

Constitution

Nillumbik Community Health Service Ltd

ACN 136 805 804

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1. NAME

The name of the Company is Nillumbik Community Health Service Ltd.

2. PURPOSE

2.1 Principal Purpose and powers

- (a) The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.
- (b) The Principal Purpose for which the Company is established is to provide benevolent relief to people in need, principally by promoting the health of the people of the area served by providing a range of health services and programs.
- (c) Solely for the purpose of furthering the Principal Purpose, the Company:
 - (i) may do all things incidental or conducive to furthering the Principal Purpose; and
 - (ii) has the capacity and powers of a company under the Act subject to the provisions of this Constitution.

2.2 Application of income and property

- (a) The income and property of the Company must be applied solely towards the Principal Purpose.
- (b) No portion of the profits, income or property of the Company may be paid or transferred directly or indirectly to Members or Directors by way of dividend, bonus or otherwise in their capacity as Members.
- (c) Sub-clause 2.2(b) does not stop the Company from doing the following things, provided they are done in good faith:
 - (i) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or
 - (ii) making a payment to a member in carrying out the company's charitable purpose(s).
- (d) The company may pay fees to a Director for acting as a Director.
- (e) 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 a Director for expenses properly incurred by the Director in connection with the affairs of the company.

- (f) Any payment made under sub-clauses 2.2(d) or 2.2(e) must be approved by the Board.
- (g) The company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this constitution.

2.3 Distribution of assets on revocation of endorsement or winding up

- (a) If the Company is a Deductible Gift Recipient and is wound up, or in the event that the Company is endorsed as a Deductible Gift Recipient and the endorsement is revoked by the Commissioner of Taxation, the following assets remaining after satisfying the Company's liabilities and expenses must be transferred to one or more funds, authorities or institutions that is charitable at law, and to which income tax deductible gifts may be made:
 - (i) gifts of money or property for the Principal Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;
 - (ii) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fund-raising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
 - (iii) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.
- (b) Upon the winding up of the Company, any assets remaining after complying with clause 2.3(a):
 - (i) must not be paid or distributed to the Members in their capacity as Members, and
 - (ii) will be given or transferred to one or more other funds, authorities, institutions or companies which:
 - (A) is charitable at law; and
 - (B) has a similar Principal Purpose to those of the Company as described in this Constitution, and
 - (C) prohibits the distribution of income, profit or assets to its members in their capacity as members.
- (c) The identity of such entity or entities that will receive a distribution under this clause will be decided by the Members by ordinary resolution on or before the time of such winding up or dissolution. If the Members fail to decide, the fund, authority, institution or company shall be determined by application to the Supreme Court in the State of incorporation.

3. MEMBERSHIP

3.1 Members

- (a) Members must comply with this Constitution.
- (b) The minimum number of Members is three. The maximum number of Members is eleven.
- (c) The rights of any Member are not transferable.

3.2 Eligibility

Any person committed to the Principal Purpose of the Company may apply to be a Member of the Company provided they:

- (a) are over 18 years of age; and
- (b) are interested in the work and welfare of the Company.

3.3 Application

- (a) An application for Membership must be made in a form and manner directed by, or acceptable to, the Board for the purpose and must be signed by the applicant.
- (b) An applicant must agree in writing to provide a guarantee of not less than the Guaranteed Amount to defray such liabilities and expenses of the Company upon its winding up or dissolution.

3.4 Admission

- (a) The Board must consider and resolve whether to accept or reject each application for Membership within a reasonable time.
- (b) The Board may accept or reject any application for Membership in its discretion, using such criteria as the Board alone may determine. The Board is not bound to give reasons for the acceptance or rejection of any application.
- (c) If the Board accepts an application, the Secretary must:
 - (i) enter the applicant's details into the Register as soon as practicable, subject to the payment of the Membership fee (if any); and
 - (ii) send to the Member written notice of the acceptance.
- (d) A person is admitted as a Member of the Company when the person's application has been accepted by the Board and the person's name is entered into the Register.
- (e) If the Board rejects an application, the Secretary must send to the applicant written notice of the rejection as soon as practicable.

