

Corporations Act 2001
A Company Limited by Guarantee

CONSTITUTION
of
AUSTRALIAN PRIVATE
HOSPITALS ASSOCIATION

April 2012

TABLE OF CONTENTS

	PART A - DEFINITIONS, INTERPRETATION AND STATUS.....	4
1	Definitions and interpretation	4
	Definitions.....	4
	Interpretation	6
2	Application of the Act	6
3	Company limited by guarantee	7
	PART B - OBJECTS, OPERATIONS AND POWERS OF THE ASSOCIATION ...	7
4	Objects of the Association	7
5	Independence of Operations	7
6	Powers of Association.....	7
7	Application of the Association's income and property	8
	PART C - MEMBERSHIP	8
8	Membership	8
9	Categories of Member	8
10	Eligibility Criteria	8
	Ordinary Members.....	8
	Associate Members	8
11	Admission to membership	9
12	Placement in Electorate	9
13	Membership – Groups	10
14	Beds	10
15	Membership not transferable	10
16	Unfinancial Members	10
17	Breach by Member.....	10
18	Member can resign	11
19	Recovery of moneys	11
20	Accreditation	12
	PART D – FEES AND LEVIES	12
21	Joining fees	12
22	Annual subscription fees.....	12
23	Determination of joining fee and annual subscription fee	12
24	Special Levies	13
25	Refunds.....	13
	PART E – MEETINGS OF MEMBERS	13
26	Calling meetings of Members	13
27	Annual general meetings	13
28	Notice of meetings of Members	13
29	Persons entitled to notice of meeting of Members	14
30	Persons entitled to attend meeting of Members.....	14
31	Proceedings at Meetings of Members	14
	Meetings	14
	Quorum.....	14
	Chairperson	14
	General conduct of meetings	15
	PART F - VOTING RULES	15
32	Votes at meetings of Members	15
33	Member Representatives & Chief Representatives	16
	Right to appoint Member Representative	16
	Right to designate a Chief Representative	16
	Proxies.....	16
	Authority conferred on proxy	17
	Deposit of proxy form before meeting.....	17
	How proxy is to vote	17
34	Voting entitlement	17
	General meetings and National Electorate elections.....	17

	Day Hospital, Psychiatric Hospital and Rehabilitation Hospital Electorate elections	18
	PART G – THE COUNCIL AND COUNCILLORS	18
35	Objects, Functions and Powers of the Council.....	18
36	Constituency of the Council	19
	Constituency of the Council.....	19
	Limit on number of Member Representatives on the Council.....	19
	Allocation of Councillor positions amongst National Electorates.....	19
37	Electorates	20
	The National Electorate	20
	The Psychiatric Hospital Electorate	20
	The Rehabilitation Hospital Electorate	20
	The Day Hospital Electorate.....	20
38	Commencement of appointment	21
39	Election of Councillors	21
	Nominations for Councillor	21
	Appointment following nomination	21
	Returning Officer	22
	Election of Councillors.....	23
	Counting votes.....	23
40	Nomination and appointment of A Class Associate Councillors	24
41	Councillors – appointment and removal	25
	Councillors may appoint other Councillors.....	25
	Casual Vacancies – Councillors.....	25
	Appointment of Alternate Councillors.....	25
	Resignation of Councillors.....	25
	Vacation of Office of Councillor	25
42	Remuneration of Councillors – payment of expenses.....	26
	PART H – MEETINGS OF COUNCIL.....	26
43	Calling meetings of Council	26
44	Notice of meetings of Council	26
45	Persons entitled to notice of meeting of Council	26
46	Persons entitled to attend meetings of Council	26
47	Proceedings at Meetings of Council	26
	Meetings	26
	Quorum.....	27
	General conduct of Council meetings	27
	Votes at meetings of Council.....	27
	PART I – THE BOARD AND THE DIRECTORS	28
48	The Board	28
	Constituency of the Board.....	28
	The Office Bearers	28
	The President shall act as Chairperson	28
49	Election of office bearers and directors	28
50	Directors – appointment and removal.....	30
	Councillors may appoint other Directors	30
	Casual vacancies – office bearers	30
	Casual vacancies – directors	31
	Term of Office.....	31
	Resignation of Directors	31
	Vacation of office of Director	31
51	Defects in appointment or qualifications of Director	31
52	Powers of the Directors.....	32
53	Remuneration of Directors.....	32
	Remuneration of Directors	32
	Payments on retirement, loss of office or death of Director.....	32
	Remuneration of Directors - payment of expenses	32
54	Director's contracts with the Association.....	32

	Director may hold other office of profit	32
	When Director may vote	32
	Director may act in professional capacity	33
	Director may sign or affix seal notwithstanding interest.....	33
	Disclosure of interest.....	33
	Record of disclosures by Directors	33
	PART J – MEETINGS OF DIRECTORS.....	33
55	Meetings of Directors	33
56	Quorum for meetings of Directors	34
57	Notice of meetings of Directors.....	34
58	Meetings by using Technology	34
59	Votes at meetings of Directors.....	35
60	Minutes.....	35
61	Secretary.....	35
62	Committees	35
63	Transitional Provisions.....	36
	PART K – CHIEF EXECUTIVE OFFICER	36
64	Appointment of Chief Executive Officer.....	36
65	Removal, suspension, replacement of absent Chief Executive Officer	37
66	Powers of Chief Executive Officer	37
	PART L – BRANCHES.....	37
67	Formation of Branches.....	37
68	Branch Powers.....	37
69	Dissolution of Branch	38
	PART M – GENERAL.....	38
70	Accounts	38
71	Auditors – appointment and removal.....	38
72	Records.....	38
73	Officers of Association not to disclose information.....	38
74	Winding up	38
75	Indemnities and insurance.....	39
	Indemnity against liabilities.....	39
	Indemnity for costs and expenses.....	39
	Insurance.....	39
76	By-Laws	40
77	Use of Technology.....	40

