

# Wuchopperen Health Service Limited

ACN 010 112 580

## Constitution

A public company limited by guarantee

Adopted on [ ] 2023

**King & Wood Mallesons**

Level 27  
Collins Arch  
447 Collins Street  
Melbourne VIC 3000  
Australia  
T +61 3 9643 4000  
F +61 3 9643 5999  
DX 101 Melbourne  
[www.kwm.com](http://www.kwm.com)

# Constitution

## Contents

<b>Acknowledgement</b>	<b>5</b>
<b>1 Definitions and Interpretation</b>	<b>5</b>
1.1 Definitions	5
1.2 Interpretation	7
1.3 Corporations Act	8
1.4 Replaceable rules not to apply	8
<b>2 Purpose, objects and powers of the Company</b>	<b>8</b>
2.1 Charitable purpose	8
2.2 Principal Object	8
2.3 Other Objects	8
2.4 Powers of the Company	9
<b>3 Income and property of the Company</b>	<b>10</b>
3.1 Application of income and assets	10
3.2 No income and assets distributed to Members	10
3.3 Permitted payments by the Company	10
<b>4 Membership</b>	<b>10</b>
4.1 Number of Members	10
4.2 Becoming a Member	11
4.3 Application for Membership	11
4.4 Eligibility for Membership	11
4.5 Admission as a Member	12
4.6 Application fee and guarantee	12
4.7 Register of Members	12
4.8 Annual Subscription Fee	12
4.9 Directors may create and vary classes and class rights	12
4.10 No transfer of Membership	13
4.11 Ceasing to be a Member	13
4.12 Resignation	13
4.13 Disciplining and expelling Members	14
4.14 Right to appeal	15
4.15 Limited liability	15
<b>5 General meetings</b>	<b>15</b>
5.1 Annual general meeting	15
5.2 Business at annual general meeting	16
5.3 Convening a general meeting	16
5.4 General meetings called by Members	16
5.5 Use of technology at general meetings	17
5.6 Notice of general meeting	17
5.7 Contents of notice of general meetings	18
5.8 Calculation of period of notice	18
5.9 Cancellation or postponement of general meeting	18
5.10 Notice of cancellation or postponement of a general meeting	18

5.11	Contents of notice postponing general meeting	18
5.12	Number of clear days for postponement of general meeting	19
5.13	Business at postponed general meeting	19
5.14	Non-receipt of notice	19
5.15	Director entitled to notice of meeting	19
5.16	Auditor entitled to notice of meeting	19
5.17	Circulating resolutions	19
<b>6</b>	<b>Appointment of proxies and attorneys</b>	<b>20</b>
6.1	Appointment of a proxy	20
6.2	Right to appoint attorney	20
6.3	Vote by proxy or attorney	21
6.4	Proxy or attorney at postponed general meeting	21
<b>7</b>	<b>Proceedings at general meetings</b>	<b>21</b>
7.1	Number for a quorum	21
7.2	Requirement for a quorum	21
7.3	If quorum not present	21
7.4	Adjourned meeting	22
7.5	Appointment of chair of general meeting	22
7.6	Absence of chair at general meeting	22
7.7	Chair may vacate	22
7.8	Conduct of general meetings	23
7.9	Adjournment of general meeting	23
7.10	Notice of adjourned meeting	23
7.11	Questions decided by majority	24
7.12	No casting vote for chair	24
7.13	Voting on show of hands	24
7.14	Demanding a poll	24
7.15	Poll	24
7.16	Entitlement to vote	25
7.17	Validity of vote in certain circumstances	25
7.18	Objection to voting qualification	25
7.19	Suspension or if any Annual Subscription Fee not paid	25
<b>8</b>	<b>The Directors</b>	<b>25</b>
8.1	Number of Directors	25
8.2	Change of number of Directors	26
8.3	Term of office of Directors	26
8.4	Eligibility to become a Director	26
8.5	Office held until conclusion of meeting	26
8.6	Director elected at general meeting	27
8.7	Consent to nomination	27
8.8	Casual vacancy or additional Director	27
8.9	Payments to a Director	27
8.10	Disclosure of Director's interests	28
8.11	Director's interests	28
8.12	Vacation of office of Director	28
<b>9</b>	<b>Powers and duties of Directors</b>	<b>29</b>
9.1	Duties of Directors	29
9.2	Directors to manage the Company	29
9.3	Specific powers of Directors	29
9.4	Public statements by Directors	29

9.5	Appointment of attorney	29
9.6	Provisions in power of attorney	30
9.7	Committees	30
9.8	Powers delegated to Committees	30
9.9	Delegation of Directors' powers	30
<b>10</b>	<b>Proceedings of Directors</b>	<b>30</b>
10.1	Directors' meetings	30
10.2	Director may convene a meeting	30
10.3	Use of technology for Directors' meetings	30
10.4	Questions decided by majority	30
10.5	Executive committee of Directors	31
10.6	Chair and deputy chair of Directors' meetings	31
10.7	Absence of chair at a Directors' meeting	31
10.8	Chair's casting vote at Directors' meetings	31
10.9	Director attending and voting by proxy	31
10.10	Quorum for Directors' meeting	32
10.11	Continuing Directors may act	32
10.12	Chair of Committee	32
10.13	Meetings of Committee	32
10.14	Determination of questions	32
10.15	Circulating resolutions	32
10.16	Validity of acts of Directors	33
<b>11</b>	<b>Chief Executive Officer</b>	<b>33</b>
<b>12</b>	<b>Secretary and other officers</b>	<b>34</b>
12.1	Appointment of Secretary and Treasurer	34
12.2	Suspension and removal of the Secretary or Treasurer	34
12.3	Powers, duties and authorities of Secretary and Treasurer	34
<b>13</b>	<b>Seals</b>	<b>34</b>
13.1	Safe custody of common seals	34
13.2	Use of common seal	34
<b>14</b>	<b>Inspection of records</b>	<b>34</b>
14.1	Inspection by Members	34
14.2	Right of a Member or other person to inspect	34
<b>15</b>	<b>Communications and service of documents</b>	<b>35</b>
15.1	Document includes notice	35
15.2	Form of document	35
15.3	Methods of service	35
15.4	Post	35
15.5	Fax or other electronic means	35
15.6	Evidence of service	35
<b>16</b>	<b>Indemnity and insurance</b>	<b>36</b>
16.1	Indemnity	36
16.2	Insurance	36
16.3	Contract	36