3.5 Register

- (a) The Secretary must maintain the Register.
- (b) The Register must contain:
 - (i) the name, address, and date of admission to membership – for each Member;
 - (ii) the name, date of admission to Membership and date on which a person ceased to be a Member – for each former Member.
- (c) The Secretary may keep the entries regarding former Members separately from the rest of the Register.
- (d) The address of a Member in the Register may serve as the address of the Member for the purpose of service of any notices to the Member.
- (e) The company must give current Members access to the Register.
- (f) Information that is accessed from the Register must only be used in a manner relevant to the interests or rights of members.
- (g) Each Member must notify the Secretary in writing of any change in that person's name, address, telephone or email address within one month after the change.

3.6 Expulsion and suspension of Members

- (a) The Board may suspend or expel a Member from the Company if it decides it is not in the interests of the Company for the person to continue or remain as a Member. The Board has absolute discretion.
- (b) The Board may not pass a resolution to suspend or expel a Member outside of a Board meeting.
- (c) If the Board intends to consider a resolution to suspend or expel a Member, it must give the Member written notice:
 - (i) stating the date, place and time of the meeting where the resolution will be considered;
 - (ii) setting out the intended resolution and the grounds on which it is based; and
 - (iii) informing the Member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

The notice must be given fourteen days before the meeting at which the resolution is to be considered.

- (d) After considering any oral or written explanation or submission under sub-clause 3.6(c)(iii), the Board may resolve at a Board meeting to:
 - (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 on conditions that the Board consider appropriate (however, the person can only make a decision that the Board could have made under this clause); or
 - (vi) require the matter to be determined at a general meeting.
- (e) Any Member expelled from the Company may at any time apply to the Board to be readmitted as a Member.
- (f) No person may be a Director following expulsion or during suspension as a Member unless such a person is subsequently readmitted as a Member.

3.7 Cessation of Membership

- (a) A person ceases to be a Member on:
- (i) resignation by written notice to the Secretary, which will be effective on the date of receipt of the notice or any later date specified in the notice;
 - (ii) termination of the person's Membership in accordance with this Constitution;
 - (iii) the Board deeming, in their sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence sent to the contact details entered in the Register for that Member;
 - (iv) in the case of a natural person:
 - (A) if the Member is also a Director, when the Member ceases to be a Director;
 - (B) death; or
 - (C) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally.
- (b) A Member whose Membership is terminated will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding the Guaranteed Amount for which the Member is liable under this Constitution.
- (c) There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

- (d) Any person who for any reason ceases to be a Member must not represent themselves in any manner as being a Member.

3.8 Life Members

The Directors may admit any persons to and remove any persons from Life Membership of the Company. The Directors may not give a Life Member the right to vote on a matter concerning the Company, but may otherwise determine the rights and obligations of a Life Member. A Life Member is not a Member for the purposes of this Constitution or the Corporations Act.

3.9 Patron

The Directors may appoint and remove any persons as a Patron or any other honorary title-holder of the Company on any terms the Directors think fit. A Patron is not a Member under this Constitution or the Act..

4. MEETINGS AND RESOLUTIONS OF MEMBERS

4.1 Proceedings of Members

A meeting of the Members is a general meeting.

4.2 Annual General Meeting

- (a) The Board may call and arrange to hold an Annual General Meeting.
- (b) The business of an Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:
 - (i) the consideration of the annual financial statements, Directors' declaration, Boards' report and any auditor's report;
 - (ii) the appointment of Directors;
 - (iii) the appointment of any auditor; and
 - (iv) the fixing of any auditor's remuneration.

4.3 Convening general meetings

- (a) A general meeting may only be called:
 - (i) by a Director; or
 - (ii) by a resolution of the Board;
- (b) If members with at least 10% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the Board 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) If the Board does not call the meeting within 21 days of being requested under sub-clause 4.3(b), 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- (d) To call and hold a meeting under sub-clause 4.3(c) the Members must:
 - (i) as far as possible, follow the procedures for general meetings set out in this constitution
 - (ii) 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, and
 - (iii) hold the general meeting within three months after the request was given to the company.
- (e) The company must pay the Members who request the general meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

4.4 Changes to general meeting arrangements

- (a) The Board may change the venue for, postpone or cancel a general meeting, subject to this clause.
- (b) If a general meeting was not called by a resolution of the Board, then it may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.
- (c) If the venue of a general meeting is changed, or if the general meeting is cancelled or postponed under this clause:
 - (i) Notice of the change, cancellation or postponement must be given to all persons entitled to receive notices of a general meeting under this Constitution.
 - (ii) A notice of postponement must specify the date, time and place to which the general meeting has been postponed.
 - (iii) The provisions of the clause in this constitution under clause 4.7 do not apply to a notice of postponement or change of venue.
 - (iv) In the case of a general meeting called under sub-clause 4.3(c) the general meeting may not be postponed beyond the date by which meetings called under such provisions are required to be held.
- (d) The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting.

