

# Constitution

**Australian Nursing & Midwifery Accreditation Council  
Limited (ANMAC)**

**ACN 143 879 396**

A Public Company Limited by Guarantee

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## **1 Name of the Company**

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The name of the Company is Australian Nursing & Midwifery Accreditation Council Limited.

## **2 Type of Company**

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- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
  - (i) payment of debts and liabilities of the Company;
  - (ii) payment of the costs, charges and expenses of winding up; and
  - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to \$20.00.

## **3 Replaceable Rules**

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This Constitution displaces the Replaceable Rules.

## **4 Definitions and Interpretation**

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### **4.1 Definitions**

In this Constitution, unless the contrary intention appears:

**Aboriginal and/or Torres Strait Islander** means a person who:

- (a) is of Aboriginal and/or Torres Strait Islander descent; and
- (b) identifies as an Australian Aboriginal and/or Torres Strait Islander person; and
- (c) is accepted as such by the community in which s/he lives or has lived.

**ACNC** means Australian Charities and Not-for-profits Commission.

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

**ACNC Regulation** means *Australian Charities and Not-for-profits Commission Amendment Regulation 2013* (Cth).

**AGM** means annual general meeting.

**Appointed Director** means a person appointed independently as a Director pursuant to **clause 31.7**.

**ASIC** means the Australian Securities and Investments Commission.

**Board** means the board of Directors of the Company.

**Board Governance Charter** means the board governance charter of the Company.

**Board Skills and Diversity Matrix** means a document approved by the Board that sets out:

- (a) an overview of the skills, diversity, expertise, experience and characteristics of Board Directors; and
- (b) an overview of any skills, diversity, expertise, experience and characteristics deemed necessary or preferred by the Company based on the needs and direction of the Company from

time to time.

**Body Corporate Representative** means for a Member that is a body corporate, an individual authorised by the Member in accordance with section 250D of the Corporations Act to act as its representative at a meeting of Members or in relation to resolutions to be passed without meetings.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

**Chairperson** means the person holding that office under **clause 31.9** and includes any assistant or acting Chairperson under this Constitution.

**Code of Conduct** means the code of conduct that forms Appendix I to the Board Governance Charter.

**Committee** means a committee established in accordance with **clause 43**.

**Company** means Australian Nursing & Midwifery Accreditation Council Limited.

**Constitution** means this constitution as amended or supplemented from time to time.

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

**Deputy Chairperson** means the person holding that office under **clause 31.9** and includes any assistant or acting Deputy Chairperson under this Constitution.

**Director** means any person holding the position of a director of the Company (and includes both Appointed Directors and Member Nominated Directors) and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.

**Director Present** means in connection with a Board meeting, a Director being present in person or pursuant to **clause 38(d)**.

**Emergencies** means dangerous or serious situations which arise suddenly and unexpectedly, and require swift action in order to avoid harmful consequences. Examples include weather or climate-related disasters, major technical security breaches and life-threatening injuries.

**Enrolled Nurse** means a person whose name is entered on the Nursing and Midwifery Board of Australia's Register of Nurses in the division of enrolled nurses, currently practicing the nursing profession.

**Hybrid Meeting** has the meaning given in **clause 12(a)**.

**Member** means a member of the Company pursuant to **clause 6** and **Membership** has the corresponding meaning.

**Member Nominated Director** means a person appointed as a Director pursuant to **clause 31.6**.

**Member Present** means in connection with a meeting of Members, a Member being present (in person or by conference pursuant to **clause 12** by proxy or attorney or by a Body Corporate Representative.

**Member's Guarantee Amount** means the amount referred to in **clause 2(c)**.

**Midwife** means a person whose name is entered on the Nursing and Midwifery Board of Australia's Register of Midwives, currently practising the midwifery profession.

**National Law** means the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld) as applied in each State and Territory by the equivalent legislation.

**Nursing and Midwifery Board of Australia** means the body corporate of that name established under section 31 of the National Law.

