

Corporations Act 2001



South Burnett Community Hospital Foundation Limited



[A company limited by guarantee]

Constitution of Company

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Constitution of SOUTH BURNETT COMMUNITY HOSPITAL FOUNDATION LIMITED

[A company limited by guarantee, incorporated under the Corporations Act 2001]

PART 1 INTERPRETATION

1.1 General

Unless:

- (1) the context otherwise requires; or
- (2) a contrary intention appears,

this Agreement is to be interpreted by reference to the definitions and subsequent provisions of this Part 1.

1.2 Definitions

Each of the following expressions bears the meaning shown opposite:

act	Includes an omission to act and a refusal to act.
Act	<ol style="list-style-type: none"> (1) An Act of the Commonwealth Parliament or the Queensland Parliament. (2) Subordinate legislation under any such Act. (3) The direction or requirement of a competent authority or person under any such Act or subordinate legislation. (4) A licence, authorization, consent, approval or exemption granted under any such Act or subordinate legislation. (5) A planning instrument and a local law.
Address for Notices	<ol style="list-style-type: none"> (1) With respect to the Company: <ol style="list-style-type: none"> (a) its registered office; (b) if it is no longer at its registered office, its principal place of business in Queensland as noted upon ASIC records for the time being; (c) its principal facsimile number at its registered office; and (d) its principal electronic mail address at its registered office. (2) With respect to a Director, including an Alternate Director: <ol style="list-style-type: none"> (a) his/her residential or business address last notified to the Company; (b) if the Secretary knows he/she is no longer at that address, and is aware of a later address, that later address; (c) his/her principal facsimile number at the

residential or business the subject of whichever is relevant of *sub-paragraphs (2)(a)* and *(2)(b)* of this definition; and

- (d) his/her principal electronic mail address at the residential or business the subject of whichever is relevant of *sub-paragraphs (2)(a)* and *(2)(b)* of this definition.

(3) With respect to a Member:

- (a) its address shown in the register of Members, or such other address as the Member has supplied to the Company as its address for notices;
- (b) its facsimile number shown in the register of Members, or such other facsimile number as the Member has supplied to the Company as its facsimile number for notices; and
- (c) its electronic mail address shown in the register of Members, or such other electronic mail address as the Member has supplied to the Company as its electronic mail address for notices.

(4) if a party is not at:

- (a) the relevant address the subject of *sub-paragraphs (1)(a)*, and *(1)(b)*, *(2)(a)* and *(2)(b)*, or *(3)(a)* and *(3)(b)*; or
- (b) the relevant facsimile number the subject of *paragraphs (1)*, *(2)* or *(3)* of this definition,

the party's last principal place of business or facsimile number in Queensland known to the other party.

Alternate Director	A person appointed under <i>Rule 4.16</i> as an alternate Director
ASIC	Australian Securities and Investments Commission.
Auditor	The Company's Auditor.
Board	The Board of Directors.
Business	<p>The Company's business, which includes:</p> <ul style="list-style-type: none"> (1) leasing from the Council land and equipment (previously operated as 'St Aubyn's Hospital') and managing the future operation of the hospital for the benefit of the residents of the Region, including through subleasing the land and equipment to a commercial private healthcare operator; and (2) conducting fundraising activities as a community hospital foundation to raise funds for the hospital and the purchase of medical equipment, including the management of the Gift Fund; and (3) any other business determined by the Board or by the Members.
Business Day	A day upon which trading banks are open for business in Brisbane, Australia.

Company	South Burnett Community Hospital Foundation Limited.
Confidential Information	<p>(1) Information regarding:</p> <p>(a) the Business; and</p> <p>(b) the assets or affairs of the Company and any Related Corporation.</p> <p>(2) Information that the Board lawfully declares by resolution to be confidential.</p> <p>(3) Information that the Company is contractually bound to keep confidential.</p>
Constitution	This document, being the constitution of the Company adopted by the Company upon its (the Company's) registration.
Council	South Burnett Regional Council.
Director	A director of the Company.
Gift Fund	The South Burnett Community Hospital Gift Fund.
include	Comprise or encompass, without being limited to what is stated to be included. ¹
Income Tax Acts	<p>(1) <i>Income Tax Assessment Act 1936 (Cwlth).</i></p> <p>(2) <i>Income Tax Assessment Act 1997 (Cwlth).</i></p>
Managing Director	A managing director of the Company.
Member	A member of the Company, including, in the context of a general meeting, that person's proxy, nominee (if the person is a corporation) or other lawful representative.
Primary Director	A Director for whom an Alternate Director is appointed.
Region	The local government area administered by the Council under the <i>Local Government Act 2009</i>
Related Corporation	A "related body corporate" as defined in the <i>Corporations Act 2001</i> , including a corporation that ceases to be a related body corporate through amendment, consolidation or replacement of the <i>Corporations Act 2001</i> .
Rule	A rule of this Constitution.
Seal	Any common seal or duplicate common seal of the Company.
Secretary	A secretary of the Company.

¹ Example: In the definition of "Act", subordinate legislation is stated to include a local law. However, the expression is not limited to a local law. It also encompasses a Regulation, a Standard Law and any other type of subordinate legislation.

Superannuation Guarantee Scheme	The scheme governed by the: <ol style="list-style-type: none">(1) <i>Superannuation Guarantee (Administration) Act 1992 (Cwlth)</i>; and(2) <i>Superannuation Guarantee Charge Act 1992 (Cwlth)</i>, requiring employers to provide a prescribed minimum level of superannuation support for employees.
Tax-Exempt Entity	An entity that is income tax-exempt under Division 50 of the <i>Income Tax Assessment Act 1997</i> .

1.3 Grammatical Similarities

Where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase bear meanings corresponding to and consistent with that definition.

1.4 Persons

Reference to a person includes:

- (1) in the case of a natural person, that person, his personal representatives and assigns; and
- (2) in the case of a corporation, the corporation, its successors and assigns.

1.5 Statutory & Other Bodies

Reference to:

- (1) the ASIC; and
- (2) any other relevant body (statutory, professional or other),

includes:

- (3) any body established or constituted successively in lieu of that body; or
- (4) if no body is constituted in lieu, any body succeeding (as nearly as may be) to its powers or functions.

1.6 Miscellaneous References

Reference to:

- (1) the singular includes the plural, and vice versa;
- (2) a gender includes each other gender;
- (3) a person includes a corporation, partnership, joint venture, association, board, group or other body (whether incorporated or not), and vice versa;
- (4) a statutory provision is a reference to that provision as amended from time to time;
- (5) money is a reference to Australian dollars and cents;
- (6) a time of day is a reference to Australian eastern standard time; and
- (7) writing is a reference to reproduction of words, figures, symbols and shapes in visible form, including print, type, lithograph, facsimile and photocopy.

1.7 Member Presence at General Meeting

A Member will be deemed present at a general meeting if the Member is present in person or by proxy, attorney or representative.

1.8 Director Presence at Board Meetings

A Director will be deemed present at a Board meeting or a general meeting if the Director is present in person or by an Alternate Director.

1.9 References to Office or Position

Reference to the occupant of a particular office or position includes any person occupying or performing the duties of that office or position for the time being.

1.10 Corporations Act 2001 Provisions

- (1) To the extent that it is inconsistent with a provision of this Constitution, a rule that applies under the *Corporations Act 2001* as a replaceable rule does not apply to the Company.
- (2) *Sub-Rule 1.10(1)* does not apply to a rule that is, under the *Corporations Act 2001*, a replaceable rule for a proprietary company and a mandatory rule for a public company.
- (3) Where an expression used in this Constitution is defined in the *Corporations Act 2001*, it bears in the Constitution the meaning ascribed to it in the *Corporations Act 2001*.
- (4) Where:
 - (a) a provision in the Constitution and a provision in the *Corporations Act 2001* deal with the same issue;
 - (b) a given expression is common to both provisions; and
 - (c) the expression is not defined in *Rule 1.2*,the expression will bear in the Constitution the meaning it bears in the *Corporations Act 2001*.