PART A - DEFINITIONS, INTERPRETATION AND STATUS

1 Definitions and interpretation

Definitions

1.1 In this Constitution the following terms have the following meanings:

Term	Meaning
the Act	The <i>Corporations Act 2001</i> (Cth).
Accredited	Accredited by an industry - recognised and approved accreditation agency (that is, an agency that is accredited by the International Society for Quality Health Care, the Joint Accreditation System of Australia and New Zealand or such other accreditation agency approved from time to time by the Board) and "Accreditation" has the same meaning.
Associate Member	A Member who is eligible to be an Associate Member pursuant to rule 10.2.
the Association	Australian Private Hospitals Association Limited ACN 008 623 809.
Bed	Subject to the calculation of deemed beds for Day Hospital Members pursuant to the By-Laws of the Association, the number of beds specified on a Private Hospital's licence or, where no number is specified, as otherwise recognised by the State or Territory government that licences the operation of the Private Hospital as a Private Hospital.
the Board	The board of directors of the Association.
Business Day	Means a day on which all banks are open for business generally in the Australian Capital Territory.
By-Laws	The by-laws of the Association made and altered pursuant to rule 76 of this Constitution.
Chairperson	The person who presides over a Board meeting, general meeting or annual general meeting of the Association, pursuant to rules 48.3 to 48.8.
Chair of the Council	The office bearer who has been appointed to preside over meetings of Council pursuant to rule 47.3
Chief Representative	An individual who is: (a) a Member Representative; and (b) either a director, Officer or the equivalent of a chief executive officer of a Member or, where the Ordinary Member is a religious order, they may be a member of that order. For the purposes of this definition the term 'director' has the same meaning as the definition of that term in the Act.
Council	The member's representative body comprised of Councillors.
Councillors	A councillor is a representative of the Members of the Association who has been appointed by the methods in rule 39

Day Hospital	A health facility: (a) at which patients are admitted and discharged on the same day for medical or surgical treatment which is approved by the Commonwealth for the purposes of basic health insurance benefits; and (b) which is not conducted or operated by the federal, a State or a Territory government.
Day Hospital Member	An Ordinary Member who is the proprietor of, or conducts, operates or manages, a Day Hospital.
Director	A director, for the time being, of the Association.
Election Year AGM	Is defined by Rule 27.1.
For Profit	As it relates to a Private Hospital – a Private Hospital that is conducted for the profit or gain of the proprietor of the Private Hospital.
Group	Means a group of: (a) corporations who are related bodies corporate; or (b) persons consisting of: (i) a corporation or corporations who are related bodies corporate; and (ii) one or more of the corporation(s) directors, officers or shareholders who are also the proprietor of, conducts, operations or manages a health facility as a sole trader. For the purposes of this definition the terms ‘director’, ‘officer’ and ‘shareholder’ have the same meanings as the definitions of those terms in the Act.
Member	A person who is a member of the Association pursuant to the Act.
Member Representative	An individual who is an Officer, employee, shareholder of a Member or, where the Ordinary Member is a religious order, a member of that order.
Membership	Membership of the Association.
Not for Profit	As it relates to a Private Hospital – a Private Hospital that is not conducted or operated for the profit or gain of the proprietor of the Private Hospital.
the Office	The registered office for the time being of the Association.
Office Bearers	The Office Bearers are described in rule 48.2 of this Constitution.
Officer	Has the same meaning as the definition of that term in the Act
Ordinary Member	A Member who is eligible to be an Ordinary Member pursuant to rule 10.1.
the previous constitution	The Association’s constitution that this Constitution replaced.
Private Hospital	A hospital or other health facility that: (a) is registered under the <i>National Health Act 1953</i> (Cth) to be eligible for the payment of health insurance benefits; and (b) is not conducted or operated by or on behalf of the federal government or a State or Territory government.
Psychiatric Hospital	A Private Hospital or a unit within a Private Hospital that is recognised by a State government or at least one private health insurer as being eligible for the payment of psychiatric benefits.

Psychiatric Hospital Member	An Ordinary Member who is the proprietor of, or conducts, operates or manages a Psychiatric Hospital.
Rehabilitation Hospital	A Private Hospital or unit within a Private Hospital or a health facility that is recognised by a State government or at least one private health insurer as being eligible for the payment of rehabilitation benefits.
Rehabilitation Hospital Member	An Ordinary Member who is the proprietor of, or conducts, operates or manages a Rehabilitation Hospital.
Related body corporate	Has the same meaning as that term in the Act.
Special Levy	A Special Levy is a levy on Members for any of the purposes of the Association not being an annual subscription fee.
State Association	An association that is incorporated in a State or Territory or, if it is a company, is formed essentially or primarily to pursue the interests of Private Hospitals located in a particular single State or Territory that has objects that are substantively similar to the Australian Private Hospitals Association.
State Branch	A branch of the Association formed pursuant to rule 67.
the Secretary	The secretary for the time being of the Association, and if there are joint secretaries, any one or more of such joint secretaries.
Technology	Includes all information and communications devices for audio, visual, audio-visual or electronic communication including, but not limited to, radio, telephone, facsimile, closed circuit television, data storage devices, internet communication via an automated or user operated system, electronic mail, automated election processes, direct recording electronic voting systems, or any other electronic means available.

Interpretation

1.2 In this Constitution headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) words denoting the singular number include the plural and vice versa;
- (b) words denoting any gender include all genders; and
- (c) the word "includes" in any form is not a word of limitation;

2 Application of the Act

2.1 Except so far as a contrary intention appears anywhere in this Constitution:

- (a) an expression used in a particular Part or Division of the Act which is given a special meaning by any provision of that Part or Division for the purposes of the whole or any part of that Part or Division has, in any provision of this Constitution which deals with a matter dealt with by the whole or any part of that Part or Division, the same meaning as in that Part or Division; and
- (b) an expression which is given a general meaning by any provision of the Act has the same meaning in this Constitution.