**Objects** mean the objects of the Company as set out in **clause 5.1**.

**Office** means the registered office for the time being of the Company.

**Office Bearer** means a person holding any of the offices specified in **clause 31.9**. **Officer** has the same meaning as given to that term in section 9 of the Corporations Act.

**Ordinary Resolution** is a resolution that only requires a simple majority to be passed.

**Practitioner** means an Enrolled Nurse, a Midwife or a Registered Nurse.

**Physical Meeting** has the meaning given in **clause 12(a)**.

**Register** means the register of Members to be kept pursuant to the Corporations Act.

**Registered Nurse** means a person whose name is entered on the Nursing and Midwifery Board of Australia's Register of Nurses in the division of registered nurses, currently practising the nursing profession.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in section 141 the Corporations Act.

**Secretary** means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

**Special Resolution** has the meaning given to it by the Corporations Act.

Virtual Meeting has the meaning given in **clause 12(a)**.

**Virtual Meeting Technology** means any technology that allows a person to participate in a meeting without being physically present at the meeting.

## 4.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes all gender identities;
- (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form, including print and electronic media;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) the word 'includes' in any form is not a word of limitation;
- (g) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (i) an expression used in a particular Part or Division of an Act or Regulation that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and

- (j) headings do not form part of or affect the construction or interpretation of this Constitution.

## **5 Objects**

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### **5.1 Objects**

- (a) The Company is a charitable institution established to pursue the objects of advancing the education, training and professional competence of nurses, midwives and other professions, including:
- (i) to act as an external accreditation entity for the purposes of the National Law;
  - (ii) to uphold the objectives of the national registration and accreditation scheme outlined in section 3 of the National Law;
  - (iii) to act as an independent accreditation authority;
  - (iv) to assess the qualifications and skills of internationally qualified nurses, midwives and other professions who wish to migrate to Australia;
  - (v) to advise and make recommendations to government bodies, professional and other organisations, on matters relating to the education, training and competence of nurses, midwives and other professions as required; and
  - (vi) to do all such other lawful things as are incidental or conducive to the advancement of the above objects or any of them including, performing any or all of the above functions in relation to nurses, midwives and other professions.
- (b) The Company may conduct commercial activities and perform commercial services (including on a fee for service basis) within the scope of the Objects. In doing so, the Company must apply the income and profits solely towards the promotion of those charitable objects in accordance with rules 5.2 and 50.

### **5.2 Income and Property**

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution will prevent payment in good faith to a Member:
- (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
  - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

### **5.3 Remuneration of Directors**

No payment shall be made to any Director other than the payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the



- Board and is not more than an amount which commercially would be reasonable for the service; and
- (c) of fees to the Director as remuneration for his or her services as a Director, provided that the amount is reasonable in the circumstances and the amount has been approved by the Members at a general meeting.

## MEMBERSHIP

### 6 Admission to Membership

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#### 6.1 Admission of Members

A Member must be:

- (a) a body corporate;
- (b) in part or wholly engaged in the advancement of the education, training and professional competence of nurses and midwives; and
- (c) an organisation of substantial standing in its field of endeavour.

#### 6.2 Maximum Number of Members

There shall be a maximum of five (5) Members of the Company at any given time.

#### 6.3 Eligibility for Membership

Subject to **clause 6.1**, any body corporate is entitled to apply to become a Member if the body corporate:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) is nominated by not less than two (2) existing Members; and
- (c) supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time

#### 6.4 Benefits

- (a) Each Member will be entitled to vote at all general meetings.
- (b) Each Member may nominate candidates for Member Nominated Director positions pursuant to **clause 31**.
- (c) In addition to each Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

### 7 Applications for Membership

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- (a) Administrative arrangements for application to Membership are to be managed by the Board.
- (b) Subject to **clauses 6.1 to 6.3**, the Board may from time to time in its absolute discretion admit any person to Membership of the Company. The Board is not required to give any reason for the rejection of any application to become a Member.
- (c) The Company Secretary must establish and maintain a register of Members which records each Member's name and contact details (including address and email address), and the date on which a Member ceases to be a Member.
- (d) An applicant for Membership becomes a Member and is entitled to exercise the rights of Membership when their name is entered in the register of Members.