4.5 Entitlement to receive notice

In the case of a general meeting, notice must be given:

- (a) to every Member; and
- (b) to every Director appointed for the Company and in office at the time.

4.6 Notice of general meetings

A notice of general meeting must:

- (a) be in writing;
- (b) specify the place, the day and the time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (c) state the general nature of the business to be transacted at the meeting;
- (d) if a Special resolution is to be proposed at the meeting – set out the wording of the resolution and state that it is proposed as a Special resolution;
- (e) include the information under clause 4.16;
- (f) include any form for the appointment of a Proxy which has been approved by the Board for the purpose; and
- (g) specify that notice of a proxy must be given to the Company at least 24 hours prior to the commencement of the meeting, by delivery to the Company at its registered address or at another address (including an electronic address) specified in the notice of the meeting.

4.7 Timing of notice

- (a) Subject to clause 4.7(b), in the case of a general meeting, at least 21 days' notice must be given unless:
 - (i) in the case of an Annual General Meeting, all the Members entitled to attend and vote agree beforehand; and
 - (ii) in the case of any other general meeting, if Members with at least 95 per cent of the votes that may be cast at the meeting agree beforehand.
- (b) A general meeting cannot be called with fewer than 21 days' notice if it is of a kind where a resolution will be moved to remove a Director or auditor.

4.8 Chair of general meetings

- (a) The Chair shall preside as chairperson at every general meeting.
- (b) If there is no Chair or the Chair is not present within 15 minutes after the time appointed for the holding of the general meeting or the Chair

is unwilling to act as chairperson for all or part of the meeting, the following, in order of precedence, may preside unless unable or unwilling to do so:

- (i) a Deputy Chair (if any);
- (ii) a Director chosen by a majority of the Directors present;
- (iii) the only Director present; or
- (iv) a Member chosen by a majority of the Members present.

4.9 Role of chairperson of general meeting

The chairperson of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting; and
- (b) must give the Members as a whole reasonable opportunity to make comments and ask questions.

4.10 Quorum for general meetings

- (a) No business may be transacted at any general meeting, other than the election of a chairperson or adjournment of a meeting, unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) A quorum of Members for a general meeting is a majority of the Members.
- (c) If a quorum is not present within 15 minutes from the time appointed for a general meeting, then:
 - (i) in the case of a meeting called by, or at the request of Members, the meeting will dissolve;
 - (ii) in any other case:
 - (A) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
 - (B) if at the resumption of the meeting a quorum is not present within 15 minutes from the time appointed for the meeting, then the meeting will dissolve.
- (d) A person attending as a proxy is deemed to be a Member present for the purpose of determining quorum.
- (e) A Member that is suspended is not counted as Member for the purpose of determining quorum.

4.11 Adjournment of general meetings

- (a) The chairperson of a general meeting may at any time, and must if so directed by the meeting, adjourn the meeting or any business, motion, or discussion being considered or remaining to be considered by the meeting.
- (b) Only unfinished business is to be transacted at a general meeting resumed after an adjournment.
- (c) It is not necessary to give any notice of an adjournment, or of the business to be transacted at any adjourned meeting, unless a meeting is adjourned for one month or more.
- (d) A meeting adjourned under this clause stands adjourned to:
 - (i) such day, and at such time and place, as the Directors present decide; and
 - (ii) if no determination is made by the Directors, to the same day in the next week at the same time and place.

4.12 Method of Voting

- (a) At a general meeting, voting will occur by show of hands or voices or such other method as the chairperson determines, unless a poll is demanded.
- (b) A poll can be demanded by a Member (including a Member that is suspended) at any time prior to a vote being taken, or immediately after the declaration of a result of a vote conducted by means other than a poll.
- (c) A demand for a poll may be withdrawn.
- (d) If a poll is duly demanded, it shall be taken in such a manner as the chairperson directs.
- (e) A poll demanded on the election of the chairperson of the meeting or on a question of adjournment of a meeting must be taken immediately.
- (f) A Member may vote in person or by proxy.