- 2.2 Each of the provisions of the sections or sub-sections of the Act referred to as a “replaceable rule” shall apply to the Association unless and to the extent expressly displaced in this Constitution.

3 *Company limited by guarantee*

- 3.1 The Association is a company limited by guarantee.
- 3.2 Each Member undertakes to contribute an amount not exceeding 50 cents to the property of the Association if the Association is wound up at a time when that person is a Member, for:
- (a) payment of the debts and liabilities of the Association contracted before that person ceased to be a Member;
 - (b) payment of the costs, charges and expenses of winding up the Association; and
 - (c) adjustment of the rights of the contributories among themselves.

PART B - OBJECTS, OPERATIONS AND POWERS OF THE ASSOCIATION

4 *Objects of the Association*

- 4.1 The objects for which the Association is established are:
- (a) To promote and protect the interests of the private hospitals industry;
 - (b) To improve public, government and industry understanding of the role and contribution of the private hospitals industry within the Australian health care sector and the broader economy;
 - (c) To represent the private hospitals industry to government, industry and the public;
 - (d) To do all things necessary for and incidental to the advancement of the above objectives.

5 *Independence of Operations*

- 5.1 In performing its functions, the Board, in fulfilling their duties to the Association will be responsive to the decisions and recommendations of the Council, as representing the views of the Members but, as the Act requires, will act independently of the Members and Council and will develop and adhere to its own policies, procedures and priorities consistent with the objects for which it was formed.

6 *Powers of Association*

- 6.1 Subject to the Act and the express provisions of this Constitution and the By-Laws, the Association has the power to do anything that is lawful for a company to do.

7 Application of the Association's income and property

7.1 The Association will apply the income and property of the Association solely towards promoting the objects of the Association and no portion thereof will be distributed or paid to Members by way of dividend or otherwise except for:

- (a) the payment in good faith of:
 - (i) reasonable remuneration in consideration for services rendered or goods supplied to the Association in the ordinary course of business;
 - (ii) interest at a reasonable rate on money borrowed by the Association; or
 - (iii) reasonable rent for premises demised or let to the Association.

PART C - MEMBERSHIP

8 Membership

8.1 The Association shall consist of:

- (a) those persons who at the date of adoption of this Constitution were members of this Association; and
- (b) any person who is admitted as a Member under this Constitution.

9 Categories of Member

9.1 There shall be two categories of membership of the Association:

- (a) Ordinary Members; and
- (b) Associate Members.

10 Eligibility Criteria

Ordinary Members

10.1 A person is eligible to be admitted as an Ordinary Member if it is the proprietor of, or conducts, operates or manages:

- (a) a Private Hospital; and/or
- (b) a Day Hospital.

Associate Members

10.2 A person is eligible to be admitted as an Associate Member if:

- (a) it is a State Association or State Branch; or
- (b) it:

- (i) is not eligible to be admitted as an Ordinary Member; and
- (ii) supports the objects of the Association.

10.3 Associate Membership shall be divided into two classes:

- (a) A Class Associate Members; and
- (b) B Class Associate Members.

10.4 State Associations and State Branches only shall be eligible to be admitted as A Class Members.

10.5 Associate Members enjoy the same rights as Ordinary Members, except the right to vote at general meetings and/or annual general meetings.

11 Admission to membership

11.1 A person who is eligible to be a Member may submit an application to be a Member to the Secretary at the Office in such form as may be determined by the Board from time to time.

11.2 The Board may, in its absolute discretion, approve an application submitted pursuant to rule 11.1.

11.3 The Secretary shall, on behalf of the Board, by notice inform an applicant as to whether or not its application has been approved and, if approved, shall cause the Member's name to be entered on the Register upon payment of the joining fee (if any), the current subscription fee, and any current levy payable by Members.

12 Placement in Electorate

12.1 Upon admission to membership and from time to time throughout the course of its membership, an Ordinary Member shall be placed by the Secretary into such Division within the National Electorate and, if the Ordinary Member is the proprietor of, or conducts, operates or manages a Day Hospital, a Psychiatric Hospital and/or a Rehabilitation Hospital, within one or more of the Electorates referred to at rule 37.1, as it reasonably appears to the Secretary that the Ordinary Member should be placed in.

12.2 The Secretary shall inform an Ordinary Member in writing as to the Division within the National Electorate and, if applicable, the other Electorate referred to at rule 37.1 that it has been placed in.

12.3 If an Ordinary Member disputes the Division within the National Electorate or other Electorate referred to at rule 37.1 that it has been placed in, it shall notify the Secretary in writing, whereupon the Secretary shall refer the matter to the Board.

12.4 The Board shall determine the dispute and notify the Ordinary Member as to which Division within the National Electorate or other Electorate referred to at rule 37.1 (as the case may be) that the Board has determined that the Ordinary Member will be placed in.

12.5 A determination of the Board pursuant to rule 12.4 shall be final.

13 Membership – Groups

- 13.1 No more than one body corporate or individual in a Group may be an Ordinary Member at any one time.

14 Beds

- 14.1 The number of Beds that are held by an Ordinary Member is to be determined in accordance with the By-Laws of the Association.

15 Membership not transferable

- 15.1 Membership is not transferable without the written consent of the Board.