## 8 Member representative

- (a) Each Member may appoint a Body Corporate Representative who may exercise all or any of the powers of the Member at meetings of the Company's Members and in relation to resolutions to be passed without meetings.
- (b) The appointment referred to in subparagraph (a) may be a standing one and the appointment may set out restrictions on the representative's powers. If the appointment is by reference to position held, the appointment must identify the position.
- (c) A Member's Body Corporate Representative must not be a Director of the Company.

## 9 Membership Entitlements Not Transferable

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A right, privilege or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another entity; and
  - (b) terminates on cessation of the body corporate's Membership.
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## 10 Cessation of Membership

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- (a) A Member's Membership will cease:
  - (i) on the date that the Secretary receives written notice of resignation from that Member;
  - (ii) upon that Member no longer satisfying the criteria for Membership and the Board passing a resolution that the Member ceases to be a Member;
  - (iii) if the Member becomes an insolvent under administration or the subject of any form of external administration (under Australian law or any overseas laws covering generally equivalent concepts), including if the Member or its property is subject to the appointment of any administrator, controller, receiver and/or manager, liquidator or official manager;
  - (iv) if the Member becomes deregistered or dissolved as a body corporate and therefore ceases to exist; or
  - (v) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty-one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to clause **10(a)(i)**, resign as a Member but shall continue to be liable for:
  - (i) any monies due by the Member to the Company;
  - (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**.
  - (iii) If there is only one Member and the Member gives proper notice of resignation, or on the same day all of the Members give proper notice of resignation, the notice or notices will be ineffective and the Member or Members cannot resign until either another person is admitted as a Member or the Company is wound up.

## GENERAL MEETINGS

### 11 Convening of General Meetings

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#### 11.1 AGMs

Notwithstanding section 111L of the Corporations Act:

- (a) in the event that the Board wishes to do so, it may convene an AGM; and
- (b) any AGM which is convened must be done so in accordance with the requirements of the Corporations Act.

#### 11.2 Convening of General Meetings

- (a) No fewer than three (3) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:
  - (i) the Members may call a general meeting; and
  - (ii) the Company will do so,
 in accordance with the provisions of part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting.

### 12 Holding a meeting of Members

- (a) The Company may hold a meeting of Members:
  - (i) at one or more physical venues (**Physical Meeting**);
  - (ii) at one or more physical venues and using Virtual Meeting Technology (**Hybrid Meeting**); or
  - (iii) using Virtual Meeting Technology only (**Virtual Meeting**).
- (b) Where the Company is holding a meeting of Members as a Hybrid Meeting or Virtual Meeting:
  - (i) the meeting will be held in a manner which gives the Members as a whole a reasonable opportunity to participate in accordance with the Corporations Act; and
  - (ii) a Member will be taken for all purposes (including for a meeting quorum) to be present in person at the meeting while attending using Virtual Meeting Technology.
- (c) Despite any other rule in this Constitution, votes at a meeting using Virtual Meeting Technology must be decided on a poll (and not a show of hands) unless the chairperson of the meeting directs otherwise, and:
  - (i) voting on a poll may be conducted using Virtual Meeting Technology and/or an online voting tool;
  - (ii) voting may open prior to commencement of the meeting; and
  - (iii) a Member who votes prior to commencement of the meeting is taken to have been present in person at the meeting for the purposes of a quorum and the relevant vote(s).

## **13 Notice of General Meeting**

- (a) Notwithstanding section 111L of the Corporations Act:
- (i) subject to **clause 13(a)(ii)**, at least twenty-one (21) days' notice of any general meeting must be given specifying:
    - (A) the place, day and hour of the meeting;
    - (B) the general nature of any business to be transacted at the meeting;
    - (C) if a Special Resolution is to be proposed, the details of and intention to propose it;
    - (D) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
    - (E) any other information required by the Corporations Act; and
  - (ii) fewer than twenty-one (21) days notice may be given of a general meeting in accordance with section 249H of the Corporations Act.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting, unless the courts on application from the person concerned, the person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.
- (c) Subject to **clause 13(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
- (i) every Member;
  - (ii) every Director (except a Director on leave of absence approved by the Board) and
  - (iii) the auditor for the time being of the Company (if any).