1.11 Exercise of Powers

- (1) The Company may do anything that the *Corporations Act 2001* permits a company limited by guarantee to do, so long as the act is:
 - (a) authorized by this Constitution;
 - (b) done in a manner permitted by the *Corporations Act 2001*.
- (2) Where this Constitution provides that a person "may" do something, that thing may be done at the person's discretion.
- (3) Where this Constitution confers a power to do something, included in that power is the power, exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend or vary what is done.
- (4) Where this Constitution confers a power to do something specific with respect to specific matters, included in that power is the power to do that thing with respect to:
 - (a) some only of those matters; or
 - (b) a particular class or particular classes of those matters,and to make differing provision with respect to individual matters or classes of matter.

- (5) Where this Constitution confers a power to make appointments to an office or position, included in that power is a power:
- (a) to appoint a person to act in the office or position pending an appointment to the office or position;
 - (b) subject to any contract between the Company and the relevant person, to remove or suspend the appointee, with or without cause; and
 - (c) to appoint a temporary replacement for a person removed or suspended, or for a sick or absent appointee.
- (6) Where this Constitution confers a power or imposes a duty:
- (a) the power may be exercised; and
 - (b) the duty must be discharged,
- from time to time as the occasion requires.
- (7) Where this Constitution confers a power or imposes a duty on the holder of an office:
- (a) the power may be exercised; and
 - (b) the duty must be performed,
- by the holder of the office.
- (8) Where this Constitution empowers a person or body to delegate a function or power:
- (a) the delegation may be made upon terms permitting the delegate to perform the function or exercise the power in addition to, or to the exclusion of, the person or body making the delegation;
 - (b) the delegation may be made subject to limitations;
 - (c) the delegation need not be to a specified person but may be to the occupant or holder for the time being of a specified office or position;
 - (d) the delegation may include the power to sub-delegate;
 - (e) if performance or exercise of the delegable function or power is a matter for the formation of an opinion or the exercise of discretion by the person or body holding the power of delegation, that function or power may be performed or exercised by the delegate similarly by the formation of an opinion or the exercise of discretion; and
 - (f) the function or power delegated, as performed or exercised by the delegate, will be deemed performed or exercised by the person or body that made the delegation.

1.12 Headings and Notes

The table of contents, the headings, and any footnotes and endnotes:

- (1) exist for convenience only; and
- (2) are to be disregarded when interpreting the Agreement.

1.13 Severance

If:

- (1) any provision of the Constitution is void, voidable, illegal or unenforceable; or

- (2) the Constitution would be void, voidable, illegal or unenforceable unless a particular provision were deleted from it,

the provision will be deemed deleted from the Constitution.

PART 2 MEMBERSHIP OF COMPANY

2.1 Classes of Membership

The Company's membership will consist of permanent members.

2.2 Permanent Members

The Council is the permanent Member.

2.3 Voting Entitlements

Only permanent Members may vote at a general meeting of the Company.

2.4 Membership Fees

The membership fee for Company membership will be:

- (1) determined periodically by the Members in general meeting; and
- (2) payable at the times and in the manner determined by the Board.

2.5 Membership Entitlements

Each permanent Member is:

- (1) responsible for payment of any subscriptions, fees and other levies imposed by the Board or by the Company in general meeting;
- (2) (where a natural person) entitled to attend, participate in the transaction of business, and cast a single vote, at any general meeting of the Company;
- (3) (where a corporation or an unincorporated association of persons) entitled to nominate 1 delegate to participate in the transaction of business, and cast a single vote on its behalf, at any general meeting of the Company;
- (4) eligible to participate in all activities promoted by the Company;
- (5) entitled to nominate a person for membership of a committee or sub-committee of the Company; and
- (6) eligible to receive financial assistance from the Company.

2.6 Termination of Membership

- (1) A Member may resign its membership of the Company by giving written notice to the Secretary.
- (2) The resignation takes effect:
 - (a) when the Secretary receives the written notice; or
 - (b) if the notice stipulates a later day than the day the Secretary receives the notice, that later day.
- (3) The Board may terminate a membership of the Company if the Member:
 - (a) is convicted of an indictable offence;

- (b) fails to comply with any of the Rules;
 - (c) is over 2 months in arrears of membership fees or other levies imposed upon it under the Rules; and
 - (d) conducts itself in a manner that brings the Company into disrepute or otherwise prejudicially affects the Company's interests.
- (4) However, the Board must not terminate a membership without affording the Member a full and fair opportunity to demonstrate that its membership should not be terminated.
- (5) If, after proper consideration of the Member's representations, the Board elects to proceed with termination of the membership, the Secretary must notify the Member of the decision promptly in writing.
- (6) The termination will be effective upon the earlier of:
- (a) the time the Member receives the Secretary's written notification under *sub-Rule 2.6(5)*; and
 - (b) the end of the 2nd Business Day after the day the Secretary's written notification is posted to the Member.
- (7) If a Member resigns its membership of the Company, or its membership is terminated under *sub-Rule 2.6*, the Member:
- (a) will not be eligible for any pro rata refund of membership fees paid to the Company; and
 - (b) will remain liable to pay any membership fees or other levies that are due from it to the Company at the time of the resignation or termination.

PART 3 GENERAL MEETINGS

3.1 Determination by resolution

- (1) As sole permanent member, in the absence of any other member, Council must determine by resolution, or by its delegate, all matters for which a general meeting would be required if the Company had more than one member.
- (2) The resolution of the member must be recorded in minutes and signed in accordance with the *Corporations Act 2001 (Cwlth)* section 249B.

3.2 Convening a General Meeting

- (1) The Directors may call and arrange to hold a general meeting when they consider it appropriate.
- (2) However, the Directors must call and arrange to hold the meeting only in accordance with this *Rule 3.1* or in accordance with sections 249D², 249E³, 249F⁴ and 249G⁵ of the *Corporations Act 2001*.
- (3) The Directors may cancel, postpone or change the venue of a general meeting unless the meeting is called and arranged to be held by the Members or the court under section 249F or section 249G of the *Corporations Act 2001*.
- (4) If they call and arrange to hold a general meeting under section 249D of the *Corporations Act 2001*, the Directors may not:

² Directors must call and arrange to hold a meeting upon the request of a certain number of members.

³ Members who have made a request under section 249D, with which the Directors have failed to comply, may call and arrange to hold the meeting.

⁴ Members with a specified minimum quantity of combined votes may call and arrange to hold a meeting.

⁵ A court may order that a meeting be called.

- (a) postpone it beyond the date by which section 249D requires it to be held; or
- (b) cancel it without the consent of the requisitioning Member/s.

3.3 Notice of General Meeting

- (1) Subject to this Constitution, notice of a general meeting must be given:
 - (a) within the time limits specified in the *Corporations Act 2001*; and
 - (b) in the manner authorized by *Rule 10.1*,to each person who is at the date of the notice:
 - (c) a Member;
 - (d) a Director; or
 - (e) an Auditor.
- (2) A notice of a general meeting must:
 - (a) specify the date, time and place of the meeting;
 - (b) state the general nature of the business to be transacted at the meeting; and
 - (c) be accompanied by a proxy form for use by the recipient if desired.
- (3) A person may waive the entitlement to receive notice of a general meeting by giving written notice to the Company.
- (4) Where a person does not receive notice of a general meeting, or the proxy form, to which the person is entitled under *sub-Rules 3.3(1)* and *3.3(2)*, everything done at the meeting, including all resolutions passed, will be valid if:
 - (a) the non-receipt is the result of an accident or error (including an accident or error that resulted in the notice of meeting or proxy form not having been sent to the Member);
 - (b) the person waives under *sub-Rule 3.3(3)*, before or after the meeting, the entitlement to receive notice of that meeting.
- (5) If:
 - (a) a person does not receive notice of a general meeting, or the proxy form, to which the person is entitled under *sub-Rules 3.3(1)* and *3.3(2)*; and
 - (b) before or after a general meeting, that person gives the Secretary written notice that the person agrees to a specified action being or having been taken at the meeting (including a resolution being or having been passed),the fact that the person does not receive notice of the meeting or proxy form does not invalidate the relevant action.
- (6) Attendance at a general meeting waives any objection a person may make to:
 - (a) notice of the meeting being defective, or not having been given; and
 - (b) the consideration of an issue the details of which were not specified in the notice of meeting as an item of business for the meeting,unless the person:
 - (c) objects, at the beginning of the meeting, to the meeting being held; or

- (d) objects, when it is presented at the meeting, to the issue being considered.