---

<b>17</b>	<b>Winding up</b>	<b>36</b>
17.1	Contributions on winding up	36
17.2	Surplus assets not to be distributed to Members	37
17.3	Distribution of surplus assets	37
17.4	Charities to be given the surplus assets	37
<hr/>		
<b>18</b>	<b>Accounts</b>	<b>37</b>
<hr/>		
<b>Annexure A</b>	<b>Membership Application Form</b>	<b>38</b>

# Acknowledgement

*Wuchopperen Health Service Limited extends heartfelt appreciation and sincere gratitude to the trailblazers who set the course for our journey.*

*Our deepest recognition goes to the original Directors - Peter Frederick Noble, Sandra Ruth Levers, Michael John Miller, Clarence Ernest Grogan, and Timothy Seamus O'Shane - along with our inaugural CEO, Leslie Charles Collins. These remarkable individuals played a pivotal role in shaping the very essence of Wuchopperen.*

*Equally, we hold in high esteem all those who have walked this path before us and stand with us today, each contributing to the unique tapestry of our identity. Your collective efforts have sculpted Wuchopperen into the organisation we are proud to be today. Your legacy and ongoing contributions are the cornerstone of our success, and we express our wholehearted gratitude for your unwavering commitment.*

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Aboriginal Person** means a person of Australian Aboriginal descent who identifies as an Aboriginal person and who is accepted as such by community protocols.

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

**Annual Subscription Fee** means any amount determined in accordance with article 4.8.

**Appeal Vote** has the meaning given in article 4.14(c)(iii).

**Approved Institution** means a fund, authority or institution which falls within the description of an item in any of the tables in Subdivision 30-B of the Tax Act, which has been established for charitable purposes, and which is endorsed as a deductible gift recipient under or for the purposes of the Tax Act.

**Australia** means Australia and its Territories.

**Blue Card** means a Suitability for Working with Children and Young People Card, following a criminal history check, for the purposes of providing a licensed care service.

**Board** means the Board of Directors, being the total number of Directors of the Company at any given time.

**Board Determination** means a unanimous resolution of the Directors in respect of a matter that this Constitution contemplates will be the subject of a board determination and the communication of that resolution to the Members in such manner as the Directors shall determine in respect of the relevant board determination.

**Cairns Region** means the region comprising Palm Cove in the north to Gordonvale in the south and the Trinity Inlet in the east to the foothills of the Great Dividing Range in the west.

**Chief Executive Officer** means a person appointed as the chief executive officer of the Company under article 11.

**Committee** means a committee of Directors constituted under article 9.7.

**Community Director** means a person who:

- (a) satisfies each of the criteria specified in article 8.4; and
- (b) provides evidence reasonably satisfactory to the Board that they represent a community group to which the Company provides health services in furtherance of its Principal Object as detailed in article 2.2; and
- (c) **[other specific criteria (if any) to be inserted]**.

**Company** means Wuchopperen Health Service Limited (ACN 010 112 580) (or such other name as it may adopt from time to time).

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

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

**Director** means a person holding office as a director.

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

**Member** means a person entered in the Register as a member of the Company and who has not ceased to be a member in accordance with this Constitution.

**Membership Application Form** means the Membership Application Form substantially in the form set out in Annexure A as the same may be revised from time to time with the approval of the Board.

**Objects** means the objects specified in articles 2.2 and 2.3.

**Register** means the register of Members and, if appropriate, includes a branch register.

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

**Registered Office** means the registered office of the Company, which will be situated at such place in the State of Queensland as the Board may from time to time decide.

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

**Specialist Non-Member Director** means a person who:

- (a) satisfies each of the criteria specified in articles 8.4(c) to 8.4(j) (inclusive); and
- (b) provides evidence reasonably satisfactory to the Board that they possess a particular expertise and/or level of experience in health, law or financial management, or in respect of a specific skill set that the Board determines from time to time, by way of a Board Determination, is required in furtherance of the Objects.

**[KWM Drafting Note: As requested, we have amended this definition so that Specialist Non-Member Directors do not have to be a Member or ATSI. However, we have maintained the other criteria set out in article 8.4.]**

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

**Torres Strait Islander Person** means a person who is a descendant of the original inhabitants of the Eastern, Western and Central Torres Strait Islands and who is accepted as such by community protocols.

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

**Youth Director** means a person who:

- (a) satisfies each of the criteria specified in article 8.4; and
- (b) will be, [as at the date of his or her appointment as a Director] of an age greater than 18 years and 1 day and less than 29 years and 1 day.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) words importing any gender include all other genders;
- (d) a reference to a document includes any variation or replacement of it;
- (e) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or “such as” or similar expressions;
- (f) a reference to “person” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (g) a reference to a particular person includes the person’s executors, administrators, successors, substitutes and permitted assigns;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacement of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);



- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (n) a reference to “writing” or “written” includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (o) a chair appointed under this Constitution may be referred to as a chair, chairperson, chairwoman or as chairman, as appropriate; and
- (p) a reference to a person being “present” at a meeting includes participating using technology approved by the Directors in accordance with this Constitution.

### **1.3 Corporations Act**

- (a) In this Constitution unless the contrary intention appears:
  - (i) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
  - (ii) “section” means a section of the Corporations Act.
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any provisions in this Constitution which are inconsistent with those Acts.

### **1.4 Replaceable rules not to apply**

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

## **2 Purpose, objects and powers of the Company**

### **2.1 Charitable purpose**

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

### **2.2 Principal Object**

The Company has been established as a not-for-profit company to provide essential quality health services to improve the health outcomes of Aboriginal Persons and Torres Strait Islander Persons.