## **14 Cancellation or Postponement of General Meeting**

- (a) Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations Act) and this Constitution, the Board may cancel a general meeting of the Company:
- (i) convened by the Board; or
  - (ii) convened by a Member or Members pursuant to **clause 12.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:
- (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
  - (ii) any failure to notify in writing any person entitled to receive notice of the

meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## PROCEEDINGS AT GENERAL MEETINGS

### 15 Quorum

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- (a) A quorum of Members Present must be present at all times during a general meeting. No business may be transacted during an inquorate period of a general meeting.
- (b) The Members Present, being a majority of the total number of Members, shall constitute a quorum for all general meetings.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
  - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
  - (ii) in any other case:
    - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
    - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

### 16 Chair

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- (a) The Chairperson of the Board shall preside as chair at each general meeting. In the absence of the Chairperson, the Deputy Chairperson shall chair the general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no Chairperson or Deputy Chairperson; or
  - (ii) the Chairperson or Deputy Chairperson is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as chair of the meeting,

then another Director will be chosen to chair the meeting by the Directors present at the meeting. If no other Director is present, the Members will choose a Member (or Body Corporate Representative) to chair the meeting. The rulings of the chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

### 17 Adjournments

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- (a) The chair of a general meeting at which a quorum is present:
  - (i) may adjourn a meeting with the consent of the meeting; and
  - (ii) must adjourn the meeting if the meeting so directs;
 to a time and place as determined.
- (b) No business may be transacted at a general meeting resumed after an adjournment

other than the business left unfinished at the meeting from which the adjournment took place.

- (c) A resolution passed at a general meeting resumed after an adjournment, is passed on the date it was passed, and not on the date of the meeting from which the adjournment took place.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

## **18 Voting**

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- (a) Votes by Members at general meetings may be given:
  - (i) personally by a Member's Body Corporate Representative at the general meeting; or
  - (ii) by proxy (or attorney) at the general meeting in accordance with **clause 26**.
- (b) A Member may only vote by one of the permitted methods set out in **clause 18(a)**.
- (c) If a Member attempts to cast more than one vote on a particular resolution, only the last vote received by the Chairperson is to be taken to have been validly cast,

## **19 Determination of Questions**

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- (a) Subject to **clause 12(c)**, at any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
  - (i) the chair of the meeting; or
  - (ii) at least three (3) Members Present.
- (b) Before a vote on a resolution is taken, the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the chair of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **20 Polls**

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- (a) A poll may be demanded:
  - (i) before a vote on a resolution 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.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the chair of the meeting directs subject to **clause 20(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

- (e) A poll demanded on the election of a chair or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

## **21 Voting Rights**

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A Member has one (1) vote, both on a show of hands and a poll.

## **22 Objection to Qualification to Vote**

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Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the chair whose decision shall be final and conclusive, and a vote allowed by the chair shall be valid for all purposes.

## **23 No Casting Vote at General Meetings**

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In the case of an equality of votes whether on a show of hands or on a poll the chair of the meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

## **24 Right of Non-Members to Attend General Meeting**

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- (a) The chair of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

## **25 Member circulation resolutions**

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- (a) If all Members entitled to vote on a resolution of Members sign a document containing a statement that they are in favour of the resolution set out in the document, a Members' resolution in those terms is passed when the last Member signs such a document.
- (b) For the purpose of this **clause 25**:
  - (i) two or more separate documents in identical terms, each of which is signed by one or more Members, will be treated as one document; and
  - (ii) an email or facsimile containing the text of the document expressed to have been signed by a Member that is sent to the Company is deemed to be a document signed by that Member at the time of its receipt by the Company.

## **PROXIES**

### **26 Right to Appoint Proxies**

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- (a) A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

- (b) If a Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

## 27 Appointing a Proxy

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### 27.1 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or, if the appointor is a corporation, signed by an authorised officer or attorney of the corporation.