3.4 Admission to a General Meeting

The chairman of a general meeting may:

- (1) refuse a person admission to the meeting; or
- (2) require a person to leave the meeting,

if the person:

- (3) possesses a camera or audio-recording device;
- (4) possesses a placard or banner;
- (5) possesses an article that the chairman considers dangerous, offensive or potentially disruptive;
- (6) refuses to produce, or to permit examination of, any article in the person's possession;
- (7) behaves or threatens to behave dangerously, offensively or disruptively; or
- (8) is not:
 - (a) a Member, or the proxy, attorney or authorized representative of a Member;
 - (b) a Director; or
 - (c) an Auditor.

3.5 Quorum at a General Meeting

- (1) No business other than:
 - (a) election of the chairman; and
 - (b) adjournment of the meeting,

may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

- (2) Subject to *sub-Rule 3.5(4)*, a quorum for a general meeting is the attendance of the permanent Member.
- (3) If a quorum is not present within 30 minutes after the appointed starting time of a general meeting, the meeting is adjourned to the same time and place on the next Business Day.
- (4) If a quorum is not present within 30 minutes after the appointed starting time of an adjourned meeting, the meeting is dissolved.

3.6 Chairman of a General Meeting

- (1) If he/she is:
 - (a) present within 15 minutes after the time appointed for the meeting; and
 - (b) willing to act,the chairman of Directors must preside as the chairman of a general meeting.
- (2) If at a general meeting:
 - (a) there is no chairman of Directors;

- (b) the chairman of Directors is not present within 15 minutes after the time appointed for the meeting; or
- (c) the chairman of Directors is present within the 15-minute grace period but is not willing to act as chairman of the meeting,

the Members present must elect as chairman of the meeting:

- (d) another Director who is present and willing to act; or
- (e) if no other Director is present and willing to act, a Member present and willing to act, or an officer, attorney or authorized representative of the Member (if that Member is a corporation).

3.7 Conduct of a General Meeting

- (1) If an issue arises at a general meeting, relating to the order of business, procedure or conduct of the meeting:
 - (a) the chairman of the meeting must resolve the issue; and
 - (b) the chairman's decision is final.
- (2) The chairman of a general meeting may, and if directed by the meeting must, adjourn the meeting from time to time and from place to place.
- (3) No business may be transacted at an adjourned meeting except the business left unfinished at the meeting from which the adjournment occurred.
- (4) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as if the adjourned meeting were the original meeting.
- (5) Except as provided by *sub-Rule 3.7(4)*, it is not necessary to give a notice of adjournment or of the business to be transacted at an adjourned meeting.

3.8 Decisions of a General Meeting

- (1) Subject to this Constitution and the *Corporations Act 2001*:
 - (a) each issue arising at a general meeting is to be decided by a majority of votes cast by the Members present at the meeting and entitled to vote; and
 - (b) each such decision is a decision of the Members.
- (2) The following actions can be taken only where the written approval of 76% of Members is already held:
 - (a) passing a resolution to wind up the Company;
 - (b) appointing a liquidator, administrator or controller to the Company;
 - (c) amending the Company's Constitution;
 - (d) altering a Member's rights;
 - (e) merging or amalgamating the Company with another company;
 - (f) changing the name of the Company;
 - (g) appointing an Auditor; and
 - (h) materially altering the Business;

- (i) acquiring a material business;
 - (j) entering a new business;
 - (k) disposing of more than 10% of the Business at one time.
- (3) If there is an equality of votes upon a proposed resolution at a general meeting:
- (a) the chairman of the meeting does not have a second or casting vote; and
 - (b) the motion is lost.
- (4) A resolution put to the vote of a general meeting must be decided upon a show of hands unless:
- (a) the chairman of the meeting; or
 - (b) a Member present and entitled to vote on the resolution, demands a poll:
 - (c) before the vote is taken; or
 - (d) before or immediately after the result of the show of hands is declared.
- (5) The demand for a poll does not prevent the general meeting continuing to transact business other than the issue the subject of the demand.
- (6) Unless a poll is properly demanded at the general meeting (and the demand is not withdrawn):
- (a) the chairman's declaration that a resolution has been carried on a show of hands, carried unanimously, carried by a particular majority, or lost; and
 - (b) an entry to that effect in the book containing the minutes of Company proceedings,
- will be conclusive evidence of the fact, and the number or proportion of votes recorded in favour of or against the resolution need not be proved.
- (7) If a poll is properly demanded at a general meeting:
- (a) subject to *sub-Rule 3.8(8)*, it may be conducted immediately or after an interval or adjournment;
 - (b) it may be conducted in whatever manner the chairman of the meeting directs; and
 - (c) the result of the poll will be the resolution of the meeting at which the poll is demanded.
- (8) A poll demanded at a general meeting with respect to:
- (a) the election of a chairman of the meeting; or
 - (b) a question of adjournment,
- must be taken immediately.
- (9) The demand for a poll may be withdrawn.

3.9 Decision Without a General Meeting

The Company may pass a resolution (other than a resolution to remove an Auditor) without a general meeting if:

- (1) each of the Members entitled to vote upon the resolution signs a document containing:

- (a) the text of the resolution; and
 - (b) a statement that the Member is in favour of the resolution detailed in the document;
- and
- (2) passage of the resolution otherwise accords with the requirements of the *Corporations Act 2001*.

3.10 Voting at a General Meeting

- (1) Subject to this Constitution, at a general meeting of the Company, every Member present (in person or by representation) is entitled to 1 vote.
- (2) A person who:
- (a) is in arrears of membership fees or other money owing to the Company;
 - (b) is of unsound mind, or otherwise lacks legal capacity,⁶
- may not vote at a general meeting.
- (3) An objection to a person's entitlement to vote at a general meeting:
- (a) must be raised before or at the meeting at which the vote the subject of the objection to is cast; and
 - (b) will be determined by the chairman of the meeting, whose decision will be final in the absence of manifest error or patent bias.
- (4) A vote not disallowed by the chairman of a meeting under *sub-Rule 3.10(3)* is valid for all purposes.

3.11 Representation at General Meeting

- (1) Subject to this Constitution and the *Corporations Act 2001*, each Member entitled to attend and cast a vote at a meeting of Members may:
- (a) vote in person or, where a Members is a corporation, by its nominee;
 - (b) vote by an attorney or attorneys; or
 - (c) appoint a person as the Member's proxy to attend and vote on the Member's behalf at the meeting⁷.
- (2) A proxy, attorney or representative may be a person other than a Member.
- (3) A proxy, attorney or representative may be appointed for:
- (a) all general meetings;
 - (b) any number of general meetings; or
 - (c) a particular general meeting.
- (4) Unless otherwise specified in the instrument appointing a proxy, attorney or representative, or in the *Corporations Act 2001*, the appointment confers upon the appointee authority:
- (a) to agree to a meeting being convened upon shorter notice than that required by the *Corporations Act 2001* or this Constitution;

⁶ Example: A person with advanced Alzheimer's disease.

⁷ This sub-Rule is mandatory under sub-section 249X(1) of the *Corporations Act 2001*.

- (b) to speak to any proposed resolution upon which the proxy, attorney or representative may vote;
 - (c) to demand or join in demanding a poll on any resolution upon which the proxy, attorney or representative may vote;
 - (d) to vote on any amendment moved to a proposed resolution, and on any motion that the proposed resolution not be put, or any similar motion;
 - (e) to vote on any procedural motion, including any motion to elect the chairman, vacate the chair, or adjourn the meeting;
 - (f) subject to *paragraphs 3.11(4)(d) and 3.11(4)(e)*, to act generally at the meeting; and
 - (g) to attend and vote at a re-scheduled or adjourned meeting, or a meeting moved to a new venue.
- (5) *Paragraphs 3.11(4)(d), 3.11(4)(e) and 3.11(4)(f)* apply even if the instrument of appointment refers to specific resolutions, and directs the proxy, attorney or representative how to vote upon those resolutions.
- (6) *Paragraph 3.11(4)(g)* applies even if the instrument of appointment refers to a specific meeting to be held at a specified time or at a specific venue.
- (7)
- (a) The instrument appointing a proxy or attorney may specify the manner in which the proxy or attorney must vote upon a particular resolution.
 - (b) If the instrument specifies the manner in which the proxy or attorney must vote upon a proposed resolution, the proxy or attorney is not entitled to vote upon the resolution except as directed in the instrument.
- (8) Subject to *sub-Rule 3.11(10)*, an instrument appointing a proxy or attorney need not be in any particular form provided it is:
- (a) in writing;
 - (b) valid at law; and
 - (c) signed by the appointor or the appointor's attorney.
- (9) Subject to *sub-Rule 3.11(10)*, a proxy or attorney may not vote at a general meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed, or a certified copy of that authority, are:
- (a) received at the Company's registered office, or at another venue or location specified for that purpose in the notice calling the meeting, before the time the meeting or adjourned meeting is to be held or the poll is to be taken (as the case may be);
 - (b) tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (c) produced when the poll is taken.
- (10) The Directors may waive all or any of the requirements of *sub-Rules 3.11(8) and 3.11(9)*, and in particular may accept, upon the production of such other evidence as they require to establish the validity of the proxy's or the attorney's appointment:
- (a) an oral appointment of the proxy or attorney;
 - (b) an instrument of appointment that is not signed in the manner required by *sub-Rule 3.11(8)*; and