4.13 Voting rights

- (a) On a vote conducted at a general meeting by poll, each Member has one vote.
- (b) On a vote conducted at a general meeting by other means, each person present who is a Member, or proxy for a Member has one vote.
- (c) In the case of a resolution passed without a meeting, in the manner provided under clause 4.18, each Member has one vote.

- (d) However, a Member that is suspended is not entitled to vote during the period of suspension.

4.14 Decisions of the Members

- (a) Questions arising for determination by the Members shall be decided by a majority of votes cast, unless otherwise provided in this Constitution.
- (b) In a case of an equality of votes cast on a motion, the motion shall be lost.
- (c) A declaration by the chairperson of the meeting that a resolution has been carried or lost, and an entry to that effect in the minutes is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution – unless a poll is demanded.
- (d) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection shall be referred to the chairperson of the meeting whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

4.15 Seconding

It is not necessary for a motion to be seconded in order to be put to a vote.

4.16 Proxies

- (a) A Member may appoint a proxy to act on behalf of the Member at one or more general meetings.
- (b) A proxy may exercise any and all of the rights of the Member who appointed it at a general meeting, subject to the following:
 - (i) a proxy is subject to any directions or limitations specified in the proxy appointment;
 - (ii) a proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- (c) A proxy must be a Member of the Company.
- (d) The appointment of a proxy must be in writing and signed by the Member making the appointment and in a form as similar as possible to that in Schedule 1.
- (e) A vote given by proxy is valid even if the Member who appointed the proxy revokes the appointment, or ceases to be a Member, provided that the chairperson was not aware of the revocation or cessation of Membership at the time the proxy cast the vote.

4.17 Use of technology in meetings

- (a) The Company may hold a general meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) A person participating through the use of technology will be deemed to be present at the meeting in person.

4.18 Resolutions without meetings

- (a) This clause does not apply to a Special Resolution, a resolution to remove a Director from office, or a resolution by the Members to appoint or remove an auditor.
- (b) A resolution may be passed without a meeting in the following circumstances if:
 - (i) notice has been given of the resolution to all of the Members entitled to vote; and
 - (ii) a majority of the Members entitled to vote give their approval in writing.
- (c) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution;
 - (ii) approval in writing includes approval given by email and any other means of electronic communication; and
 - (iii) a resolution will be deemed to have passed if after a minimum of 72 hours after notice was given it achieves the requisite majority.
- (d) The resolution is passed at the time when approval is given to the Secretary of the last person necessary to constitute a majority.

5. DIRECTORS

5.1 Number of Directors

- (a) The minimum number of Directors is three.
- (b) The maximum number of Directors is eleven.

5.2 Eligibility

Any natural person committed to the Principal Purpose is eligible to be appointed or elected as a Director provided:

- (a) the person is a Member;
- (b) the person has given written, signed consent to act as a Director;
- (c) the person has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board from time to time; and

- (d) the person is not disqualified by the Act or the ACNC Legislation from being a Director, to the extent that either applies.

5.3 Appointment of Directors

- (a) The Members may from time to time by resolution appoint a person to be a Director.
- (b) The Board shall have power at any time and from time to time to:
 - (i) appoint a new Director to fill any casual vacancy; and
 - (ii) appoint additional Directors.

5.4 Term of office

- (a) The term of office of a Director appointed by resolution of the Members:
 - (i) is the period specified in the resolution, and if there is no period specified then a term of three years;
 - (ii) commences on the date of appointment and;
 - (iii) expires at the end of the period specified in the resolution or if there is no period specified then at the conclusion of the third Annual General Meeting following the appointment.
- (b) The term of office of a Director appointed by the Board to fill a casual vacancy pursuant to clause 5.6(b)(iii):
 - (i) commences on the date of appointment; and
 - (ii) expires at the conclusion of the first Annual General Meeting following the appointment.
- (c) A person may be appointed as a Director for more than one term of office:
 - (i) in accordance with a rotation policy determined by the Board; and
 - (ii) subject to a maximum tenure of nine years, unless the Members pass a resolution to permit the re-appointment of a Director beyond that period (and subject to clause 10.2(b)).