### **2.3 Other Objects**

In furtherance of article 2.2, the Objects of the Company include to:

- (a) ensure that Aboriginal Persons and Torres Strait Islander Persons are able to access and use existing health services effectively;

- (b) collaborate with other health and related organisations including non-government and public sector agencies to improve the health outcomes of Aboriginal Persons and Torres Strait Islander Persons;
- (c) collect data and conduct research in order to inform planning and program development in matters relating to the health and welfare of Aboriginal Persons and Torres Strait Islander Persons;
- (d) provide Aboriginal Persons and Torres Strait Islander Persons with assistance, support guidance and development services that enable Aboriginal Persons and Torres Strait Islander Persons to receive culturally appropriate holistic health services that raise the health and wellbeing of Aboriginal Persons and Torres Strait Islander Persons;
- (e) promote knowledge and understanding of issues relating to Aboriginal Persons and Torres Strait Islander Persons to enhance holistic well-being;
- (f) formulate and implement community development principles of empowerment to assist Aboriginal Persons and Torres Strait Islander Persons to address their health needs;
- (g) promote the health services provided by the Company to Aboriginal Persons and Torres Strait Islander Persons;
- (h) undertake activities that address the socio-economic disadvantages that impact on the health status of Aboriginal Persons and Torres Strait Islander Persons;
- (i) [relieve poverty, sickness, suffering, distress, misfortune, disability and helplessness within Aboriginal Persons and Torres Strait Islander Persons;]

**[KWM Drafting Note: To the extent that WHS would like to remove this clause, the 12 charitable purposes listed in the Charities Act 2013 (Cth) includes advancing health, advancing education, advancing social or public welfare and advancing culture. Therefore, it is likely that the remaining Objects would still be consistent with the charitable purposes set out in the Charities Act even if paragraph (i) were to be deleted. However, we are seeking advice from our tax team on this.]**

- (j) ensure all services provided by the Company promote the safety, wellbeing and quality care of Aboriginal Persons and Torres Strait Islander Persons; and
- (k) carry out such other activities as the Company decides from time to time are necessary to further the Objects set out in this provision.

## 2.4 Powers of the Company

The Company has the following powers, which may only be used to carry out its purposes and Objects as set out in article 2:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

---

## **3 Income and property of the Company**

### **3.1 Application of income and assets**

All income and assets of the Company must be applied towards the promotion of the Objects.

### **3.2 No income and assets distributed to Members**

The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in articles 3.3 and 17.

### **3.3 Permitted payments by the Company**

Article 3.2 does not prevent the Company from doing the following things, provided they are done in good faith:

- (a) paying a Member for goods and services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company;
- (b) making a payment to a Director of the Company in accordance with article 8.9;
- (c) making a payment for any reasonable and proper rent for premises let or demised by any Member to the Company; or
- (d) making a payment to a Member in carrying out the Company's charitable purpose(s).

## **4 Membership**

### **4.1 Number of Members**

- (a) The Members are those:
  - (i) noted as such on the application for the incorporation of the Company;
  - (ii) noted as such in the Register as at the date of this Constitution; and
  - (iii) applicants that are admitted as Members in accordance with article 4.2 following the date of this Constitution, and have not since ceased to be a Member.
- (b) If an applicant is admitted as a Member, the Secretary must ensure that:
  - (i) the applicant is given notice of admission as a Member; and
  - (ii) the name and details of the applicant are entered in the Register in accordance with article 4.7.
- (c) The Company will endeavour to ensure that, at all times, a majority of Members are Aboriginal Persons and/or Torres Strait Islander Persons.

## 4.2 Becoming a Member

Except for a person who agreed in writing to the terms of the Company's constitution before the application for the Company's registration was lodged, a person may only become a Member under this article 4.

## 4.3 Application for Membership

- (a) A person may apply to become a Member by submitting to the Secretary a properly completed application in the form of the Membership Application Form.
- (b) By completing the Membership Application Form, if accepted, the applicant agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.

**[KWM Drafting Note: The Membership Application Form can now be attached in newly created Annexure A.]**

## 4.4 Eligibility for Membership

- (a) To be eligible to become a Member following the date of adoption of this Constitution, an applicant must:
  - (i) be an individual;
  - (ii) provide evidence, satisfactory to the Board that they are an Aboriginal Person or Torres Strait Islander Person, and that they both identify, and are accepted as, an Aboriginal Person or Torres Strait Islander Person;
  - (iii) be an Aboriginal Person or Torres Strait Islander Person;
  - (iv) be a resident in the Cairns Region for a minimum of 2 years prior to the person's application to become a Member;
  - (v) declare in writing that the applicant agrees to be bound by this Constitution; and
  - (vi) tender to the Company an application fee in an amount to resolved by the Directors from time to time in accordance with article 4.6(a).

**[KWM Drafting Note: Further to the comments provided, we have amended this article 4.4(a)(vi) so that the application fee is to be determined by the Directors in accordance with article 4.6(a).]**

- (b) For the avoidance of doubt, article 4.4(a) has no application to those Members:
  - (i) noted as such on the application for the incorporation of the Company; or
  - (ii) noted as such in the Register as at the date of this Constitution.

**[KWM Drafting Note: As requested, we have included this article 4.4(b) to expressly state that that the selection criteria set out in article 4.4(a) does not apply to those persons awarded membership prior to the date of this Constitution.]**

#### 4.5 Admission as a Member

The Directors must resolve whether to accept or reject each application for membership and, within a reasonable time, notify the applicant of their decision. The Directors are not required to give reasons for rejection of an application for membership of the Company. For the avoidance of doubt, the Directors will only accept applications for membership from individuals.

#### 4.6 Application fee and guarantee

- (a) The Directors may resolve from time to time that any person applying to become a Member must pay an application fee and, if so, how much and when and how it is to be paid.
- (b) Each Member must also contribute the guarantee amount referred to, and in the circumstances referred to, in article 17.

#### 4.7 Register of Members

- (a) Upon a person's admission as a Member, that person's details will be recorded in the Register by a Director or the Secretary.
- (b) A Member must promptly notify the Company of any change in the Member's details which are recorded in the Register.