16 Unfinancial Members

- 16.1 Any Member failing to pay any subscription fee or levy within two (2) months after the date on which it becomes due and payable, shall be disqualified from taking part in any proceedings of the Association (including attendance and, in the case of Ordinary Members, voting at general meetings and/or annual general meetings) and shall be liable to pay an additional 10% of the outstanding subscription fee or levy.
- 16.2 The Association may suspend the provision of services to any Member who is disqualified under rule 16.1.
- 16.3 Where a Member is in default under rule 16.1, the Member may be removed by resolution of the Board. Such action shall be without prejudice to the right of the Association to recover any arrears of subscription or unpaid levy together with any additional amount provided for under rule 19.1.
- 16.4 Rule 17.10 does not apply in the case of a removal of a Member under rule 16.3.

17 Breach by Member

- 17.1 When so directed by the Board, the Chief Executive Officer shall charge a Member with:
- (a) an offence against, a breach of or a failure to comply with this Constitution;
 - (b) an offence against, a breach of or a failure to comply with the By-Laws;
 - (c) of being guilty of conduct that is unbecoming of a Member; or
 - (d) of being guilty of conduct that is prejudicial to the Association.
- 17.2 Such charge shall be in writing, signed by the Chief Executive Officer and served upon the Member.
- 17.3 Any Member charged pursuant to rule 17.1 shall answer the charge. Such answer shall be in writing and served upon the Chief Executive Officer no later than twenty-one (21) days after the date of service of the charge on the Member.
- 17.4 If the Member does not fully comply with rule 17.3, the Member shall be deemed to be guilty of the charge.

- 17.5 Upon receipt the Member's answer in full compliance with rule 17.3, the Chief Executive Officer shall make, or cause to be made, such investigations as in his or her opinion are warranted. The Member charged shall produce to the Chief Executive Officer all relevant documents and records concerning such charge and shall afford the Chief Executive Officer all facilities requested by him or her to enable the investigation.
- 17.6 After the completion of such investigations the Chief Executive Officer shall report thereon to the Board, which shall consider such report in conjunction with the answer submitted by the Member under rule 17.3. The Member may, in its answer, elect to appear before the Board to explain the written answer submitted. Proceedings of the Board when considering a charge against a Member shall be confidential as between that Member and the Board.
- 17.7 The Member charged pursuant to rule 17.1 shall be given not less than five (5) days' notice of the Board meeting at which the charge is to be considered and advised of the right to be in attendance.
- 17.8 If, after considering the facts and hearing any representations made by the Member, the Board determines that the Member charged is guilty of the charge, the Member may by resolution of the Board:
- (a) be reprimanded; or
 - (b) be expelled from the Association.
- 17.9 The decision of the Board shall be conveyed in writing by the Chief Executive Officer to the Member charged.
- 17.10 A Member expelled under rule 17.8 may, by notice to the Chief Executive Officer within fourteen (14) days of the date of the Chief Executive Officer's advice given under rule 17.9, appeal to a meeting of the Council, which shall hear the Member's representations and consider all matters raised by the Board. The Council may allow or dismiss the appeal.

18 Member can resign

- 18.1 A Member may resign as a Member by giving to the Association 6 months' notice in writing to the Secretary and upon the expiration of that 6-month notice period, the Member shall cease to be a Member.

19 Recovery of moneys

- 19.1 Any moneys that are owed by a Member to the Association whether under this Constitution, the By-Laws or otherwise (including any subscription fee or levy which is outstanding) may be recovered through any lawful action (including, but not limited to, debt collection processes and/or legal proceedings) instituted by the Chief Executive Officer on behalf of the Association or a person authorised by the Chief Executive Officer and the Member shall be liable for all of the Association's costs (including, but not limited to, debt collection fees, search fees and/or legal costs on a solicitor and client basis) of instituting and maintaining such action or proceedings and must indemnify the Association for all such costs.
- 19.2 Without limiting its generality, rule 19.1 extends to the enforcement and the recovery of each debt due and payable to the Association whether under this Constitution, the By-Laws or otherwise (including any subscription fee or levy which

is outstanding) but not paid by the Member in relation to the period before the Member's resignation, removal or expulsion.

20 Accreditation

- 20.1 An Ordinary Member must obtain Accreditation for each Private Hospital and/or Day Hospital that it owns, controls, operates or manages:
- (a) where the Ordinary Member was admitted to membership before 1 January 2006 - by 1 January 2007;
 - (b) where the Ordinary Member was admitted to membership on or after 1 January 2006 - within 18 months of the date of its admission.
- 20.2 An Ordinary Member may make a written application to the Board for an extension of up to 12 months to comply with clause 20.1. The Board may in its absolute discretion grant or reject the application. If the Board grants the application it may do so on such conditions as it sees fit.
- 20.3 Each Ordinary Member shall maintain the Accreditation required by this Constitution for the duration of its Membership and, on request, shall produce satisfactory evidence of the Accreditation to the Association.
- 20.4 An Ordinary Member must advise the Association in writing as soon as practicable after it is notified of any change to the Accreditation of any Private Hospitals and/or Day Hospitals that it owns, controls, operates or manages.
- 20.5 An Ordinary Member may make a written application to the Board for an extension of its Membership for a period of up to 12 months, if any Private Hospital and/or Day Hospital that it owns, controls, operates or manages ceases to be accredited. The Board may in its absolute discretion grant or reject the application. If the Board grants the application it may do so on such conditions as it sees fit.

PART D – FEES AND LEVIES

21 *Joining fees*

- 21.1 A Member may be required to pay a joining fee as a precondition to admission to membership of the Association.

22 *Annual subscription fees*

- 22.1 Every Member shall pay to the Association an annual subscription fee for membership of the Association.

23 *Determination of joining fee and annual subscription fee*

- 23.1 The Board shall, from time to time and in its absolute discretion, determine the amount of the joining fee and the amount of the annual subscription fee.
- 23.2 Without limiting the way in which they may otherwise be determined, the fees referred to in rule 23.1 may be determined or calculated:
- (a) on the basis of a formula or formulas determined by the Board from time to time having regard to the number of Beds held by the Member; and

- (b) having regard to the make up or characteristics of Members within the Ordinary Member and Associate Member categories of membership.