- (c) a copy (including a copy sent by facsimile transmission) of the instrument of appointment, or of the power of attorney or other authority under which that instrument is signed.
- (11) A vote cast in accordance with the terms of the instrument appointing a proxy or attorney is valid despite revocation of:
- (a) the appointment; or
 - (b) the authority under which the instrument was executed,
- if written notice of the revocation is not received by the Company by the time, and at a place at which, the instrument appointing the proxy or attorney is required to be received, tabled or produced under *sub-Rule 3.11(9)*.
- (12)
- (a) The appointment of a proxy or attorney is not revoked by the appointor attending and participating in a general meeting.
 - (b) However, if the appointor votes on a resolution, the proxy or attorney is not entitled to vote upon the resolution, and must not vote upon it, as the appointor's proxy or attorney.

PART 4 DIRECTORS

4.1 Appointment, Removal and Retirement of Directors

- (1) The management of the Company shall be vested in a Board of Directors which shall consist of not more than 9 persons appointed by the Council.
- (2) The Council shall appoint 9 Directors ,1 of whom must be an employee of Council.
- (3) The Council may:
 - (a) remove a nominated Director;
 - (b) appoint a new person to replace a nominated Director; or
 - (c) appoint a person to act as an alternate director to a nominated Director, and remove the appointee.
- (4) Every director must retire from office at each annual general meeting of members.
- (5) A director who retires from office under *sub-Rule 4.1(4)* may be re-appointed.
- (6) For avoidance of doubt, *sub-Rule 4.1(4)* does not apply to the first annual general meeting of members convened after registration of the Company.

4.2 Chairman of the Board

- (1) The Directors:
 - (a) must appoint a Director as chairman of the Board; and
 - (b) subject to *sub-Rule 4.2(3)*, may terminate a Director's appointment as chairman.
- (2) The chairman of the Board may be appointed by a simple majority of the Directors.
- (3) An appointment as chairman may be terminated by a simple majority of the Directors but only if another Director of the Board is qualified (pursuant to *sub-Rule 4.2(1)(a)*) to hold the position of chairman.
- (4) Once appointed, the chairman must appoint a proxy, being another Director, before the next Board meeting.

- (5) If the chairman is:
- (a) absent from a Board meeting; or
 - (b) unwilling to chair the meeting,
- the proxy appointed under *sub-Rule 4.2(4)*:
- (c) must chair the meeting; and
 - (d) will possess for that meeting, in addition to the proxy's existing rights as a Director, all of the chairman's rights.
- (6) If the chairman's proxy is required to chair a Board meeting, but is:
- (a) absent from the meeting; or
 - (b) unwilling to chair the meeting,
- the meeting will be adjourned to a time agreed by the Directors present at the meeting.
- (7) The chairman may resign as chairman by written notice to the other Directors.
- (8) If a Director:
- (a) resigns as chairman;
 - (b) is unable to continue discharging the responsibilities of chairman⁸,
- the Directors must appoint a new chairman in accordance with *sub-Rule 4.2(2)*.

4.3 Duration of Office

A Director holds office until he/she is removed from office under this Constitution⁹.

4.4 Termination of Employment

If a Director is also employed by the Company, and the Company terminates the employment:

- (1) the person's appointment as a Director also terminates; and
- (2) the Members may not re-appoint that person as a Director.

4.5 Written Appointment and Removal

- (1) Once appointed:
 - (a) a Director must give the Company prompt written notice of his/her appointment as Director; and
 - (b) the chairman of Directors must give the Company prompt written notice of his/her appointment as chairman.
- (2) If a Director:
 - (a) resigns or is removed from office as a Director;
 - (b) resigns, is removed from office or is unable to continue as chairman of Directors,

⁸ Examples: Death, loss of capacity, removal as a Director.

⁹ See *sub-Rule 4.1*

the remaining Directors must give the Company prompt written notice of the resignation, removal or cessation.

- (3) Notice to the Company under *sub-Rules 4.5(1)* and *4.5(2)* will be properly given if the relevant written notice is given to the Secretary.

4.6 Remuneration of Directors

- (1) For the purposes of this Constitution, the amount fixed by the Company as a Director's remuneration will not include an amount paid by the Company:
- (a) to a superannuation, retirement or pension fund for the Director pursuant to the Superannuation Guarantee Scheme; or
 - (b) for an insurance policy or premium pursuant to *Rule 8.3*.
- (2) Each Director is entitled to such remuneration from Company funds as the Board determines.
- (3) Unless otherwise resolved by the Company in general meeting, the Directors are to receive no remuneration from the Company.
- (4) A Director's remuneration may be:
- (a) a specified salary;
 - (b) a fixed sum per Board meeting attended;
 - (c) a specified salary and a fixed sum per Board meeting attended; or
 - (d) a share of a fixed sum determined by the Members in general meeting as the aggregate remuneration to be paid to the Directors via a pool of money to be divided between them in the proportions they agree, or, failing agreement, equally.
- (5) A specified salary under *paragraph 4.6(4)(a)* or a share of a fixed sum under *paragraph 4.6(4)(b)* will accrue from day to day.
- (6) If the Members in general meeting fix pursuant to *paragraph 4.6(4)(d)* a limit on the aggregate remuneration payable to the Directors, the aggregate remuneration paid to them under this *Rule 4.6* must not exceed that limit.
- (7) In addition to his/her remuneration (if any) under *paragraph 4.6(2)(2)*, a director is entitled to be reimbursed all reasonable expenses he/she properly incurs in connection with the Company's affairs, including the cost of travelling to and from:
- (a) general meetings of the Company;
 - (b) meetings of the Board; or
 - (c) meetings of Directors committees.
- (8) If a Director provides extra services or expends special efforts in connection with the Company's affairs, the Directors may arrange for special remuneration of that Director.
- (9) Nothing in *sub-Rules 4.6(2)* and *4.6(8)* restricts the remuneration a Director may receive as an officer of the Company in a capacity other than director.
- (10) A Director may be paid:
- (a) the special remuneration the subject of *sub-Rule 4.6(8)* or
 - (b) the other-capacity remuneration the subject of *sub-Rule 4.6(9)*,
- in addition to or in substitution for the Director's remuneration (if any) under *sub-Rule 4.6(2)*.

4.7 Membership Qualification (Unnecessary)

A Director may attend and speak at a general meeting of the Company despite not being a Member.

4.8 Interested Directors

- (1)
 - (a) A Director may hold another office or position of profit in the Company, other than Auditor, in conjunction with his or her directorship.
 - (b) The Director may be appointed to that office or position upon such terms, particularly with respect to remuneration and tenure of office, as the Directors consider appropriate.
- (2) A Director may be a director or other officer of, or be otherwise interested in, any corporation other than the Company, including a corporation:
 - (a) promoted by the Company;
 - (b) of which the Company is a member; or
 - (c) with which the Company deals,without being accountable to the Company for remuneration or other benefits received by the Director from, or from his/her interest in, that corporation.
- (3) The Directors may exercise, in such manner as they consider appropriate, the voting rights conferred by shares held or owned by the Company in any corporation.
- (4) In particular, the Directors may exercise the voting rights the subject of *sub-Rule 4.8(3)* by voting in favour of a resolution:
 - (a) appointing a Director as a director or other officer of that corporation; or
 - (b) for the payment of remuneration to the directors or other officers of that corporation.
- (5) If permitted by law, a Director may vote in the manner detailed in *sub-Rule 4.8(4)* despite the fact that he/she:
 - (a) is, or may be, about to be appointed a director or other officer of the relevant corporation; and
 - (b) thus is personally interested in the votes.
- (6) A Director is not disqualified from:
 - (a) selling property to the Company or purchasing property from it;
 - (b) lending money to the Company or borrowing any money from it, with or without interest or security;
 - (c) guaranteeing for commission or profit the repayment of money borrowed by the Company;
 - (d) underwriting or guaranteeing, for commission or profit, a subscription for securities in any corporation promoted by the Company, or in which the Company may be interested as a member or otherwise;
 - (e) being employed by the Company or acting on behalf of the Company in any professional capacity (other than Auditor); or
 - (f) otherwise contracting with the Company,merely because he/she is a Director.