5.5 Casual vacancy in directorship

A casual vacancy is created in the office of a Director if the Director:

- (a) resigns;
- (b) dies;
- (c) ceases to be a Member;
- (d) is removed by the Members under the Act;

- (e) is absent without the consent of the Board and without leave of absence, from:
 - (i) three consecutive Board meetings; or
 - (ii) at least four Board meetings over 12 months;
- (f) becomes subject to a Court order to receive treatment or have his or her finances managed by another person due to the Director being of unsound mind or having a mental illness; or
- (g) becomes ineligible to be a Director by the Act or ACNC Legislation.

5.6 Effect of casual vacancy

- (a) In the event of a casual vacancy in the office of a Director the remaining Directors may act, subject to this clause.
- (b) If the number of Directors in office at any time is not sufficient to constitute a quorum at a meeting of the Directors, or is less than the minimum number of Directors fixed under this constitution, the remaining Directors must act as soon as possible to:
 - (i) increase the number of Directors to a number sufficient to constitute a quorum and to satisfy the minimum number of Directors required under this constitution;
 - (ii) convene a general meeting of the company for that purpose; or
 - (iii) appoint additional Directors.
- (c) Until the remaining Directors have acted in accordance with the preceding sub-clause, the Board may only act if and to the extent that there is an emergency requiring them to Act.

5.7 Defects in appointment of Directors

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

5.8 Chair and office bearers

- (a) From time to time as required, the Board must appoint the Chair from among the Board. The Chair will be appointed for the period specified in the Board resolution, or if no period is specified then one year.
- (b) Office Bearers of the Company other than the Chair may be elected by the Board from among the Board for an annual term of office.
- (c) The description, number and duties of the Office Bearers may be determined by the Board from time to time.

- (d) An Office Bearer, including the Chair, may be elected for more than one successive term.
- (e) The Board may remove or suspend a person from holding any of the above offices by resolution passed at a Board meeting provided:
 - (i) the resolution is passed by not less than two-thirds of the Directors present;
 - (ii) at least 21 days' notice in writing of the resolution has been given to the Secretary and to the person that is the subject of the resolution.

5.9 Chief Executive Officer

- (a) The Board must appoint a chief executive officer designated by whatever title the Board thinks fit.
- (b) The appointment may be for the period, at the remuneration and on the conditions that the Board thinks fit.
- (c) The Board may remove the chief executive officer at any time, with or without cause, subject to any contract between the Company and the chief executive officer.

5.10 Secretary

- (a) There must be at least one Secretary.
- (b) The Secretary is to be appointed by the Board on such terms and conditions as the Board thinks fit.
- (c) A person must not be appointed Secretary unless the person has given the Company a signed consent to act as Secretary.
- (d) The Board may suspend or remove a Secretary.
- (e) An act done by a person acting as a Secretary is not invalidated by reason only of:
 - (i) a defect in the person's appointment as a secretary; or
 - (ii) the person being disqualified to be a secretary,if that circumstance was not known by the person when the act was done.
- (f) The Secretary must identify whether a person is ineligible to be appointed as a Director under this Constitution as a result of disqualification by the Act or the ACNC Legislation. The Secretary must:
 - (i) perform a search of the publicly available registers as soon as practicable after becoming aware that a person has been, or may be, appointed as a Director; and

- (ii) must obtain a declaration from each Director to the effect that he or she is not disqualified by the Act or the ACNC Legislation, and that he or she will notify the Secretary as soon as possible in the event that he or she becomes disqualified.

6. PROCEEDINGS OF THE BOARD

6.1 Powers of the Board

- (a) The Board is responsible for the management of the business of the Company and may exercise all the powers of the Company (in accordance with the provisions of this Constitution) that are not, by the Act or by this Constitution, required to be exercised by the Members.
- (b) The Board may (without limiting the previous paragraph):
 - (i) borrow money;
 - (ii) charge any property or business of the company;
 - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (iv) decide how negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the Company.
- (c) The Board cannot remove a Director or auditor.

6.2 By-laws

- (a) The Board has power to make regulations or by-laws for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter such by-laws or regulations as it sees fit.

6.3 Appointment of attorney

- (a) The Board may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for such period and subject to such conditions as it thinks fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.