23.3 A Member's first annual subscription fee shall fall due on the date the Member was admitted to membership and shall be for the period to 30 June next occurring and shall be reduced pro-rata as that period bears to 12 months. In each succeeding year of membership, all Members' annual subscriptions shall fall due on the 1st of July in each successive year of membership.

24 Special Levies

24.1 The Board may make a special levy on Members for any of the purposes of the Association. Prior to making a levy the Board will notify the Members and seek their views on the proposed levy. After consulting with the Members the Board at its discretion may make a levy and that levy will be compulsory on all Members.

24.2 Any such levy shall be made by resolution of the Board which shall set out:

- (a) the details of the resolution;
- (b) the amount and manner in which the levy shall be charged against Members;
- (c) the due date for payment of the levy; and
- (d) any other matters incidental to the resolution or the levy.

24.3 A levy may be calculated by any method that the Board considers fit.

25 Refunds

25.1 Unless a mistake has been made in the calculation of the amount of any joining fee, subscription fee or levy to be paid, a Member shall not be entitled to a refund of any joining fee, subscription fee or levy that it has paid.

PART E – MEETINGS OF MEMBERS

26 Calling meetings of Members

26.1 A director may call a meeting of the Association's members.

26.2 The Members may call and arrange to hold general meetings in accordance with the Act.

27 Annual general meetings

27.1 The Association will hold annual general meetings in accordance with the Act. The annual general meeting held in each even numbered year shall be an "Election Year AGM".

28 Notice of meetings of Members

28.1 Notice of a meeting of Members must be given in accordance with the Act.

29 *Persons entitled to notice of meeting of Members*

- 29.1 Notice of a meeting of Members is not required to be given to any person other than the persons entitled to receive notices of meetings of Members under the Act.

30 *Persons entitled to attend meeting of Members*

- 30.1 All Members are entitled to attend meetings of Members as well as any other persons entitled to attend under the Act.

31 *Proceedings at Meetings of Members*

Meetings

- 31.1 Subject to the Act, the Members shall determine the procedures for conducting meetings of Members.

Quorum

- 31.2 The provisions of sub-sections 249T(1) and (2) of the Act that apply as a replaceable rule are displaced. The remaining provisions of section 249T shall continue to apply as a replaceable rule.

- 31.3 A quorum for a meeting of Members is that number of Ordinary Members who together hold at least 55% of the total number of voting units held by all Ordinary Members.

- 31.4 In determining whether a quorum is present, only those persons present and eligible to vote may be counted. A person is present if:

- (a) they are personally in attendance;
- (b) they have validly appointed a proxy and the proxy is present;

To clarify matters:

- (c) if a person who is eligible to attend and vote has validly appointed a proxy, and the proxy holder is in attendance, then that Member shall be considered present;
- (d) if a Member has appointed more than one person as a proxy or representative, then the appointor is counted as being present, but they still only count as one attendee;
- (e) If a proxy holder is also in attendance attending as a Member in their own right, then they will be counted as present in their own right;

Chairperson

- 31.5 The provisions of section 249U of the Act that apply as a replaceable rule are displaced.

General conduct of meetings

- 31.6 Subject to the Act, the Chairperson will be responsible for the general conduct of meetings of Members and for the procedures to be adopted at meetings of Members.
- 31.7 The Chairperson may delegate the powers conferred by rule 31.6 to such person or persons as he or she thinks fit.
- 31.8 Nothing contained in rule 31.6 and 31.7 will be taken to limit the powers conferred on the Chairperson by law.

PART F - VOTING RULES

32 *Votes at meetings of Members*

- 32.1 At any general meeting, a resolution put to the vote is decided on a show of hands unless a poll is demanded (before or on the declaration of the result of the show of hands) by:
- (a) the Chairperson; or
 - (b) a Member.
- 32.2 Unless a poll is so demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Association, signed by the Chairperson of that or the next succeeding general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 32.3 If a poll is demanded, it must be taken in such a manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs, and the result of the poll is the resolution of the general meeting at which the poll was demanded.
- 32.4 The demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which a poll has been demanded.
- 32.5 The demand for a poll may be withdrawn.
- 32.6 If in the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the general meeting at which the show of hands takes place or at which the poll is demanded, in addition to his or her deliberative vote (if any) has a casting vote. The Chairperson has a discretion both as to the use of the casting vote and as to the way in which it is used.
- 32.7 An objection may be raised to the qualification of a voter only at the general meeting or adjourned general meeting at which the vote objected to is given or tendered. The objection must be referred to the Chairperson of the general meeting whose decision is final. A vote not disallowed following the objection is valid for all purposes.

33 Member Representatives & Chief Representatives

Right to appoint Member Representative

33.1 A Member may appoint one or more Member Representatives in accordance with their internal governance processes.

Right to designate a Chief Representative

33.2 A Member must designate one of its Member Representatives to be the Chief Representative who:

- (a) will act as the key contact for the Member; and
- (b) will hold the Member's proxy in accordance with rule 33.6.

33.3 A Chief Representative must:

- (a) be a director, officer or chief executive officer (or its equivalent) of the Member except if the Member is a religious order, then the Chief Representative may be a member of that order; and
- (b) be designated by the Member in accordance with their internal governance processes.

33.4 A Member may change the Chief Representative from time to time and at any time.

33.5 A Member must notify the Association of the cessation of a Chief Representative within ten (10) Business Days of the cessation.