- (7) The fact that a Director:
- (a) holds office as a Director; or
 - (b) is bound by fiduciary obligations arising from his/her position as a Director,
- is not sufficient, considered alone, to:
- (c) render void or voidable; or
 - (d) render the Director liable to account to the Company for a profit realized from, a contract or arrangement:
 - (e) by the Director with the Company; or
 - (f) by the Company with another party, but in which the Director may be interested.
- (8) A Director interested in a contract or arrangement, or a proposed contract or arrangement, involving the Company must declare the interest to the Directors unless the interest is obvious.
- (9) Despite having, and having declared, an interest the subject of *sub-Rule 4.8(8)*, a Director may:
- (a) be counted in determining whether or not a quorum is present at a Board meeting to consider the contract or arrangement, or the proposed contract or arrangement;
 - (b) vote with respect to, or with respect to any matter arising from, the contract or arrangement, or proposed contract or arrangement;
 - (c) sign any document relating to the contract or arrangement, or the proposed contract or arrangement, that the Company may execute.

4.9 Directors' Powers and Duties

- (1) The Directors:
- (a) are responsible for managing the Business; and
 - (b) may exercise to the exclusion of the Company in general meeting all of the Company's powers that are not required, by the *Corporations Act 2001* or this Constitution, to be exercised by the Company in general meeting.
- (2) Before the end of each financial year, the Directors must adopt a strategic plan for the Company, which plan must include a plan of action relating to such of the following issues as are relevant to the Business:
- (a) business strategy;
 - (b) product and service strategy;
 - (c) pricing policy;
 - (d) personnel policy and hiring plans;
 - (e) investment strategy;
 - (f) financing requirements for working capital, investment and expansion;
 - (g) revenue objectives;
 - (h) a marketing plan;
 - (i) financial budgets;

- (j) revenue distribution forecasts;
 - (k) business policies;
 - (l) financial and non-financial performance targets;
 - (m) any proposed major disposal or divestment of assets; and
 - (n) key performance indicators as determined by the Board from time to time.
- (3) The managing Director (if any) is responsible for day-to-day management of the Company, subject to the Boards instructions.
- (4) Decisions that are not items of day-to-day management of the Company must be made at Board meetings.
- (5) Unless otherwise determined by the Board, the Directors must ensure that the Company:
- (a) maintains its property in good working order and condition (reasonable fair wear and tear, and damage from unforeseen circumstances, excepted), and repairs and replaces that property where necessary;
 - (b) complies with all agreements to which it is a party;
 - (c) otherwise pays its debts as and when they fall due;
 - (d) adequately insures all of its insurable assets, to their full replacement value and on a reinstatement or replacement basis, against loss, damage and destruction from any cause against which it is prudent to insure;
 - (e) maintains adequate public risk insurance with respect to any property that it occupies or at which it conducts its Business;
 - (f) holds workers compensation insurance for all of its employees;
 - (g) (otherwise) maintains adequate insurance with respect to risks against which a prudent person, holding assets and conducting a business similar to the Company's, would insure;
 - (h) complies with the requirements of all Acts relating to conduct of the Business and the administration of its affairs;
 - (i) maintains its corporate existence; and
 - (j) conducts the Business in accordance with the current strategic plan adopted under *sub-Rule 4.9(2)*.
- (6) The Directors also must ensure that the Company maintains books and records, including minutes of Directors and Members meetings, in compliance with:
- (a) all applicable rules of general law;
 - (b) all applicable Acts, including the *Corporations Act 2001* and the *Income Tax Acts*; and
 - (c) generally-accepted accounting principles and best practices.
- (7)
- (a) Further, the Directors must ensure that the Company provides in its accounts for all taxes to be paid as they are incurred, after deducting any taxation credits arising from losses and adjustments in previous years.

- (b) The object of *paragraph 4.9(7)(a)* is to ensure that no provision is required in the Company accounts for losses to be carried forward or to be set off against profits in future years.
- (8) Without limiting the effect of *sub-Rule 4.9(1)*, the Directors may exercise all of the Company's powers to:
 - (a) borrow or otherwise to raise money;
 - (b) charge Company assets; or
 - (c) give other security for a debt, liability or obligation of the Company or another person.
- (9) The Directors may determine how negotiable instruments are signed, drawn, accepted, endorsed or otherwise processed on behalf of the Company.
- (10) The Directors may pay from the Company's funds all of the expenses of:
 - (a) promoting, forming and registering the Company; and
 - (b) vesting in it of the assets it acquires.
- (11) The Directors may:
 - (a) appoint or employ any person as an officer, agent or attorney of the Company, for such purposes, and with such powers, discretions and duties (including those vested in or exercisable by the Directors), upon such terms as they consider appropriate;
 - (b) authorize an officer, agent or attorney to delegate any of the powers, discretions and duties vested in that officer, agent or attorney; and
 - (c) (subject to any Act or rule of general law, and to any contract between the Company and that person) remove or dismiss an officer, agent or attorney of the Company at any time, with or without cause.
- (12) A power of attorney granted by the Company may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the Directors consider appropriate.
- (13) The Directors must ensure that the assets and income of the Company are applied solely in furtherance of the objects for which it was incorporated and no portion is distributed directly or indirectly to the Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

4.10 Proceedings of Directors

- (1) The Directors may:
 - (a) meet for the dispatch of Company business; and
 - (b) adjourn and otherwise regulate their meetings,as they consider appropriate.
- (2)
 - (a) Contemporaneous linkage, by telephone or other electronic medium, of a number of Directors sufficient to constitute a quorum, constitutes a meeting of the Board.
 - (b) The Rules relating to Directors meetings apply to the extent that they can do so, and with such alterations as are necessary, to Directors meetings by telephone or other electronic media.

- (3) A Director participating in a meeting by telephone or other electronic media is to be regarded as present in person at the meeting.
- (4) A meeting by telephone or other electronic media is to be regarded as held at the place determined by the chairman of the meeting if at least 1 of the participating Directors is at that place throughout the meeting.
- (5) The Mayor and the Chief Executive Officer of the Council may attend Director's meetings as observers.

4.11 Convening Board Meeting

- (1) A Director may convene a meeting of the Directors whenever he/she considers it appropriate.
- (2) A Secretary must convene a meeting of the Directors if requested to do so by a Director.

4.12 Notice of Board Meeting

- (1) Subject to the requirements of this Constitution, unless all Directors agree otherwise, notice of a Directors meeting must be given at least 2 Business Days before the day of the proposed meeting, to each person who is:
 - (a) a Director, other than a Director on leave of absence approved by the Directors; or
 - (b) an Alternate Director appointed under *Rule 4.16* by a Director on leave of absence that has been approved by the Directors.
- (2) The notice of a Directors meeting:
 - (a) must specify the time and place of the meeting;
 - (b) must state the nature of the business to be transacted at the meeting, and include any applicable explanatory and supporting documents;
 - (c) (despite *Rule 4.12(1)*) may be given immediately before the meeting if the Directors agree;
 - (d) may be given by personal delivery, post, telephone, facsimile transmission, or by other electronic means; and
 - (e) will be regarded as having been given to an Alternate Director if it is given to the Director who appointed that Alternate Director.
- (3) Unless all Directors agree otherwise, they must not pass a resolution unless:
 - (a) notice of the subject-matter of that resolution; and
 - (b) the applicable explanatory and supporting documentation (if any) was included in the notice of meeting.
- (4) A Director or Alternate Director may waive notice of a Directors meeting by notifying the Secretary to that effect in person, by post, telephone, facsimile transmission or other electronic means.
- (5) Where a Director or Alternate Director does not receive a notice of a Directors meeting to which he/she is entitled under *Rule 4.12*, the failure will not invalidate anything done at the meeting, including any resolution passed, if:
 - (a) non-receipt is the result of an accident or error (including an accident or error resulting in the notice of meeting not having been sent);
 - (b) he/she waives under *sub-Rule 4.12(4)*, before or after the meeting, the entitlement to receive notice of that meeting;

- (c) he/she agrees to that thing; or
 - (d) he/she attends the meeting.
- (6) If:
- (a) a Director or Alternate Director does not receive a notice of a Directors meeting to which he/she is entitled under *Rule 4.12*; and
 - (b) before or after that Directors meeting he/she notifies the Secretary in person, or by post, telephone, facsimile transmission or other electronic means, that he/she agrees to a specified action being or having been taken at the meeting (including a resolution being or having been passed),
- the fact that he/she does not receive notice of the meeting does not invalidate the relevant action.
- (7) Attendance at a Directors meeting waives any objection to non-receipt of a notice of the meeting by:
- (a) the Director who attends;
 - (b) any Alternate Director appointed by that person; and
 - (c) if the person who attends is an Alternate Director, the Director who appointed that person an Alternate Director, and any other Alternate Director appointed by that Director.
- (8) Notice of a Director's meeting must be given to the Mayor and the Chief Executive Officer of the Council.