6.4 Meetings of the Board

The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

6.5 Convening Board meetings

The Board may at any time, and a Secretary must on the requisition of a Director, convene a Board meeting.

6.6 Entitlement to receive notice of Board meetings

In the case of a Board meeting, notice must be given to each Director entitled to vote at the meeting. A Director may waive the requirement to receive notice of a Board meeting.

6.7 Content of notice of Board meetings

A notice of a Board meeting:

- (a) must specify the place, the day and the time of the meeting; and
- (b) if the meeting is to be held in two or more places, it must specify the technology that will be used to facilitate this; but
- (c) it does not need to specify the nature of the business to be transacted at the meeting.

6.8 Timing of notice of Board meetings

In the case of a Board meeting, notice may be given immediately before the meeting.

6.9 Chair of Board meetings

- (a) The Chair shall preside as chairperson at every Board meeting.
- (b) Where a meeting of the Board is held and the Chair is not present within 10 minutes after the time appointed for the holding of the Board meeting or is unwilling to act as act as chair for all or part of the meeting then:
 - (i) if there is a Deputy Chair, the Deputy Chair will be the chairperson of the Board meeting; and
 - (ii) if there is not a Deputy Chair present, willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of such meeting or part of it.

6.10 Quorum for Board meetings

- (a) No business may be transacted at any Board meeting unless a quorum is present.
- (b) A quorum consists of a majority of the total number of Directors.
- (c) A Director on a leave of absence approved by the Directors should not be included when calculating the total number of Directors for the purposes of this clause.

6.11 Voting at Board meetings

- (a) A Board meeting at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Board under this Constitution.
- (b) A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote, unless otherwise provided in this Constitution. Such a decision is for all purposes a decision of the Board.
- (c) Where the votes cast on a motion are equal, the chairperson of the meeting does not have a second or casting vote and the motion shall be lost.

6.12 Establishment of committees

- (a) The Board may establish one or more committees comprised of such persons as it thinks fit for such purposes as it sees fit. A committee may include, or be comprised of, non-Directors.
- (b) The meetings and proceedings of committees are:
 - (i) subject to any directions of the Board; and
 - (ii) otherwise governed by the provisions of this Constitution which regulate the proceedings of the Board, to the greatest extent practical.

6.13 Delegation of powers

- (a) The Board may delegate any of its powers to one or more Directors, a committee, an employee or any other person.
- (b) A delegation must be recorded in the Company's minute book.
- (c) The Board may revoke a delegation.
- (d) The Board may specify terms (including the power to further delegate).

6.14 Use of technology in Board meetings

- (a) The Board may hold their meetings by using any technology that is agreed to by the Board.
- (b) The Board's agreement may be a standing one.
- (c) A Director may only withdraw his or her consent within a reasonable period before the meeting.
- (d) A Director that is present at a Board meeting through the use of technology is be deemed to be present at the meeting.
- (e) A Director that is present at the commencement of a meeting used by technology is considered to be present for the duration of the meeting

unless the Director obtains the consent of the Chair to leave the meeting.

6.15 Resolutions without meetings

- (a) A resolution of the Board may be passed without a meeting if a majority of the Directors entitled to vote on the resolution respond to a notice stating that they are in favour of the resolution.
- (b) The resolution is passed at the time when the last Director signs.
- (c) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution;
 - (ii) the notice may be distributed by any means, including electronic communication;
 - (iii) a resolution will be deemed to have failed to have been passed if a majority of the Directors have not responded stating that they are in favour of the resolution within 72 hours after the notice was given.

7. DIRECTORS' DUTIES AND INTERESTS

7.1 Duties of Directors

Directors must comply with any duties imposed on them by the Act, which may include duties under the Act and the ACNC Legislation.

7.2 Disclosure of interests

- (a) A Director must disclose any perceived or actual material conflict of interest to the other Directors.
- (b) A Director must disclose any material personal interests in the manner and extent required by the Act.