#### 4.8 Annual Subscription Fee

- (a) The Company in general meeting may determine whether there will be an Annual Subscription Fee and, if so, the annual amount for each Member or class of Members.
- (b) The Directors or Secretary may notify Members of the date and manner for payment of an Annual Subscription Fee. Otherwise, each Member must pay any applicable Annual Subscription Fee in advance by 30 June each year.
- (c) The Directors may waive the payment of all or any part of an Annual Subscription Fee for a Member or any class of Members.

**[KWM Drafting Note: The intention of the drafting is that the Members set the amounts of the Annual Subscription Fees to ensure that the amounts are agreed to by Members. Article 4.8(c) provides the Directors with the discretion to waive the payment of the Annual Subscription Fee by particular Members or classes of Members - this may be appropriate in cases where a particular Member is experiencing financial hardship, first time Members, Members that join towards the end of a financial year etc. We can remove this discretion, but it will then take away the flexibility to waive the payment of the Annual Subscription Fees in these kinds of circumstances.]**

#### 4.9 Directors may create and vary classes and class rights

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

- (a) prescribe, revoke and amend the criteria for membership and any classes of membership (but are not obliged to accept persons fulfilling those criteria as Members or Members of a class);
- (b) establish any new class of Members and define the rights, restrictions, and obligations of Members in that class; and

- (c) vary or cancel the rights, restrictions, and obligations of Members in any new or existing class, if:
  - (i) at least 75% of the Members of that class give their written consent; or
  - (ii) a special resolution to that effect is passed at a separate meeting of those Members.

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

#### 4.10 No transfer of Membership

A Member must not sell, transfer or dispose of their interests in the Company to another Member or a third party.

#### 4.11 Ceasing to be a Member

A person ceases to be a Member on:

- (a) resignation;
- (b) the termination of the person's membership by the Directors or by the Company in general meeting in accordance with this Constitution;
- (c) death;
- (d) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (e) becoming of unsound mind or if they are, or their estate is, liable to be dealt with in any way under a law relating to mental health; or
- (f) the Secretary issuing a written request to the Member to confirm that they wish to retain their membership in the Company and the Member:
  - (i) failing to respond within [3] months of the issue of the written request; or
  - (ii) notifying the Secretary in writing that they no longer wish to be a Member.

**[KWM Drafting Note: We think it would be better in practice to provide the Member with the opportunity to respond to a written request and if no response is received (i.e., because of undelivered mail etc) then the person will cease to be a Member.]**

#### 4.12 Resignation

A Member may by written notice to the Company resign from membership with immediate effect or with effect from a specified date occurring not more than 6 months after the service of the notice. A Member remains liable after resignation for all money due by the Member to the Company at the date of resignation, in addition to any sum for which the Member is liable as a Member under articles 4.6 and 4.8.

#### 4.13 Disciplining and expelling Members

In accordance with this article 4.13, the Directors may resolve to warn, suspend, or expel a Member from the Company if the Directors consider that:

- (a) the Member has breached this Constitution, or any by-laws, policies or other standards prescribed by the Directors;
- (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company; or
- (c) the Member applied for membership under article 4.3 and no longer meets the criteria for admission to membership under article 4.4,

provided that the following procedure is observed:

- (d) the Directors or Secretary must give written notice to the Member setting out what is alleged against the Member and the Member must be given the opportunity (and a reasonable period of time, not to exceed 30 days from the issue of the written notice) to rectify the matter the subject of the allegation;
- (e) at least 1 week before the Directors' meeting at which the resolution is to be considered, the Member must be given notice of the meeting setting out:
  - (i) what is alleged against the Member; and
  - (ii) the intended resolution;
- (f) at the Directors' meeting, and before voting on the resolution, the Member must be given an opportunity to give such written or verbal explanation of the matter the subject of the allegation as the Member thinks fit;
- (g) after considering any explanation under article 4.13(f), the Directors may:
  - (i) take no further action;
  - (ii) warn the Member;
  - (iii) suspend the Member's rights as a Member for a period of no more than 12 months;
  - (iv) expel the Member;
  - (v) refer the decision to an unbiased, independent person determined by the Directors on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this article), or
  - (vi) require the matter to be determined at a general meeting;
- (h) the Directors cannot fine a Member;
- (i) the Secretary must give written notice to the Member of the decision under article 4.13(g) as soon as possible;
- (j) subject to article 4.14, disciplinary procedures must be completed as soon as reasonably practical; and

- (k) subject to article 4.14, if a resolution for the Member's expulsion is passed in accordance with this article, the Member's membership automatically terminates and the Member ceases to be a Member with effect from the date of the relevant resolution.

**[KWM Drafting Note: We note that the Corporations Act does not prevent Directors from suspending/ expelling a Member. Further, the Courts have held that member expulsion/ suspension clauses may be included in a company's articles of incorporation as long as they provide procedural fairness. We also note that this article 4.13 is broadly consistent with the "disciplining members" provisions of the ACNC Template Constitution which also does not provide a right of appeal. Notwithstanding, we have included a right of appeal for suspended/ expelled Members in article 4.14.]**

#### **4.14 Right to appeal**

- (a) A person who is subject to a suspension or expulsion under either article 4.13(g)(iii) or 4.13(g)(iv) respectively, may appeal the suspension or expulsion by written notice given to the Secretary within 7 days of receiving the relevant notice from the Secretary under article 4.13(i).
- (b) On receipt of notice from a person under article 4.14(a), the Secretary must notify the Directors who must convene a general meeting of the Company to be held within 28 days after the date on which the secretary has received the notice.
- (c) At the general meeting of the Company convened in accordance with article 4.14(b):
- (i) no business other than the question of the appeal is to be transacted;
  - (ii) the Directors and the person must be given the opportunity to make representations in relation to the appeal orally and in writing, or both;
  - (iii) the Members present are to vote by secret ballot on the question of whether the decision made under article 4.13(g)(iii) or 4.13(g)(iv) (as applicable) is confirmed or revoked (**Appeal Vote**); and
  - (iv) the Appeal Vote is to be determined by a simple majority of votes cast by the Members.