### 27.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act):
- (i) the name and address of the Member;
  - (ii) the name of the Company;
  - (iii) the proxy's name or the name of the office of the proxy; and
  - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (c) An instrument of proxy may be revoked at any time by notice in writing to the Company.

## 28 Lodgement of Proxies

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- (a) An instrument appointing:
- (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,
- must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than twenty-four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote.
- (b) For the purposes of this **clause 28**, it will be sufficient that any document required to be lodged by a Member be received in legible form by electronic medium if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the electronic medium by the Company.

## 29 Validity of Proxies

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- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death of the appointor;
  - (ii) the bankruptcy or liquidation of the appointor;



- (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its Office written notice of the death, liquidation or revocation at least forty-eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (c) Except on a show of hands, a proxy may vote as more than one Member or if the proxy holds appointments for those Members which specify the way the proxy is to vote on the resolution and the proxy votes that way.

### **30 Rights of Proxies and Attorneys**

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- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 29(b)** and **clause 29(c)**, unless a Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the chair that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a poll.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **31 Number and Appointment of Directors**

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#### **31.1 Number of Directors**

The Board of Directors shall consist of not fewer than three (3) and not more than nine Directors.

#### **31.2 Composition of Board**

The Board shall consist of:

- (a) up to five (5) Member Nominated Directors; and
- (b) up to four (4) Appointed Directors appointed by the Board, and the Company intends that the Board, to the extent possible, includes:
  - (c) at least two (2) Registered Nurses;

- (d) at least two (2) Midwives; and
  - (e) at least two (2) Aboriginal and/or Torres Strait Islander persons,
- and will comprise a majority of Practitioners.

### 31.3 Eligibility to be a Director

To be eligible to be a Director, a person must:

- (a) be an individual, not a body corporate;
- (b) be at least 18 years of age;
- (c) not be disqualified from managing corporations under Part 2D.6 of the Corporations Act (or any generally equivalent overseas laws);
- (d) not be an undischarged bankrupt under the laws of Australia or another country; and
- (e) have given the Company their signed consent to act as a Director.

### 31.4 Skills Based Board

The Company is to have a 'skills based' Board in accordance with better practice corporate governance principles and the following principles shall apply to all Board appointments:

- (a) the Directors must ensure that the Board develops and maintains the Board Skills and Diversity Matrix;
- (b) all Board appointments must be made with reference to the Board Skills and Diversity Matrix in accordance with **clauses 31.6 and 31.7**;
- (c) no Member has the power to appoint a nominee Director; and
- (d) any Director who is a director, officer or employee of a Member must:
  - (i) act in the best interests of the Company and not the Member; and
  - (ii) not disclose any Company confidential information to the Member, without the approval of the Company.

### 31.5 Member Nominated Directors – nomination process

- (a) The Directors must ensure that the Board Governance Charter sets out the Director nomination process, including the following elements:
  - (i) the Board will determine the nomination process and prescribe the nomination form;
  - (ii) the prescribed nomination form must require the nominator to address how the candidate meets the requirements of the Board Skills and Diversity Matrix;
  - (iii) each Member may nominate any eligible Director candidates (from inside and/or outside its organisation); and
  - (iv) to support and supplement the Member nomination process, the Board may nominate any other eligible Director candidates and/or advertise for expressions of interest.
- (b) The Board Governance and Nomination Committee must:
  - (i) review all Member nominations and other nominations;
  - (ii) develop a report setting out all nominees, along with an assessment of each nominee against the Board Skills & Diversity Matrix and the Committee's appointment recommendations (**Board Composition Report**); and

- (iii) deliver the Board Composition Report to the Board.

### 31.6 Appointment of Member Nominated Directors

- (a) After receiving the Board Composition Report, the Board may by resolution appoint any eligible person nominated under clause 31.5 as a Director.
- (b) A Director appointed by the Board under **clause 31.6(a)** must have the appointment confirmed by an Ordinary resolution of the Members at the Company's next AGM (or by Members circular resolution under clause 25 at any time prior to the AGM). If the appointment is not confirmed, the person automatically ceases to be a Director of the Company at the end of the AGM.