Proxies

33.6 Upon designation in rule 33.2 the Chief Representative will be deemed to hold the Member's proxy to attend and cast a vote at a meeting of Members, unless the Member specifically revokes that proxy and advises the Association of the revocation.

33.7 In the event that the Chief Representative is unable to attend a meeting of Members, the Chief Representative may appoint a replacement proxy using the standard instrument which appoints a proxy.

33.8 In the event that there is no Chief Representative or the Chief Representative does not hold the Member's proxy in accordance with rule 33.6 then a Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person who:

- (a) Is a Member Representative; or
- (b) is eligible to be a Member Representative; or
- (c) another Member;

as the Member's proxy to attend and vote for the Member at the meeting.

33.9 A proxy may be appointed for all meetings or for any number of meetings or for a particular purpose.

Authority conferred on proxy

33.10 Unless otherwise provided in the instrument, an instrument appointing a proxy will be taken to confer authority:

- (a) to agree to a meeting of Members being called by shorter notice than is required by the Act; and
- (b) to vote on a show of hands in accordance with the directions (if any) given in the instrument.

Deposit of proxy form before meeting

33.11 An instrument appointing a proxy, to be effective, must be received by the Association:

- (a) at the place, or electronic address or fax number as is specified in the notice of meeting of Members to which the proxy or attorney relates; or
- (b) at the Office, electronic address or fax number at the Office, not less than 48 hours before the time scheduled for commencement of the meeting (or any adjournment of that meeting) at which the person named in the instrument intends to vote.

How proxy is to vote

33.12 A Member may, but need not, specify the manner in which a proxy is to vote on a particular resolution.

34 Voting entitlement

General meetings and National Electorate elections

34.1 For the purpose of any vote conducted pursuant to a poll at a general meeting or an election of Councillors for a Division of the National Electorate, each Ordinary Member shall possess a number of votes determined in accordance with the following formula:

$$N = \frac{MS \times TB}{TMS}$$

Where:

N = the number of the Ordinary Member's votes.

MS = the dollar amount of the Ordinary Member's subscription fee for the financial year in which the vote or election is conducted expressed as a number.

TB = the total number of Beds of which the Ordinary Member is the proprietor of, or conducts, operates or manages.

TMS = the total amount of subscription fees for all Ordinary Members for the financial year in which the vote or election is conducted expressed as a number.

Day Hospital, Psychiatric Hospital and Rehabilitation Hospital Electorate elections

- 34.2 For the purpose of any vote conducted pursuant to a election of Councillors for an Electorate referred to at paragraph (b), (c) or (d) of rule 37.1, an Ordinary Member of that Electorate shall possess a number of votes:
- (a) in the case of the Day Hospital Electorate, equivalent to the number of Beds that the Ordinary Member is deemed to hold pursuant to the By-Laws; and
 - (b) in the case of the Psychiatric Hospital Electorate, equivalent to the number of Beds located at the Psychiatric Hospitals which the Ordinary Member is the proprietor of, or conducts, operates or manages; and
 - (c) in the case of the Rehabilitation Hospital, equivalent to the number of Beds located at the Rehabilitation Hospitals which the Ordinary Member is the proprietor of, or conducts, operates or manages.

PART G – THE COUNCIL AND COUNCILLORS

35 *Objects, Functions and Powers of the Council*

- 35.1 The objects for which the Council is established are:
- (a) To identify and promote the interests of the private hospitals industry to the Association;
 - (b) To represent and promote the interests of the Members, either individually or collectively, to the Board; and
 - (c) To facilitate and improve communication and the flow of information between the Members and the Board.
- 35.2 The functions and powers of the Council are:
- (a) To communicate to the Members the key issues and activities that are being considered by the Board;
 - (b) Councillors are entitled to represent and promote the position of the views of the Members who have appointed them;
 - (c) To make proposals and recommendations to the Board on issues that the Council considers relevant to the Association and the Objects of the Association.
- 35.3 For the purpose of rule 35.2, all proposals and recommendations made to the Board are not binding upon the Board.

36 Constituency of the Council

Constituency of the Council

36.1 The Council shall consist of:

- (a) up to sixteen (16) Councillors nominated from amongst or elected by the Ordinary Members within the respective divisions of the National Electorate;
- (b) up to six (6) Councillors appointed by the A Class Associate Members pursuant to rule 40;
- (c) up to one (1) Councillor nominated from amongst or elected by the Psychiatric Hospital Members;
- (d) up to one (1) Councillor nominated from amongst or elected by the Rehabilitation Hospital Members;
- (e) up to one (1) Councillor nominated from amongst or elected by the Day Hospital Members; and
- (f) such other Councillors as may be appointed pursuant to rule 41.2

Limit on number of Member Representatives on the Council

36.2 At any one time:

- (a) an Ordinary Member who holds no more than 2000 Beds (as determined pursuant to Rule 14.1 and the By-Laws) may not have more than two Member Representatives on the Council; and
- (b) an Ordinary Member who holds more than 2000 Beds (as determined pursuant to Rule 14.1 and the By-Laws) may not have more than three Member Representatives on the Council.

Allocation of Councillor positions amongst National Electorates

36.3 A division within the National Electorate shall be allocated a Councillor position on the Council when B in the following equation is 0.5 and a further Councillor position for each additional multiple of 0.5:

$$A = \frac{TA}{16}$$

$$B = \frac{TE}{A}$$

Where: TA = the total voting entitlement of all Ordinary Members of the Association.

TE = the total voting entitlement of all Ordinary Members with the Division of the National Electorate.

37 Electorates

37.1 For the purposes of appointing Councillors, the Association consists of the following electorates of Ordinary Members:

- (a) the National Electorate;
- (b) the Psychiatric Hospital Electorate;
- (c) the Rehabilitation Hospital Electorate; and
- (d) the Day Hospital Electorate.