#### **4.15 Limited liability**

A Member has no liability as a Member except as set out in this article 4 and article 17.1.

## **5 General meetings**

### **5.1 Annual general meeting**

- (a) Annual general meetings of the Company are to be held in accordance with this article 5, subject to the Corporations Act and any other applicable law.
- (b) A general meeting, called the annual general meeting, must be held by the Company at least once in every calendar year at such time and place



as the Board shall appoint, and it must be held by no later than 30 November each year.

- (c) The annual general meeting shall be specified as such in the notice convening it.

## **5.2 Business at annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, the Director's report and auditor's report (if any);
- (b) the election of Directors;
- (c) the appointment and fixing of the remuneration of the auditor (if relevant); and
- (d) to attend to any other business duly specified by the Directors or requisition of Members.

## **5.3 Convening a general meeting**

- (a) The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to under the Corporations Act or any other applicable law.
- (b) If Members with at least 5% of the votes that may be cast at the general meeting, or at least 100 members who are entitled to vote at the general meeting, make a request to the Company for a general meeting to be held, the Directors must:
  - (i) within 21 days of the Members' request, give all Members notice of a general meeting; and
  - (ii) hold the general meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members have is to be worked out as at the midnight before the Members request the meeting.
- (d) The request made by the Members for a general meeting must:
  - (i) be in writing;
  - (ii) state any resolution to be proposed at the meeting;
  - (iii) be signed by the Members making the request, and
  - (iv) be given to the Company.
- (e) Separate copies of a document setting out the request may be signed by members if the wording of the request is identical in each copy.

## **5.4 General meetings called by Members**

- (a) If the Directors do not call the meeting within 21 days of being requested under article 5.3(b), Members with more than 50% of the votes of all the

Members who made the request may call and arrange to hold a general meeting.

- (b) To call and hold a meeting under article 5.4(a) the Members must:
  - (i) as far as possible, follow the procedures for general meetings as set out in this Constitution;
  - (ii) hold the meeting not later than 3 months after the request is given to the Company; and
  - (iii) call the meeting using the list of Members on the Register, which the Company must provide to the Members making the request at no cost.
- (c) The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

## **5.5 Use of technology at general meetings**

The Company may hold a meeting of Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

## **5.6 Notice of general meeting**

- (a) Notice of a general meeting must be given in accordance with this article 5.6, article 5.7 and article 15, subject to any applicable laws.
- (b) Notice of a general meeting must be provided at least 21 days before the meeting.
- (c) Subject to article 5.6(d), notice of a general meeting may be provided by the Company less than 21 days before the meeting if:
  - (i) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
  - (ii) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (d) Notice of a general meeting cannot be provided by the Company less than 21 days before the meeting if a resolution will be moved to:
  - (i) remove a Director in accordance with the Corporations Act;
  - (ii) appoint a Director in order to replace a Director who was removed; or
  - (iii) remove an auditor in accordance with the Corporations Act.
- (e) Notice of a general meeting must be given to:
  - (i) each Member entitled to vote at the general meeting;
  - (ii) each Director; and
  - (iii) the auditor (if any).

## **5.7 Contents of notice of general meetings**

Subject to any applicable laws, every notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (d) contain a statement setting out the following information:
  - (i) that a Member has a right to appoint a proxy;
  - (ii) that any proxy a Member does appoint must themselves be a Member as required under article 6.1(a)(i);
  - (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
  - (iv) that the proxy appointment must be delivered to the Company at least 48 hours before the meeting to its Registered Office or the place, fax number or electronic address specified in the notice of meeting.

## **5.8 Calculation of period of notice**

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

## **5.9 Cancellation or postponement of general meeting**

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

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

## **5.10 Notice of cancellation or postponement of a general meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member; and
- (b) to each other person entitled to be given notice of a general meeting.

## **5.11 Contents of notice postponing general meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;

- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **5.12 Number of clear days for postponement of general meeting**

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

#### **5.13 Business at postponed general meeting**

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

#### **5.14 Non-receipt of notice**

The non-receipt of a notice of a general meeting (or of the cancellation or postponement of a general meeting) by, or the accidental omission to give a notice of a general meeting (or cancellation or postponement of a general meeting) to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting (or the cancellation or postponement of a meeting).

#### **5.15 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of any class of Members and is entitled to speak at those meetings.

#### **5.16 Auditor entitled to notice of meeting**

- (a) The auditor (if any) is entitled to receive notice of and to attend all general meetings and all separate meetings of any class of Members and is entitled to speak at those meetings.
- (b) The Company must give the auditor (if any) all communications relating to the general meeting that a Member is entitled to receive.

#### **5.17 Circulating resolutions**

- (a) The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Member signs.

## **6 Appointment of proxies and attorneys**

### **6.1 Appointment of a proxy**

- (a) A Member may appoint a proxy to attend and vote at a general meeting on their behalf provided that:
  - (i) any proxy appointed by a Member to attend and vote for that Member must themselves be a Member; and
  - (ii) each Member who is entitled to attend and cast a vote at a general meeting is only permitted to hold a proxy for 1 other Member and no more.
- (b) Provided that a proxy satisfies the requirements of article 6.1(a), a proxy appointed to attend and vote for a Member has the same rights as the Member to:
  - (i) speak at the meeting;
  - (ii) vote (but only to the extent allowed by the appointment); and
  - (iii) join in a demand for a poll.
- (c) An appointment of proxy must be signed by the Member appointing the proxy and must contain:
  - (i) the Member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name; and
  - (iv) the meeting(s) at which the appointment may be used.
- (d) A proxy appointment may be standing (ongoing).
- (e) Proxy forms must be received by the Company at the address stated in the notice under article 5.6 or at the Registered Office at least 48 hours before a meeting.
- (f) A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- (g) A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **6.2 Right to appoint attorney**

A Member may by power of attorney appoint another Member to be their attorney and to act on their behalf at all or any meetings of the Company or of any class of Members.

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

### 6.3 Vote by proxy or attorney

A vote cast by a proxy or attorney is valid notwithstanding the previous revocation of this authority by the death of his or her principal or otherwise unless such revocation or transfer has been received, in writing, at the Registered Office or by the chair of the meeting before the vote is cast.