### 31.7 Appointment of Appointed Directors

Subject to this **clause 31**, the Board may appoint an eligible person as an Appointed Director by resolution at any time where the Board considers it necessary or desirable to provide additional specific skills and experience to the Board, with reference to:

- (a) the skills and experience of potential Director candidates; and
- (b) the Board Skills & Diversity Matrix.

### 31.8 Transition rules, Term, and Rotation

- (a) A person who is a Director at the time this version of the Constitution is adopted will continue to serve the remainder of their appointment term (subject to this Constitution), and if the Director:
  - (i) was a Member Director, they will be taken to be a Member Nominated Director under **clause 31.6**; and
  - (ii) was an Appointed Director, they will be taken to be an Appointed Director under **clause 31.7**.
- (b) Subject to **clause 31.8(d)**:
  - (i) Member Nominated Directors shall hold office for a term of three (3) years and shall be eligible for reappointment and
  - (ii) Appointed Directors shall hold office for a term of two (2) or three (3) years (as specified in the Board resolution appointing the Director) and shall be eligible for reappointment.
- (c) To the extent practicable, it is intended to avoid all appointments expiring at the same time by ensuring that the appointment periods exercised under **clause 31.8(b)(ii)** implement an effective Director rotation system.
  - (d) Directors shall not hold office for more than nine (9) consecutive years. Once a Director has served the maximum term of nine (9) consecutive years, the person is not eligible for reappointment to the Board until a period of at least two (2) years has expired since the expiry of the Director's previous term on the Board.
  - (e) The Board may, on application of a Director, grant that Director leave of absence from the Board, for a period determined by the Board.

### 31.9 Office Bearers

- (a) The Board shall appoint from amongst the Directors sitting on the Board:
  - (i) a Chairperson;

- (ii) a Deputy Chairperson;
  - (iii) Chair of the sub-committees delegated by the Board in accordance with Clause 43 and
  - (iv) such additional Office Bearer positions as the Board deems necessary from time to time.
- (b) The Board will determine all matters dealing with these positions.

### **32 Right to Act**

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The Board may act despite any vacancy in its body, but if the number falls below the minimum fixed in accordance with **clause 31.1** the Board may act:

- (a) for the purpose of:
    - (i) increasing the number of Directors to the minimum; or
    - (ii) convening a general meeting; or
  - (b) in Emergencies,
- but for no other purpose.

### **33 Vacation of Office**

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- (a) Any Director may retire from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
  - (i) dies;
  - (ii) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (iii) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;
  - (iv) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible person of a registered entity under section 45.20(4) of the ACNC Regulation;
  - (v) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
  - (vi) is removed from office by the Company in general meeting;
  - (vii) completes the period for which the Director was appointed;
  - (viii) fails to attend three (3) consecutive Board meetings without approved leave of absence from the Board and the Board resolves that the Director should cease to be a Director or
  - (ix) resigns by notice in writing to the Company.

### **34 Filling of Vacancies on the Board**

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In the event of a casual vacancy occurring on the Board in relation to a Member Nominated Director the Board may appoint an eligible person to fill the vacant position with a term expiring on the appointment date for the next Member Nominated Director

appointment process.

## POWERS AND DUTIES OF DIRECTORS

### 35 Duties of Directors

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- (a) Each Director is subject to, and must comply at all times with, the duties set out in governance standard 5 in section 45.25 of the ACNC Regulation.
- (b) In accordance with governance standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible person under subsection 45.20(4) of the ACNC Regulation.

### 36 Powers of Directors

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The control, management and conduct of the Company shall be vested in the Board which shall exercise all such powers of the Company as are not required by the Corporations Act, the ACNC Act, the ACNC Regulation or this Constitution to be exercised in any other manner.