7.3 Participation in decisions

- (a) A Director who has a material personal interest in a matter that is being considered by the Board:
 - (i) must not be present while the matter is being considered at a Board meeting; or
 - (ii) vote on the matter;

unless permitted by the following sub-clause.
- (b) A Director may be present or vote if:
 - (i) the interest arises because the Director is a Member of the Company, and the interest is held in common with other Members of the Company;

- (ii) the interest arises in relation to the Director's remuneration as a Director of the Company;
- (iii) the interest relates to a contract the Company is proposing to enter into that:
 - (A) is subject to approval by the Members; and
 - (B) will not impose any obligation on the Company if it is not approved by the Members;
- (iv) the interest arises merely because the Director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company;
- (v) the interest arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in paragraph 7.3(b)(iv);
- (vi) the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company (but only if the contract does not make the Company or a Related Body Corporate the insurer);
- (vii) the interest relates to any payment by the Company or a related body corporate in respect of an indemnity permitted under section 199A of the Act or any contract relating to such an indemnity; or
- (viii) the interest is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a Related Body Corporate and arises merely because the Director is a director of the Related Body Corporate; or
- (ix) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
- (x) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
 - (B) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

7.4 Directors' interests

A Director may:

- (a) hold any other position in the Company, except that of auditor, unless being or becoming a Director would breach any law by reason of holding that office;

- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) sign or participate in the execution of a document by or on behalf of the Company; and
- (g) do any of the above despite the fiduciary relationship 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

provided the Director complies with the clauses 7.2 and 7.3.

7.5 Wholly-owned subsidiaries

If the Company is a wholly-owned subsidiary, the Board is expressly authorised to act in the best interests of the Holding Company and in doing so are deemed to be acting in good faith and in the best interests of the Company provided that:

- (a) the Company is not insolvent at the time the Directors so act; and
- (b) the Company does not become insolvent because of the Directors' act; and
- (c) the Holding Company is established for similar purposes to the Principal Purpose.

8. ADMINISTRATION

8.1 Minutes

- (a) The Board shall cause minutes of
 - (i) all proceedings and resolutions of meetings of Members;
 - (ii) all proceedings and resolutions of meetings of the Board, including meetings of a committee established by the Board;
 - (iii) resolutions passed by Members without a meeting; and
 - (iv) resolutions passed by the Board without a meeting,
 to be duly entered into the books kept for that purpose, within one month.

- (b) The Company must ensure that:
 - (i) minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
 - (A) the chairperson of the meeting; or
 - (B) the chairperson of the next meeting; and
 - (ii) minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- (c) A minute recorded and signed as required by this clause is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.
- (d) The Company must keep its minute books at its registered office or its principal place of business in Australia.

8.2 Accounts and other records of the Company

- (a) The Company must make and keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance, and
 - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The accounts will be held at the registered office or any other place as the Board thinks fit.
- (c) A Director has a right of access to the financial records at all reasonable times.
- (d) The Company must retain its financial records for at least seven years.
- (e) The Board must take reasonable steps to ensure that the Company's records are kept safe.

8.3 Members' access of Company records

To allow Members to access and inspect the Company's records:

- (a) the Company must give a Member access to the records set out in sub-clause 8.1; and
- (b) the Company may authorise a Member to inspect other records of the Company, including records referred to in sub-clause 8.2.

8.4 Financial year

The Financial year will begin on the first day of July and end on the thirtieth day of June, unless the Board passes a resolution to change the financial year.

8.5 Audit

If required by law, the Company must appoint and remunerate an auditor.

8.6 Common Seal

The Company does not have a common seal.

8.7 Execution of documents

The Company may execute a document by the signature of:

- (a) two Directors; or
- (b) one Director and one Secretary; or
- (c) one Director and another person appointed by the Board for that purpose.

8.8 Alteration of Constitution

- (a) The Company may only alter this Constitution by Special Resolution in accordance with the Act.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

8.9 Notices

- (a) Notices can be served on Members or the Board by post, electronic mail, or such other means as may be generally accepted in business from time to time.
- (b) Notices directed to the last known address (including any virtual or electronic address) of a Member or Director are to be treated as duly served in such time as it would usually take for such notice to be delivered.
- (c) The non-receipt of notice of a general meeting or Board meeting, including notice of postponement or change of venue, does not invalidate anything done or any resolution passed at the meeting if the non-receipt of notice occurred by accident or inadvertent error.
- (d) A person who attends a general meeting or Board meeting waives any objection that person may have to non-receipt of notice of the meeting.
- (e) In calculating a period of notice to be given under this Constitution, both the days on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.10 Officers: indemnities and insurance

- (a) The Company indemnifies every person that is or has been an Officer of the Company, or of a wholly-owned subsidiary, against any liability (including without limitation liability for legal costs) incurred as a result

of their position as Officer (other than to the Company or a related body corporate) to the full extent permitted by law.

