.
- 11.8.2 The Company may execute any deed in favour of any Indemnified Officer to take out insurance referred to in clause 11.8.1, on such terms as the Board considers appropriate.

11.9 Seal

- 11.9.1 The Board will determine whether or not the Company is to have a seal (known as the common seal) and, if so, will provide for the safe custody of such seal.
- 11.9.2 The seal, if any, of the Company may only be affixed to any instrument with the Board's authority.
- 11.9.3 The affixing of the seal must be attested by the signatures of persons authorised by the Board for that purpose.

11.10 Definitions

In this Constitution:

Appointed Director means a non-executive Director appointed for the purposes of clause 7.1.1(b), and therefore, is not an employee of the Company;

Board means the board of Directors of the Company with a quorum to transact business;

Business Day means a weekday which is not a public holiday in the state or territory of the Company's registered office;

Chair means the Director and office bearer under clause 7.8.1;

Chief Executive Officer means a chief executive officer appointed under clause 8.3;

Company means the company named on page 1 of this Constitution;

Company Secretary means a secretary appointed under clause 8.4;

Constitution means this constitution of the Company;

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

Director means a person for the time being who performs the role of director of the Company;

Deputy Chair means the Director and office bearer under clause 7.8.2;

Elected Director means a non-executive Director elected for the purposes of clause 7.1.1(a), and therefore, is not an employee of the Company;

Electronic Voting means an electronic vote of members (including voting using electronic means, computer-mediated voting and voting via electronic mail) conducted in accordance with this Constitution and the Regulations from time to time;

Hybrid Meeting means a meeting held in two or more locations where some or all of the participants' attendance is enabled by audio and video conferencing or similar technology;

Indemnified Officer has the meaning given in clause 11.7;

Law includes statute, regulation, legislative instrument, rules, standards, proclamation, ordinance or by-law which, by or under statute, bind a person from time to time;

Liability includes cost, charge, loss, damage, expense or penalty;

Member means a person who is a member of the Company pursuant to clauses 4 and 5;

Officer means an officer for the purposes of the Corporations Act;

Purpose has the meaning given in clause 1;

Regulations means regulations made by the Board under clause 8.5;

Relevant Laws means Laws regulating the registration, reporting or governance obligations of the Company and includes:

- (a) *Australian Charities and Not-for-profits Commission Act 2012* (Cth), *Income Tax Assessment Act 1997* (Cth) and the *Charities Act 2013* (Cth); and
- (b) *Aged Care Act 1997* (Cth).

Representative of a Member means:

- (a) a proxy appointed in accordance with clause 6.9;
- (b) an attorney of the Member, whose instrument of appointment has been provided to the Company;

- (c) a representative appointed by the body corporate Member in accordance with the Corporations Act,

and includes a Representative appointed on a standing basis;

Unacceptable Conduct means conduct of a Member which:

- (a) is, has been or will be prejudicial to the Company's interests;
- (b) is conduct which threatens the good order or integrity of the Company;
- (c) is not that of a fit and proper person or a person of good fame and character;
- (d) is conduct which creates conflicts or is contrary to the Company's Purpose, vision or values, or otherwise lacks honesty, integrity, ethics or professionalism;
- (e) is unbecoming of Members; and
- (f) is conduct similar to the above which is set out in the Regulations; and

Year, in relation to a Director's term of office, means the period of approximately one calendar year from the end of an annual general meeting until the end of the next annual general meeting.

11.11 Interpretation rules

Unless the contrary intention appears in this Constitution:

- 11.11.1 words importing the singular include the plural, and words importing the plural include the singular;
- 11.11.2 a reference to a person includes a reference to an individual or an organisation, company, association, partnership, body corporate or other unincorporated body;
- 11.11.3 words importing a gender include every other gender;
- 11.11.4 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 11.11.5 headings and bold text are for convenience only and do not affect its interpretation;
- 11.11.6 a Member is to be taken to be present at a general meeting if the Member is present in person, or by technology or by Representative; and
- 11.11.7 a reference to a general meeting includes any adjournment of that general meeting (which comprises one and the same general meeting).

11.12 Interpretation subject to Relevant Laws

- 11.12.1 This Constitution is to be interpreted subject to Relevant Laws. If there is any inconsistency, Relevant Laws prevail.
- 11.12.2 To the extent that Relevant Laws require this Constitution to include provisions so that the Company can hold a registration or exemption status, those provisions are taken to form part of this Constitution.
- 11.12.3 Provisions which are optional replaceable rules under the Corporations Act do not apply to the Company.