The National Electorate

37.2 The National Electorate shall be divided into of such Divisions of Ordinary Members having such characteristics or makeup as the Directors may resolve from time to time.

37.3 At the time of adoption of this constitution, the National Electorate is divided into Divisions of Ordinary Members as set out in the following Table:

Division
For profit, Large Group (400 Beds or more)
Not for profit, Large Group (400 Beds or more)
For profit, Small group (less than 400 Beds) and Large Independent (more than 70 Beds)
Not for profit, Small Group (less than 400 Beds) and Large Independent (more than 70 beds)
For profit, Small Independent (no more than 70 Beds)
Not for profit, Small Independent (no more than 70 Beds)

The Psychiatric Hospital Electorate

37.4 The Psychiatric Hospital Electorate consists of the Psychiatric Hospital Members.

The Rehabilitation Hospital Electorate

37.5 The Rehabilitation Hospital Electorate consists of the Rehabilitation Hospital Members.

The Day Hospital Electorate

37.6 The Day Hospital Electorate consists of the Day Hospital Members.

38 Commencement of appointment

- 38.1 Appointments and elections of Councillors shall take place prior to each successive Election Year AGM.
- 38.2 Subject to the Act, this Constitution and any relevant By-Laws, each Councillor appointed or elected shall be entitled to hold office until the close of the Council elections held prior to the next occurring Election Year AGM.

39 Election of Councillors

Nominations for Councillor

- 39.1 The Secretary shall forward by electronic mail (or any other method prescribed by the Board from time to time in accordance with rule 77.1) a nomination form to every Ordinary Member entitled to nominate a candidate or candidates for an election.
- 39.2 The nomination form shall state the closing date of nominations and the method for completing and forwarding the nominations in accordance with rule 77.3.
- 39.3 A person is only eligible for nomination as a Councillor to represent a particular Division within the National Electorate or to represent another Electorate referred to at rule 37.1 if he or she is a Member Representative of an Ordinary Member within that Division or Electorate.
- 39.4 A nomination shall be in writing, signed by the nominator and be assented to in writing signed by the nominee. If the nominee is not the Chief Representative of an Ordinary Member, then the Chief Representative of that Ordinary Member must also assent to the nomination in writing by signing the nomination form. Nominations and consents shall be forwarded to the Secretary so as to reach him or her not later than 4.00 p.m. on the date stated in the nomination form issued pursuant to rule 39.1.
- 39.5 The Secretary shall inspect nominations and consents and satisfy himself or herself as far as he or she reasonably can that each of them meets the requirements of this Constitution and any relevant By-Laws.
- 39.6 If the Secretary finds a nomination to be defective he or she shall, before rejecting the nomination, notify the person concerned of the defect and where it is practicable to do so, give him or her the opportunity of remedying the defect within 7 days after him or her being so notified.
- 39.7 A Member Representative may only be nominated for election to one Electorate referred to at rule 37.1 at any one time. In the event that a Member Representative is nominated for election to more than one Electorate referred to at rule 37.1 at any one time, the Member Representative shall be deemed to have been only nominated for election to the Electorate referred to on the first non-defective nomination first inspected by the Secretary pursuant to rule 39.5.

Appointment following nomination

- 39.8 If insufficient nominations are received to fill all vacancies available to represent a particular Division within the National Electorate or another Electorate referred to at rule 37.1, the candidates nominated shall be deemed to be elected and further nominations shall be received at the annual general meeting.

- 39.9 If insufficient further nominations are received to fill all vacancies available to represent a particular Division within the National Electorate or another Electorate referred to at rule 37.1, any vacant positions in relation to that particular Division within the National Electorate or other Electorate referred to at rule 37.1 shall be deemed to be vacancies.
- 39.10 If the number of further nominations received at the annual general meeting exceeds the number of vacancies to be filled for a particular Division within the National Electorate or another Electorate referred to at rule 37.1, then a ballot shall be held in accordance with rules 39.12 to 39.25. For the purposes of rule 39.20 the 'closing date for nominations' shall be deemed to be the date of the annual general meeting.
- 39.11 If the number of nominations received is equal to the number of vacancies to be filled to represent a particular Division within the National Electorate or another Electorate referred to at rule 37.1, the persons nominated shall be deemed to be elected.

Returning Officer

- 39.12 The Secretary may act as Returning Officer or may appoint a natural person to be the Returning Officer, for the conduct of elections of Councillors, Office Bearers and Directors.
- 39.13 The Returning Officer shall not at the time he or she is appointed or at any time during his or her appointment be a nominee for or hold any other office in the Association (other than as allowed under rule 39.12).
- 39.14 The Returning Officer shall take such action and give such directions as are reasonably necessary to ensure that no irregularities occur in or in connection with an election or in order to remedy any procedural defects and no person shall refuse or fail to comply with any such directions or obstruct or hinder a Returning Officer or any other person in the conduct of such an election or in the taking of any such action.
- 39.15 The decision of a Returning Officer is final and binding with regard to any matter concerning the validity or formality of any nomination or vote or any matter concerning an election and the conduct thereof.
- 39.16 If an irregularity occurs in the conduct of an election, and in the opinion of a judicial officer, such irregularity will affect the result of that election then that election and each and every step taken in connection with it shall be null and void and another election under these Rules shall be held as soon as is practicable. Any person holding an office immediately prior to an election which is null and void shall remain in office until his or her successor is elected.
- 39.17 Where another election is to be held under rule 39.16 any times fixed in these Rules for the conduct of such an election whether by reference to a date or not shall be as from the date upon which such election became necessary or such other date within 14 days thereof as may be decided by the Returning Officer.
- 39.18 Elections shall be by electronic ballot (or postal ballot if the Board so prescribes) and may utilize any form of available Technology to allow votes to be cast, as the Board may determine, and shall be conducted as provided by this Constitution and any relevant By-Laws.