4.13 Quorum at Board Meeting

- (1) No business may be transacted at a Board meeting unless a quorum of Directors is present at the time the business is transacted.
- (2) Subject to sub-Rule 4.13(3), the quorum for a Board meeting is 4 Directors.
- (3) If a quorum is not present within 30 minutes after the appointed starting time of a Board meeting, the meeting is adjourned to the same time and place on the next Business Day.
- (4) If a quorum is not present within 30 minutes after the appointed starting time of an adjourned Board meeting, the meeting may proceed with those Directors who were present at the initial meeting, otherwise the meeting is dissolved.
- (5) Subject to *sub-Rule 4.13(6)*, if there is a vacancy in an office of Director, the remaining Directors may transact Company business.
- (6) If the number of Directors in office at any time is:
 - (a) insufficient to constitute a quorum at a Board meeting; or
 - (b) less than the minimum number of Directors fixed under this Constitution,the Members must:
 - (c) appoint further Directors in accordance with this Constitution as soon as possible; and
 - (d) until the further Directors are appointed, act only if and to the extent that an emergency requires.

4.14 Board Decisions

- (1) A Board meeting at which a quorum is present may exercise any of the authorities, powers and discretions vested in or exercisable by the Board under this Constitution.

- (2) However, if the Company has only 1 Director:
 - (a) the Director may pass a resolution and make a declaration by recording it and signing the record; and
 - (b) such a decision is a determination of the Board for all purposes.
- (3) The Board Decisions may make decisions by majority vote.
- (4) Subject to *sub-Rule 4.14(5)*, each Director entitled to vote at a Board meeting has 1 deliberative vote.
- (5) If there is an equality of votes upon a motion at a Board meeting, the chairman of the meeting has a second (casting) vote in addition to his/her deliberative vote.

4.15 Written Board Resolutions

- (1) If:
 - (a) a document containing a statement that something has been done (including a resolution having been passed) bears the signed assents of sufficient of the Directors to constitute a quorum and pass a resolution at a Board meeting; and
 - (b) the assenting Directors would have constituted a quorum at a Board meeting held to consider what has been done,that thing is to be regarded as having been done at a Board meeting.
- (2) For the purposes of *sub-Rule 4.15(1)*:
 - (a) if the Directors endorsed their assents on the same day, the meeting will be regarded as having been held on that day, at the time at which the last assent was endorsed upon document;
 - (b) if the Directors endorsed their assents on different days, the meeting will be regarded as having been held on the day upon which, and at the time at which, the last assent was endorsed upon document;
 - (c) 2 or more counterparts in identical terms, each of which bears the assent of 1 or more Directors, will be regarded as constituting an assent document; and
 - (d) a Director may assent to the thing done by signing the assent document, or by notifying the Secretary of his/her assent to the contents of the document in person, or by post, telephone, facsimile transmission, or other electronic means.
- (3) Where, for the purposes of *sub-Rule 4.15(1)*, a Director signifies assent to the contents of a document otherwise than by signing the document:
 - (a) he/she must sign the document by way of confirmation at the next Board meeting he/she attends; and
 - (b) however, failure to sign the document does not invalidate the act to which the document relates.

4.16 Alternate Director

- (1) The Council may appoint a person as an alternate Director to the Member's nominated Director.
- (2) An Alternate Director need not be a Member or a Director.
- (3) One person may be an Alternate Director to more than 1 Director.

- (4) If the Primary Director does not attend a Board meeting, an Alternate Director may attend and vote in the Primary Director's stead and on his/her behalf.
- (5) In addition to any vote to which he/she is entitled as a Director in his/her own right, an Alternate Director is entitled also to a separate vote for each Primary Director the Alternate Director represents.
- (6) In the absence of the Primary Director:
 - (a) an Alternate Director may exercise any power that the Primary Director may exercise; and
 - (b) exercise of that power by the Alternate Director will be regarded as exercise of the power by the Primary Director.
- (7) The office of an Alternate Director is vacated when the Primary Director vacates office as a Director.
- (8) The appointment of an Alternate Director may be terminated at any time by the appointor despite the period of the Alternate Director's appointment not having expired.
- (9) The appointment of an Alternate Director, or the termination of that appointment:
 - (a) must be in writing, signed by the appointor; and
 - (b) is not effective until the Secretary receives written notice of the appointment or termination.
- (10) Alternate Directors will not be considered in determining the minimum or maximum number of Directors permitted under this Constitution.
- (11) In determining whether a quorum is present at a Board meeting, an Alternate Director who attends the meeting is to be counted as a Director for each Primary Director on whose behalf the Alternate Director attends the meeting.
- (12) An Alternate Director is entitled to such remuneration as the Board considers appropriate, either in addition to or in reduction of the remuneration payable to the Primary Director for whom the Alternate Director substitutes.
- (13) An Alternate Director is not entitled to remuneration for his/her service in that capacity other than in accordance with *sub-Rule 4.16(12)*.
- (14) While acting as a Director, an Alternate Director:
 - (a) will be responsible to the Company for his/her own acts; and
 - (b) will not be regarded as the Primary Director's agent.

4.17 Committees of Directors

- (1) The Board may delegate any of its powers to a committee consisting of such Directors as it considers appropriate.
- (2) A committee to which the Board delegates powers must exercise those powers according to any directions from the Board.
- (3) The Rules that apply to Directors meetings and resolutions apply, to the extent that they can do so, and with such alterations as are necessary, to meetings and resolutions of a committee of Directors.
- (4) The Board may resolve to treat membership of a committee of Directors as extra service provided or special effort expended for the purposes of *sub-Rule 4.6(8)*.

4.18 Delegation to Individual Director

- (1) The Board may delegate any of its powers to 1 Director.
- (2) A Director to whom the Board delegates powers must exercise those powers according to any directions from the Board.
- (3) The Board may resolve to treat the acceptance of its delegation of powers as extra service provided or special effort expended by the delegate for the purposes of *sub-Rule 4.6(8)*.

4.19 Validity of Acts

An act done by:

- (1) a person acting as a Director; or
- (2) a meeting of the Board or a committee of Directors attended by a person acting as a Director,

is not invalidated merely because:

- (3) a the person's appointment as a Director is defective;
- (4) the person is disqualified from holding office as a Director, or has vacated the office; or
- (5) the person is not entitled to vote, at the meeting of the Board or committee of Directors,

if the Directors or committee (as the case may be) know of that circumstance when the act is done.

4.20 Authorisation of Expenditure

The Board may only authorise the expenditure of money on the following basis:

- (1) from the Gift Fund:
 - (a) hospital equipment; and
 - (b) building improvements.
- (2) from the operating account:
 - (a) community functions;
 - (b) statutory requirements; and
 - (c) working capital cash for the operating costs of the hospital.

PART 5 EXECUTIVE OFFICERS**5.1 Managing Director**

- (1) The Board may appoint 1 or more of the Directors to the office of Managing Director.
- (2) A person's appointment as a Managing Director automatically terminates if the person ceases to be a Director.

5.2 Secretaries

The Directors:

- (1) must appoint at least 1 Secretary, who shall be a Director who is an employee of the Council; and

- (2) may appoint additional Secretaries.