### 6.4 Proxy or attorney at postponed general meeting

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

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

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

## 7 Proceedings at general meetings

### 7.1 Number for a quorum

- (a) Subject to article 7.3, the quorum for a general meeting is twenty (20) Members.
- (b) In determining whether a quorum is present, each individual attending as a proxy or attorney is to be counted, except that:
  - (i) where a Member has appointed more than 1 proxy or attorney, only 1 is to be counted: and
  - (ii) where an individual is attending both as a Member and as a proxy or attorney, that individual is to be counted only once.

**[KWM Drafting Note: As requested, we have updated this article 7.1 so that the quorum for general meetings of the Company is 20 members only.]**

### 7.2 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chair of the meeting (on the chair's own motion or at the request of a Member, proxy or attorney who is present) declares otherwise.

### 7.3 If quorum not present

If within 60 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and

- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

#### **7.4 Adjourned meeting**

At a meeting adjourned under article 7.3(b), the same quorum requirements apply as set out in article 7.1. If a quorum is not present within 60 minutes after the time appointed for the adjourned meeting, then those Members attending will be deemed to be a quorum, provided the number of such Members is no less than [5].

**[KWM Drafting Note: We have amended the drafting so that an adjourned meeting will go ahead so long as a certain number of Members (which can be less than the usual quorum number of 20) are in attendance. This will assist to ensure that there is a greater likelihood that the adjourned meeting can be held.]**

#### **7.5 Appointment of chair of general meeting**

If the Directors have elected 1 of their number as chair of their meetings, that person is entitled to preside as chair at a general meeting of the Company.

#### **7.6 Absence of chair at general meeting**

If a general meeting is held and:

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

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

- (c) any deputy chair;
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Member chosen by a majority of the Members present in person or by proxy or attorney; or
- (g) any other person chosen by a majority of Members present in person or by proxy or attorney.

#### **7.7 Chair may vacate**

- (a) At any time during a general meeting and in respect of any specific item or items of business (including, but not limited to, items of business where the chair has an actual or perceived conflict of interest), the chair may elect to vacate the role of chair in favour of another person nominated by the chair which person must be (in order of precedence):
  - (i) the auditor of the Company; or
  - (ii) a Director.

- (b) A person nominated by the chair in accordance with article 7.7(a) is to be taken to be the chair and will have all the powers of the chair (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.

**[KWM Drafting Note: As requested, we have included this article 7.7 so that the auditor of the Company is permitted to chair general meetings of the Company in respect to a specific item(s) of business. As a practical matter, will the Company's auditor be present at every general meeting of the Company to act as chair in those circumstances? We note that it is common practice for the auditor to only attend the annual general meeting of the companies that they audit. Accordingly, we have included the ability for another Director to act as chair in those circumstances.]**

## **7.8 Conduct of general meetings**

The chair of a general meeting:

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

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

## **7.9 Adjournment of general meeting**

- (a) The chair of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:
  - (i) in exercising the discretion to do so, the chair may, but need not, seek the approval of the Members present in person or by proxy or attorney; and
  - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the chair, a vote may not be taken or demanded by the Members present in person or by proxy or attorney in respect of any adjournment.

## **7.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 1 month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.



### **7.11 Questions decided by majority**

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

### **7.12 No casting vote for chair**

If there is an equality of votes, either on a show of hands or on a poll, the chair of the general meeting is not entitled to a casting vote in addition to any votes to which the chair is entitled as a Member or proxy or attorney.

### **7.13 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded under article 7.14 and the demand is not withdrawn.

On a show of hands, the chair's decision is conclusive evidence of the result of the vote.

The chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **7.14 Demanding a poll**

- (a) At a general meeting of the Company, a poll may be demanded by:
  - (i) at least 5 Members entitled to vote on the resolution;
  - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the chair of the meeting.
- (b) A poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that Members have is to be worked out as at midnight before the poll is demanded.

### **7.15 Poll**

If a poll is effectively demanded in accordance with article 7.14:

- (a) it must be taken in the manner and at the date and time directed by the chair and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chair or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and

- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### **7.16 Entitlement to vote**

Subject to this Constitution, the Corporations Act or any other applicable laws, and to any rights and any restrictions attached to any class of Members:

- (a) on a show of hands, each Member present in person and each other person present as a proxy or attorney of a Member has 1 vote; and
- (b) on a poll, each Member present in person has 1 vote and each person present as proxy or attorney of a Member has 1 vote for each Member that the person represents.

### **7.17 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy or attorney, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the appointing Member is mentally incapacitated; or
- (c) the Member revokes the appointment or authority.

### **7.18 Objection to voting qualification**

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting:

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

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

### **7.19 Suspension or if any Annual Subscription Fee not paid**

In addition to any other rights of the Company, if:

- (a) any Annual Subscription Fee is due and payable by a Member and is not paid; or
- (b) a Member is suspended,

the Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy or attorney, at a general meeting of the Company.

## **8 The Directors**

### **8.1 Number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not more than 7, comprising at all times:

- (a) no less than 2 Specialist Non-Member Directors; and

- (b) at least 1 Youth Director

with all of the remaining Directors from time to time being Community Directors.

## **8.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors and may also determine any provisions for the rotation or retirement of Directors.

## **8.3 Term of office of Directors**

- (a) A Director shall hold office for a term of 3 years but shall be eligible for re-election as a Director for 1 further term of 3 years (comprising a maximum consecutive term of 6 years).
- (b) Other than a Director appointed under article 8.8, a Director's term of office starts at the end of the annual general meeting at which they are elected.