- (b) The Company may pay, or agree to pay, a premium in respect of a contract insuring its Officers, to the extent permitted by law.

8.11 Winding up

Subject to clause 2.3, the Company may be dissolved by a Special Resolution of Members.

8.12 Liability of Members

The liability of the Members is limited to the Guaranteed Amount, being \$5.00.

8.13 Contribution of Members on winding up

Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member such amount as may be required not exceeding the Guaranteed Amount, for:

- (a) the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member;
- (b) the costs charges and expenses of winding up.

9. INTERPRETATION

9.1 Exclusion of replaceable rules

The replaceable rules contained in the Act do not apply to the Company.

9.2 Definitions

In this Constitution:

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

“**ACNC Legislation**” means the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*.

“**Act**” means the *Corporations Act 2001*.

“**Annual General Meeting**” means a meeting held once in every calendar year at such time and place as may be determined by the Board, for the purposes of carrying out the business of the Company described in clause 4.2(b) or such of it as is thought necessary by the Board.

“**Auditor**” may mean a reviewer, if permitted by the Act or ACNC Legislation.

“**Board**” means the board of Directors for the time being of the Company.

“**Company**” means Nillumbik Community Health Service Ltd.

“**Deductible Gift Recipient**” means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

“**Directors**” means the Directors for the time being of the Company and “**Director**” has a corresponding meaning.

“**chairperson**” means the person chairing a meeting.

“**Chair**” means the person appointed to the position of Chair of the Company under the clause 4.8.

“**charity at law**” means charitable within the meaning of the *Charities Act 2013* (Cth), and “**charitable at law**” has the same meaning.

“**Chief Executive Officer**” means a person appointed as Chief Executive Officer under clause 5.9.

“**Guaranteed Amount**” means the amount set out in clause 8.12.

“**Financial Year**” means the financial year set out in clause 8.4.

“**Holding Company**” means a body corporate of which the Company is a subsidiary.

“**ITAA 97**” means the *Income Tax Assessment Act 1997* (Cth).

“**Member**” means a person whose name is entered in the Register as a member of the Company in accordance with clause 3.5 and “**Membership**” has the corresponding meaning.

“**Officer**” has the meaning given under the Act.

“**person**” includes a natural person and a body corporate and a corporation within the meaning of s 57 of the Act.

“**poll**” means a method of voting where votes are cast in writing. It includes (but is not limited to) a vote conducted by secret ballot.

“**Principal Purpose**” means the purpose set out in clause 2.1.

“**Register**” means the register of Members of the Company under the Act.

“**Related Body Corporate**” means a body corporate that is a Holding Company, a subsidiary of the Company, or a subsidiary of a Holding Company.

“**Secretary**” means the secretary for the time being of the Company and if there are joint secretaries, any one or more of such joint secretaries.

“**Special Resolution**” means a resolution passed at a general meeting:

- (i) of which notice has been given in accordance with clause 4.6(d) ; and
- (ii) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

9.3 Interpretation

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Act, the meaning from the Act shall apply to the expression - except where a contrary intention appears in this Constitution.
- (b) Words importing any one gender are deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.
- (c) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

10. TRANSITIONAL PROVISIONS

The clauses in this Part apply notwithstanding anything to the contrary in this Constitution.

10.1 Members

The Members following adoption of this Constitution will be those individuals listed as current Members in the Register immediately prior to adoption of this Constitution.

10.2 Directors

- (a) The Directors following adoption of this Constitution will be those Directors in office immediately prior to the adoption of this Constitution.
- (b) Time served by any Director in office prior to the adoption of this Constitution shall not be taken into account for the purposes of clause 5.4(c)(ii).

SCHEDULE 1

APPOINTMENT OF PROXY

I/We

being a member/members of the abovenamed Company hereby appoint

.....

of

or, in his or her absence,

of

as my/our proxy to vote for me/us on my/our behalf at the meeting of Members of the Company to be held on the day of, 20.... and at any adjournment of that meeting.

This form is to be used * in favour of / * against the resolution .

SIGNED this day of, 20..

* Strike out whichever is not desired

To be inserted if desired