5.3 Provisions Applicable to all Executive Officers

- (1) Reference to an executive officer in this *Rule 5.3*, is a reference to a Managing Director or a Secretary appointed under this *Part 5*.
- (2) An executive officer may be appointed for such period, at such remuneration and upon such terms as the Directors consider appropriate.
- (3) Subject to any contract between the Company and that executive officer, the Directors may remove or dismiss an executive officer of the Company at any time, with or without cause.
- (4) The Directors may:
 - (a) confer on an executive officer such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors) as they consider appropriate;
 - (b) withdraw, suspend or vary any powers, discretions and duties conferred on an executive officer; and
 - (c) authorize the executive officer to delegate any of the powers, discretions and duties conferred on the executive officer.
- (5) An executive officer need not be a Member to qualify for appointment as an executive officer.
- (6) An act done by a person acting as an executive officer is not invalid merely because:
 - (a) the person's appointment as an executive officer is defective; or
 - (b) the person is not entitled to be appointed an executive officer,if the person is unaware of that circumstance when the act is done.

PART 6 MINUTES AND RECORDS

6.1 Minutes of Meetings

The Board must ensure that minutes of proceedings and resolutions at:

- (1) each general meeting of Members; and
- (2) each meeting of Directors (including a committee of Directors),

are recorded in a book kept for the purpose, within 1 month after each meeting is held.

6.2 Minutes of Resolutions Passed Without Meetings

The Board also must ensure that minutes of:

- (1) each resolution passed by Members; and
- (2) each resolution passed and each declaration made by Directors (and by a committee of Directors),

without a meeting, is recorded in a book kept for the purpose, within 1 month after the resolution is passed or the declaration is made.

6.3 Confirmation of Minutes

- (1) The minutes of a meeting must be signed within a reasonable time by:

- (a) the chairman of the meeting; or
 - (b) the chairman of the next meeting.
- (2) The minutes recording:
- (a) a resolution passed; or
 - (b) a declaration made,
- without a meeting, must be signed by a Director within a reasonable time after the resolution is passed or the declaration made.

6.4 Evidence

A minute:

- (1) recorded under *Rule 6.1* or *Rule 6.2*; and
 - (2) signed under *Rule 6.3*,
- is prima facie evidence¹⁰ of the proceeding, resolution or declaration to which it refers.

6.5 Inspection of Records

- (1) The Board must ensure the minute books for general meetings are open for inspection by Members without charge.
- (2) Subject to *sub-Rule 6.5(1)*, the Board may determine:
 - (a) whether and, if so, to what extent; and
 - (b) at what times and places, and under what conditions,the Company's minute books, accounting records and other documents, or any of those items, will be open for inspection by Members (other than Directors).
- (3) A Member (other than a Director) may not inspect Company books, accounting records or other documents except as:
 - (a) provided by law; or
 - (b) authorized by the Board or this Constitution.

PART 7 PROVISION OF INFORMATION

7.1 Periodic Reports

- (1) Subject to *sub-Rules 7.1(3)*, *7.1(4)* and *7.1(5)*, each Director and Member must do whatever is reasonable to ensure that information or material concerning the Business and the operations of the Company is made available for inspection by:
 - (a) the Board; and
 - (b) any Member who has not appointed personally a serving Director,promptly after the request for inspection is made.

¹⁰ *Prima facie evidence is evidence that, in the absence of evidence to the contrary, suffices as proof of the fact or proposition in question. It is to be contrasted with conclusive evidence, which is evidence that is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing that it overbears all proof to the contrary and established the fact or proposition beyond any reasonable doubt.*

- (2) A request for the provision of information under this *Rule 7.1* must be directed to a Secretary.
- (3) The following reports must be available to each Director and Member as soon as practical, but not later than 14 days, after the end of each month:
 - (a) an unaudited profit and loss statement;
 - (b) a monthly cash flow statement (with projections for the following 12 months) for the month and for the current financial year to date; and
 - (c) an unaudited balance sheet as at the end of the month,and each must be prepared in accordance with generally-accepted accounting principles and best practices consistently applied.
- (4) An audited profit and loss statement and balance sheet for the financial year must be available as soon as practical, but not later than 3 months, after the end of each financial year.
- (5) Information or material, other than information and material the subject of *sub-Rules 7.1(3)* and *7.1(4)*, requested by a Director or Member to enable the Company or the Member to satisfy a reporting obligation under an Act, must be made available as soon as practical following the request.
- (6) The cost of providing information requested by a Member under *sub-Rule 7.1(5)* must be borne by the Member.

7.2 Audit

The accounts of the Company must be audited annually by the Auditor.

7.3 Access to Information

The Company must permit:

- (1) a Member or a Member's representative;
- (2) a current Director; or
- (3) a former Director against whom a claim has been made in their capacity as a director of the Company,

upon reasonable notice, at any reasonable time, and as often as the Board considers it reasonable, to:

- (4) inspect Company property;
- (5) inspect and take copies of any document relating to the Business, including its accounts; and
- (6) discuss the Company's affairs, including particularly its finances and accounts, with the Company's officers and the Auditor.

7.4 Confidentiality

Subject to *Rules 7.3* and *7.5*, neither a Director or other Company officer, nor a Member, may:

- (1) disclose Confidential Information; or
 - (2) use Confidential Information in a manner that may cause loss to the Company or its Members,
- and each Director and Member must use its best endeavours to ensure that nobody:
- (3) discloses Confidential Information; or
 - (4) uses Confidential Information in a manner that may cause loss to the Company or its Members.

7.5 Permitted Disclosure

Confidential Information may be disclosed:

- (1) with the written consent of the Board (where the Company owns the information or is entitled to the benefit of the confidence);
- (2) with the written consent of all persons entitled to the benefit of the confidence (where more than one person is entitled to the benefit of the confidence, whether or not the Board is one of those persons);
- (3) if it belongs solely to the Company and its disclosure is necessary in the ordinary course of transacting the Business;
- (4) if its disclosure is required by law;
- (5) if it comes into the public domain other than by a breach of this *Rule 7.5*;
- (6) subject to *Rule 7.6*, to the Company's banker or professional adviser; and
- (7) if its disclosure is required by an Act.

7.6 Confidentiality Agreements

Confidential Information may be disclosed to a banker or professional adviser only if that person first undertakes by Deed in the Company's favour to comply with obligations similar to those contained in *Rules 7.4, 7.5* and this *Rule 7.6*, amended as necessary.

PART 8 INDEMNITY AND INSURANCE

8.1 Affected Persons

Rules 8.2 and *8.3* apply:

- (1) to each person who is or has been a Director, an Alternate Director or an executive officer (within the meaning of the latter term in *sub-Rule 5.3(1)*);
- (2) to any other officer or former officer of the Company to whom the Directors determine they should apply; and
- (3) if the directors so determine, to any Auditor or former Auditor.

8.2 Indemnity

- (1) The Company must indemnify, on a full indemnity basis, to the extent permitted by law, every:
 - (a) Director and Alternate Director;
 - (b) Auditor;
 - (c) other Company officer,against all liability, loss and expense incurred by the person in that capacity, including:
 - (d) liability for negligence;
 - (e) the reasonable costs and expenses incurred defending proceedings in which judgment is given in the person's favour or in which he/she is acquitted of a charge; and
 - (f) the reasonable costs and expenses incurred in connection with an application upon which a Court grants the person relief under the *Corporations Act 2001*.

- (2) If requested by a person to whom *sub-Rule 8.2(1)* applies, the Company must execute a formal indemnity in favour of that person to secure the Company's obligation under *sub-Rule 8.2(1)*.

8.3 Insurance

To the extent that it is permitted by law to do so, the Company may:

- (1) insure a person to whom *Rule 8.2* applies; or
- (2) pay the premiums for insurance that the person obtains, against the losses and liabilities the subject of *Rule 8.2*.

8.4 Ambit of Entitlements

- (1) The indemnity in *Rule 8.2*:
 - (a) is a continuing obligation, remaining enforceable if the person entitled to it ceases to be a Company officer or Auditor;
 - (b) applies to losses and liabilities incurred before and after *Rule 8.2* is adopted, but to the extent only that a relevant loss or liability is not covered by insurance.
- (2) *Rules 8.2* and *8.3* do not:
 - (a) limit to what is provided in those Rules a person's entitlements with respect to a loss or liability the subject of those Rules; or
 - (b) limit the Company's entitlement to indemnify, insure, or pay insurance premiums for, a person to whom those Rules do not apply.