## **8.4 Eligibility to become a Director**

Without limitation to article 8.1, to be eligible for election as a Director (other than a Specialist Non-Member Director), a person must:

- (a) be a Member;
- (b) be an Aboriginal Person and/or be a Torres Strait Islander Person;
- (c) be 18 years of age or older;
- (d) demonstrate that they hold a current and valid Blue Card;
- (e) undertake a criminal history check and any other background check as deemed necessary by the Board from time to time (and the results of those checks must be satisfactory to the Board);
- (f) not be ineligible to be a director under the Corporations Act or the ACNC Act;
- (g) provide a written confirmation to the Board committing to the Objects of the Company;
- (h) not be a current employee of the Company, or have been an employee of the Company in the previous 3 years from the date on which the person is nominated to be a Director;
- (i) provide written evidence to the Board that that they have been a resident in the Cairns Region for the 12 month period immediately preceding the date of the person's appointment to the Board; and
- (j) meet any other eligibility criteria relating to the composition of the Board and the skills and qualifications of Directors as may be determined by the Directors from time-to-time pursuant to a Board Determination.

## **8.5 Office held until conclusion of meeting**

Subject to article 8.3, a retiring Director holds office until the conclusion of the meeting.

## **8.6 Director elected at general meeting**

Subject to article 8.1 and 8.3, the Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

## **8.7 Consent to nomination**

Except for:

- (a) a person who is eligible for election under article 8.8; or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least 30 business days before the general meeting or any other period permitted under the Corporations Act but no more than 90 business days before the meeting.

## **8.8 Casual vacancy or additional Director**

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided:

- (a) the total number of Directors does not exceed any maximum number specified in article 8.1;
- (b) the requirements in respect of categories of Directors in article 8.1 are adhered to; and
- (c) the Director eligibility and qualification requirements outlined in article 8.4 are adhered to.

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

## **8.9 Payments to a Director**

- (a) The Company may pay fees to a Director for acting as a Director in amounts to be determined by the Board from time to time by way of Board Determination provided that:
  - (i) the maximum aggregate amount that a Director is entitled to receive pursuant to this article 8.9 in respect of any 1 meeting must not exceed the sum of \$600 (or such greater amount as the Members may, in general meeting, determine); and
  - (ii) the maximum annual aggregate amount a Director is entitled to receive pursuant to this article 8.9 in any 1 calendar year must not exceed the sum of [\$7,200] for all Directors other than the chair and [\$10,800] for any Director serving as chair during that calendar year (or such greater amount as the Members may, in general meeting, determine).
- (b) Subject to article 8.9(c), the Company may:
  - (i) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or

- (ii) reimburse the Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- (c) Any payment and/or reimbursement proposed to be made under article 8.9(b) must be approved by a majority of all the Directors.

#### **8.10 Disclosure of Director's interests**

A Director must comply with the Corporations Act and any other applicable laws relating to disclosure of Director interests.

#### **8.11 Director's interests**

Subject to the provisions of this Constitution and compliance with the Corporations Act and any other applicable law regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm, or an officer or employee of a body cooperate which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary obligations of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

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

#### **8.12 Vacation of office of Director**

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

- (a) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of his joint or separate estate generally;

- (b) becomes of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns from the office by notice in writing to the Company or refuses to act; or
- (d) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of any compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that appointment.

## **9 Powers and duties of Directors**

### **9.1 Duties of Directors**

The Directors must comply with their duties as Directors under the Corporations Act and under all other applicable laws.

Without limitation to the foregoing, each Director:

- (a) has a duty to act in that position in an honest manner;
- (b) must not make improper use of information or opportunity received through that position;
- (c) must declare any conflict of interest;
- (d) must be required to sign a confidentiality agreement; and
- (e) must at all times hold a current and valid Blue Card.

### **9.2 Directors to manage the Company**

The Directors are responsible for overseeing the proper management of the business of the Company. They may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **9.3 Specific powers of Directors**

Without limiting the generality of article 9.2, the Directors may exercise all the powers of the Company, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **9.4 Public statements by Directors**

No public statement may be made by any member of the Board regarding any of the activities of the Company, except when a statement has been first approved by the Board or by a person or persons appointed by the Board.

### **9.5 Appointment of attorney**

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

## **9.6 Provisions in power of attorney**

A power of attorney granted under article 9.5 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

**[KWM Drafting Note: As per your instructions, there is no legal requirement of this article to be included in the Constitution. Therefore, financial authorities can be dealt with in the existing separate policies and procedures for convenience and ease of updating and amending.]**

## **9.7 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of 1 or more of their number as they think fit.

## **9.8 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 9.7 must exercise those powers in accordance with any directions of the Directors.

## **9.9 Delegation of Directors' powers**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

# **10 Proceedings of Directors**

## **10.1 Directors' meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

## **10.2 Director may convene a meeting**

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

## **10.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

## **10.4 Questions decided by majority**

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

## 10.5 Executive committee of Directors

There shall be an executive committee of Directors comprising the following persons:

- (a) the chair;
- (b) the deputy chair;
- (c) a Secretary; and
- (d) a Treasurer.

**[KWM Drafting Note: To be confirmed with WHS. As instructed, we have included article 14.10 from the current constitution in here. Is this actually a committee of Directors at present? (The Secretary and Treasurer are of course not Directors.)]**

## 10.6 Chair and deputy chair of Directors' meetings

The Directors may elect 1 of their number as chair of their Directors' meetings and 1 of their number as deputy chair of their Directors' meetings. They may also determine the periods for which the chair and deputy chair of the Directors' meetings are to hold office.

The chair and deputy chair of the Directors' meetings may be removed by a resolution of the Directors of which not less than 14 days' notice has been given to all the Directors.

The chair and deputy chair of the Directors' meetings shall hold office for a term of 3 years.

## 10.7 Absence of chair at a Directors' meeting

The Directors present at a Directors' meeting may choose a Director present to be the chair for that meeting if the elected chair and deputy chair are:

- (a) not present within 15 minutes after the starting time set for the meeting; or
- (b) present but neither the elected chair nor deputy chair is able or willing to act as chair of the relevant Directors' meeting.

## 10.8 Chair's casting vote at Directors' meetings

If there are an equal number of votes for and against a question, the chair of a Directors' meeting has a casting vote, unless only 2 Directors are present and entitled to vote on the question.

## 10.9 Director attending and voting by proxy

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) the appointment is signed by the appointor.