### 37 Conferment of Powers

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- (a) The Board may from time to time confer upon any Director for the time being or any other person as it may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 37** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

## PROCEEDINGS OF DIRECTORS

### 38 Meetings of Directors

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- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit, provided that the Board must meet not less than four (4) times each calendar year.
- (b) A minimum of two (2) Directors may at any time, and the Secretary upon the request of any two (2) Directors shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the Secretary and/or Directors must have used their best endeavours to ensure that the notice was properly served and received.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) Subject to **clause 38(e)**, a Board meeting may be convened or held using any technology consented to by all of the Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 38(d)**, must be available and accessible to all Directors who wish to attend the

Board meeting.

- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

### **39 Quorum**

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- (a) A quorum of Directors Present must be present at all times during a Board meeting. No business may be transacted during an inquorate period of the meeting.
- (b) A majority of the total number of Directors shall constitute a quorum for all Board meetings.
- (c) A Director who is disqualified from voting on a matter by the Board due to a conflict of interest shall be counted in the quorum despite that disqualification.

### **40 Chair**

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- (a) The Chairperson appointed must be a Registered Nurse or Midwife.
- (b) The Chairperson shall, if present, chair every meeting of the Board.
- (c) If a meeting of Board is held and:
- (i) there is no Chairperson;
  - (ii) the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
  - (iii) the Chairperson, if present, does not wish to chair the meeting,
- then Deputy Chairperson or another Director will be chosen to chair the meeting by the Directors present at the meeting.

### **41 Voting**

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- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors present will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In case of an equality of votes at a meeting of the Board, the chair has a casting vote.

### **42 Circular Resolutions by Directors**

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- (a) The Board may pass a resolution without a Board meeting being held if a majority of the total number of Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, the document can consist of any number of counterparts, and those counterparts taken together constitute one and the same instrument.
- (b) A facsimile, email or communication by any other form of electronic medium which is received by the Company and which purports to have been signed by a Director shall

for the purposes of this **clause 42** be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.

### **43 Committee**

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- (a) The Board may form and delegate any of its powers to a Committee or Committees consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation.

### **44 Validation of Acts of Directors**

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All acts done:

- (i) at any meeting of the Board; or
- (ii) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

## **MINUTES**

### **45 Minutes**

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- (a) Notwithstanding section 111L of the Corporations Act, the Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
- (i) the names of the Directors Present at each meeting of the Board and of Directors present at each meeting of any Committee;
  - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
  - (iii) such matters as are required by the Corporations Act or the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the person presiding over the meeting, or the person presiding over the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

## **SECRETARY**

### **46 Appointment and Tenure**

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- (a) There must be a Secretary appointed by the Board for a term and on conditions

determined by the Board.

- (b) The Secretary may be an officer of the Company, a Director or an independent person hired for this purpose. The Secretary may not be a Member or Body Corporate Representative.
- (c) The Board may remove any Secretary so appointed.

## EXECUTION OF DOCUMENTS

### **47 Execution of Documents**

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- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
  - (i) two (2) Directors signing the same; or
  - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

## ACCOUNTS AND INSPECTION OF RECORDS

### **48 Accounts and Inspection**

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The Board shall:

- (a) cause proper financial records to be kept and must, if required by the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company;
- (b) where required by the ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the ACNC Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

## NOTICES

### **49 Service of Notices**

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- (a) A notice may be given by the Company to any Member by:
  - (i) serving it on the Member by hand delivering it to the Member at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;



- (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
  - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
  - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office its place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
  - (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the fifth Business Day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
  - (d) Where a notice is sent by electronic medium, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.

## WINDING UP

### 50 Winding Up

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- (a) If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution(s) or corporation(s) which has (have):
  - (i) objects which are similar to the Objects;
  - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
  - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 50(a)** is to be determined:
  - (i) by the Board; or
  - (ii) if the Board does not decide or does not wish to decide, then by the Members;

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of the Australian Capital Territory for determination.

## INDEMNITY

### 51 Indemnity

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To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or

former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
  - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

## **52 Payment of Indemnity Policy Premium**

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- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both)
  - (i)
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 51** except to the extent that the indemnity in the insurance policy does not fully cover the person's liability.

## **53 Indemnity to Continue**

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The indemnity granted by the Company contained in **clause 51** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.