PART 9 EXECUTION OF DOCUMENTS

9.1 Manner of Execution

The Company may execute a document if the document is signed by:

- (1) 2 Directors;
- (2) a Director and a Secretary;
- (3) a Director who is the only Director and is also the only Secretary (but the Director must state next his/her signature that he/she signs in the capacity of sole Director and sole Secretary); or
- (4) a person the Board authorizes to sign.

9.2 Common Seal

- (1) The Company may have a common seal.
- (2) If the Company has a common seal, *Rules 9.3* to *9.6* apply.

9.3 Safe custody of Seal

The directors must provide for the safe custody of the common seal.

9.4 Use of Seal

- (1) The common seal must be used only by the authority of:
 - (a) the Directors; or

- (b) a committee of the Directors, which committee the Directors have authorized the use of the seal.
- (2) The authority to use the common seal may be given before or after the seal is used.
 - (3) Until the Directors otherwise determine, every document to which the common seal is affixed must be signed by:
 - (a) 2 Directors;
 - (b) a Director and a Secretary;
 - (c) a Director and another person appointed by the Directors to countersign that document or a class of documents to which that document belongs;
 - (d) a Director who is the only Director and is also the only Secretary (but the Director must state next to his/her signature that he/she witnesses the affixation in the capacity of sole Director and sole Secretary); or
 - (e) the person or attorney the subject of *sub-Rule 9.1(4)*.

9.5 Seal Register

- (1) The Company may keep a seal register.
- (2) If the Company keeps a seal register, it must enter in the register particulars of any document to which the common seal is affixed, specifying in each instance:
 - (a) the date of the document;
 - (b) the names of the parties to the document;
 - (c) a short description of the document; and
 - (d) the names of the signatories to the document under *sub-Rule 9.4(3)*.
- (3) The register must be produced at Board meetings for confirmation of use of the common seal since confirmation was last given under this *Rule 9.5*.
- (4) Non-compliance with *sub-Rules 9.5(2)* or *9.5(3)* does not invalidate a document to which the common seal is properly affixed.

9.6 Duplicate Seal

- (1) The Company may have 1 or more duplicate seals for use in place of its common seal outside the state or territory where its common seal is kept.
- (2) Each duplicate seal must be a facsimile of the Company's common seal with the addition on its face of:
 - (a) the words "duplicate seal"; and
 - (b) the name of the place where it is to be used.
- (3) A document sealed with a duplicate common seal is to be regarded as having been sealed with the Company's common seal.

PART 10 NOTICES

10.1 Service of Notices

- (1) A notice:

- (a) from the Company to a Member, a Director, or Alternate Director; or
 - (b) from a Member, a Director or an Alternate Director, to the Company,
- may be:
- (c) given in writing; and
 - (d) delivered personally, posted or transmitted by facsimile, to the intended recipient's Address for Notices.
- (2) A notice sent by post to an address outside the Commonwealth of Australia must be sent via airmail.

10.2 Receipt of Notices

A notice will be deemed received:

- (1) if personally delivered, at the moment of delivery;
- (2) if sent by post:
 - (a) 5 business Days after posting, if it is a notice convening a general meeting of the Company or a notice posted to an address outside the Commonwealth of Australia;
 - (b) 2 Business Days after posting, in the case of any other notice;
- (3) if sent by facsimile transmission, at the time specified in a transmission confirmation report produced by the sender's machine, which report contains the identification code of the intended recipient and indicates that the transmission was received without error;
- (4) if sent by other electronic means, on the Business Day following the day upon which it is sent, unless the sender receives confirmation, by whatever means, that the message:
 - (a) has not been received by of the intended recipient; or
 - (b) has been received in corrupt, incomplete or illegible form.

10.3 Company Signature

A signature upon a notice from the Company to a Member under *Rule 10.1* may be:

- (1) handwritten; or
- (2) a facsimile printed or affixed by mechanical or other means.

10.4 Notices via Facsimile and Electronic Media

The fact that a person gives the Company a facsimile number or other electronic address for notices to that person does not oblige the Company to give a notice to that person by facsimile transmission or other electronic means.

10.5 Evidence of Notice

A certificate signed by a Director or Secretary, stating that a notice has been given in accordance with this Constitution is prima facie evidence of that fact.

PART 11 WINDING UP

11.1 Distribution of Surplus

- (1) If:

- (a) the Company goes into liquidation; and
- (b) surplus Company assets remain after the satisfaction of its liabilities, including the liquidation costs:

the liquidator must transfer the surplus assets to an entity:

- (c) whose objects are similar to the Company's objects; and
 - (d) that does not operate for the purpose of producing profit or gain to its individual members; and
 - (e) whose constitution prohibits distribution of its income and assets to its members.
- (2) A receipt issued by the recipient entity, with a written undertaking by the entity to use the transferred assets for the pursuit of its objects, will discharge the liquidator's responsibility for the transferred assets.

11.2 Member Contributions to Assets

- (1) Each permanent Member must contribute to the Company's assets if the Company goes into liquidation:
 - (a) while the person is a Member; or
 - (b) within 1 year after the person ceases to be a Member.
- (2) The contribution by the permanent Member is to be such sum not exceeding \$25.00 as is required to secure:
 - (a) satisfaction of the liabilities incurred by the Company before the person ceases to be Member;
 - (b) payment of the costs of liquidation; and
 - (c) adjustment of the entitlements of contributories between each other.

PART 12 MISCELLANEOUS

12.1 Submission to Jurisdiction

Every Member submits to the non-exclusive jurisdiction of:

- (1) the Supreme Court of the State or Territory in which the Company is registered; and
- (2) the Courts that may hear appeals from those Courts.

12.2 Prohibition and Enforceability

- (1) If a provision of this Constitution, or application of the provision, is prohibited in a particular place, the provision or application in that place is ineffective only to the extent of the prohibition.
- (2) If a provision of this Constitution, or application of the provision, is void, illegal or unenforceable in a particular place:
 - (a) the provision or its application does not become void, illegal or unenforceable in another place; and
 - (b) the remaining provisions of the Constitution do not become void, illegal or unenforceable in any place,merely because of that fact.

PART 13 ESTABLISHMENT AND OPERATION OF THE GIFT FUND

13.1 Maintaining the Gift Fund

The Company must maintain for the principal purpose of the Gift Fund a fund:

- (1) to which gifts of money or property for the purpose are to be made;
- (2) to which any money received by the Company because of those gifts is to be credited; and
- (3) that does not receive any other money or property.

13.2 Limits on Use of Gift Fund

The Company must use the following for the principal purpose of the Gift Fund:

- (1) gifts made to the Gift Fund; and
- (2) any money received because of those gifts.

13.3 Winding Up

If the Gift Fund is wound up or if the endorsements (if any) of the Company as a deductible gift recipient for the operation of the Gift Fund is revoked, any surplus assets of the fund remaining after payment of liabilities attributable to it shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made under the Income Tax Acts.

13.4 Bank Account

The Company must maintain a separate bank account for the Gift Fund.

13.5 Gift Fund form part of the Company

It is declared that the Gift Fund forms part of the Company.

PART 14 OBJECTS OF INCORPORATION

14.1 Principal Object

The principal object of the Company is the operation and management of the Business for the benefit of the residents of the Region.

14.2 Additional Objects

The Company is incorporated also to pursue the following objects:-

- (1) conducting fundraising activities and any activities ancillary to the operation and management of the Business;
- (2) promoting and advancing health and providing care to sick, aged, inform, afflicted or incorrigible persons;
- (3) to conduct itself as it deems fit for the achievement of its objects as:
 - (a) a charitable institution for the Income Tax Acts, *Income Tax Assessment Act 1997 (Cwlth)* section 50-5, table item 1.1 and for the *Taxation Administration Act 2001 (Qld)* Part 11A;
 - (b) a charity registered with the Australian Charities and Not for Profits Commission under the *Charities Act 2013 (Cwlth)*;
 - (c) a deductible gift recipient;

(d) a public benevolent institution.

14.3 Independence of Objects

Each of the objects specified in this Part 14 is a discrete object of the Company.

14.4 Income and Property of Company

The income and property of the Company must be applied solely in promotion of the objects of the Company and must not be distributed to the Members, nor are dividends to be paid to the Members.