The appointment may be general or for 1 or more particular meetings. A Director present as proxy of another Director who would be entitled to vote if present at



the meeting has 1 vote for the appointor and 1 vote in his or her own capacity as a Director.

#### **10.10 Quorum for Directors' meeting**

The quorum for a Directors' meeting is a majority (more than 50%) of Directors. For the avoidance of doubt, if the number of Directors is 6 or 7, a quorum for a Directors' meeting is 4 Directors and if the number of Directors is 4 or 5, a quorum for a Directors' meeting is 3 Directors.

#### **10.11 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number.

#### **10.12 Chair of Committee**

The members of a Committee may elect 1 of their number as chair of their meetings. If a meeting of a Committee is held and:

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

the members involved may elect 1 of their number to be chair of the meeting.

#### **10.13 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

#### **10.14 Determination of questions**

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

If there are an equal number of votes for and against a question, the chair of the meeting has a casting vote, unless only 2 members of the Committee are present and entitled to vote on the question.

#### **10.15 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if a majority of the Directors entitled to vote on the resolution have consented to the resolution in accordance with this article 10.15. The resolution is passed when the last participating Director consents to the resolution in accordance with this article 10.15.
- (b) Any proposed resolution or other document referred to in this article 10.15 must be sent to every Director who is entitled to vote on the resolution.

**[KWM Drafting Note: As requested, we have included a requirement for all documents relating to the resolution to be sent to each Director who is entitled to vote on the resolution.]**

- (c) Notwithstanding article 10.15(b), the resolution is not invalidated if it is consented to by a Director who is not entitled to vote.

- (d) A Director may consent to a resolution by signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution.
- (e) Alternatively, a Director may consent to a resolution by giving the Company a written notice (including by fax or other electronic means) addressed to and received by the Secretary or the chair:
  - (i) that signifies the Director's assent to the resolution;
  - (ii) that sets out the terms of the resolution or identifies those terms; and
  - (iii) if the Director has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code), that authenticates the Director's consent by those specified means.
- (f) Any document referred to in this article 10.15 may be in the form of a fax or electronic notification. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.
- (g) This article 10.15 applies to resolutions of Committees as if the references to Directors were references to Committee members.

## 10.16 Validity of acts of Directors

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

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

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

## 11 Chief Executive Officer

- (a) The Directors may:
  - (i) appoint a Chief Executive Officer for any period;
  - (ii) delegate to the Chief Executive Officer any of the powers conferred on the Directors; and
  - (iii) withdraw or vary any of those powers,

on any terms and conditions and with any restrictions as they think fit. The Directors may fix the remuneration of the Chief Executive Officer which may be by way of salary drawn from the Company.

- (b) Subject to the terms of any employment contract between the Company and the Chief Executive Officer, the Directors may at any time remove or dismiss the Chief Executive Officer from employment with the Company.

## 12 Secretary and other officers

### 12.1 Appointment of Secretary and Treasurer

The Company must have at least 1 Secretary and 1 Treasurer who is to be appointed by the Directors and who shall hold office for a term of 3 years.

**[KWM Drafting Note: There is no legal requirement for the Secretary and Treasurer to also be Directors (although they can be). We recommend that optionality be maintained so that the Directors can appoint non-Directors with specialist skill sets (if required) to perform these roles from time-to-time.]**

### 12.2 Suspension and removal of the Secretary or Treasurer

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

### 12.3 Powers, duties and authorities of Secretary and Treasurer

Both a Secretary and Treasurer hold office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary and Treasurer is subject at all times to the control of the Directors. Without limitation to the foregoing, 1 duty of the Treasurer will be to act as chair of the Board's audit and risk committee.

## 13 Seals

### 13.1 Safe custody of common seals

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

### 13.2 Use of common seal

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

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

## 14 Inspection of records

### 14.1 Inspection by Members

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

### 14.2 Right of a Member or other person to inspect

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

## **15 Communications and service of documents**

### **15.1 Document includes notice**

In this article 15, a reference to a document includes a notice and a notification by electronic means.

### **15.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

### **15.3 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member;
- (d) by notifying the Member by an electronic means nominated by the Member that:
  - (i) the document is available; and
  - (ii) how the Member may use the nominated access means to access the document; or
- (e) by any other means permitted by law.

### **15.4 Post**

A document sent by post:

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

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

### **15.5 Fax or other electronic means**

A document sent or given by fax or other electronic means:

- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the date of its transmission.

### **15.6 Evidence of service**

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member personally by post, fax or other electronic

means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

## **16 Indemnity and insurance**

### **16.1 Indemnity**

To the maximum extent permitted by law, the Company will indemnify any current or former Director, Secretary or officer of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

unless:

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

### **16.2 Insurance**

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

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

### **16.3 Contract**

The Company may enter into an agreement with a person referred to in articles 16.1 and 16.2 with respect to the matters covered in those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise.

## **17 Winding up**

### **17.1 Contributions on winding up**

Each Member must contribute an amount of not more than \$10 to the property of the Company if the Company is wound up while the Member is a Member, or

within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the Member stopped being a Member; or
- (b) costs of winding up.

## **17.2 Surplus assets not to be distributed to Members**

If the Company is wound up, any surplus assets must not be distributed to a Member or a former Member.

**[KWM Drafting Note: As requested, we have removed the above wording.]**

## **17.3 Distribution of surplus assets**

Subject to the Corporations Act and any other applicable law, and any court order, any surplus assets that remain after the Company is wound up must be distributed to 1 or more charities:

- (a) with charitable purpose(s) and objects similar to, or inclusive of, the purpose(s) and objects in article 2;
- (b) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Company; and
- (c) which is an Approved Institution.

**[KWM Drafting Note: To address the preference for surplus assets to be distributed to institutions that have been endorsed as DGRs, we have included article 17.3(c). We note that the ultimate decision as to which charity/ charities to whom the surplus assets are distributed will be for Members pursuant to article 17.4.]**

## **17.4 Charities to be given the surplus assets**

The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## **18 Accounts**

The Directors must cause the accounts and records of the Company to be maintained and, if required, audited in accordance with the requirements of the Corporations Act.

# Annexure A Membership Application Form