Election of Councillors

- 39.19 If the number of nominations received exceeds the number of vacancies to be filled for a particular Division in the National Electorate or another electorate referred to at rule 37.1, a ballot shall be held.
- 39.20 Noting the capacity of the Association to hold the elections using available Technology, the intention is that:
- (a) The Returning Officer shall cause ballots to be prepared with the names of the candidates listed in a random order determined by the Chief Executive Officer and a box next to each name to mark a voter's intention.
 - (b) Within 14 days after the closing date for nominations, the Returning Officer shall make a ballot available to each Ordinary Member entitled to vote in an election pertaining to the Division within the National Electorate or the Electorate referred to at rule 37.1 in which the Ordinary Member has been placed pursuant to rule 12.1 or rule 12.4.
 - (c) The Returning Officer shall advise all voters of the closing date for the receipt of returned vote which he or she shall fix and which shall not be:
 - (i) (if conducted by electronic ballot) less than 7 days and not more than 28 days from the date he or she makes available such electronic ballots; or
 - (ii) (if conducted by postal ballot) less than 14 days and not more than 28 days from the date he or she makes available such postal ballots.
 - (d) A voter will be required to indicate a preference for every candidate on the ballot by placing a whole number in the box next to the candidate's name. The whole number "1" must be placed in the box next to the name of the candidate who is the voter's first preference, the whole number "2" must be placed in the box next to the name of the candidate who is the voter's second preference, and so on until, following that sequence, there is a whole number in every box next to every candidate's name.

Counting votes

- 39.21 Ballots not in accordance with method published under rule 39.20(d) will be deemed to be invalid and will not be counted.
- 39.22 The Returning Officer shall be responsible for counting the votes.
- 39.23 Votes shall be counted as follows:
- (a) On each ballot, the number in the box next to a candidate's name shall multiplied by the number of votes held by the voter to determine the number of votes for that candidate on that ballot;
 - (b) The number of votes for each candidate from each ballot shall be added together;
 - (c) The candidate(s) with the lowest total(s) corresponding with the number of Councillors that can be elected to represent a particular Division within the

National Electorate or another Electorate referred to at rule 37.1 will be elected.

39.24 Where the votes received by two or more candidates for the one position are equal, the candidates with the higher number of first preference votes will be elected.

39.25 In the event of the process in rule 39.24 producing a tied result the successful candidates will be elected on the basis of second preferences and so on until a result has been determined.

40 *Nomination and appointment of A Class Associate Councillors*

40.1 Each A Class Associate Member shall be entitled to nominate and appoint one Councillor, except:

(a) where there is a State Association and a State Branch in the same State;

then:

(b) only the State Branch will be entitled to nominate and appoint one Councillor;

40.2 A person is only eligible to be nominated as a Councillor to represent a particular A Class Associate Member if he or she:

(a) is a Member Representative of that A Class Associate Member; and

(b) is also a Member Representative of an Ordinary Member.

40.3 A nomination must be in writing, signed by the nominator and be assented to in writing by the nominee. Nominations and consents shall be forwarded to the Secretary so as to reach him or her no later than 28 days prior to the annual general meeting.

40.4 The Secretary shall inspect nominations and consents and satisfy himself or herself as far as he or she reasonably can that each of them meets the requirements of this Constitution and any relevant By-Laws.

40.5 If the Secretary finds an appointment to be defective he or she shall, before rejecting the appointment, notify the A Class Associate Member concerned of the defect and where it is practicable to do so, give him or her the opportunity of remedying the defect within 7 days after the A Class Associate Member being so notified.

40.6 If the nomination meets the requirements of this Constitution and any relevant By-Laws, the person nominated shall be deemed to be appointed.

41 Councillors – appointment and removal

Councillors may appoint other Councillors

- 41.1 The provisions of Section 201H of the Act which apply as a replaceable rule are displaced.
- 41.2 The Councillors may appoint a person as a Councillor. A person can be appointed as a Councillor in order to make up a quorum for a meeting of the Council even if the total number of Councillors of the Association is not enough to make up that quorum.
- 41.3 If a person is appointed by the other Councillors as a Councillor, the Association must confirm the appointment by resolution at the Association's next annual general meeting. If the appointment is not confirmed, the person ceases to be a Councillor at the end of the annual general meeting.

Casual Vacancies – Councillors

- 41.4 If a casual vacancy occurs in any of the offices set out in rule 36.1 the Council shall as soon as practicable thereafter appoint a Member to fill such casual vacancy.
- 41.5 A Member appointed pursuant to rule 41.4 shall be from the same electorate as the position that has been vacated.
- 41.6 A Councillor appointed pursuant to rule 41.4 shall hold office for the period of the unexpired term for which his or her predecessor had been elected or appointed.

Appointment of Alternate Councillors

- 41.7 Subject to the other Councillors approval, a Councillor may appoint another person from within their own electorate as an Alternate Councillor to exercise some or all of that Councillor's functions and powers for a specified period by notice in writing to the Council.
- 41.8 If the appointing Councillor requests the Council to give the Alternate Councillor notice of meetings of the Council, the Council must do so.
- 41.9 When an Alternate Councillor exercises the appointing Councillor's functions, the exercise of the functions and powers is just as effective as if the appointing Councillor exercised the functions and powers.
- 41.10 The appointing Councillor may terminate the Alternate Councillor's appointment at any time by notice in writing to the Council.

Resignation of Councillors

- 41.11 A Councillor may resign from office on giving the Secretary notice in writing.

Vacation of Office of Councillor

- 41.12 Each Councillor will remain in office until his or her office is vacated pursuant to rule 41.13.
- 41.13 The office of a Councillor is vacated if that Councillor:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns the office of Councillor in accordance with rule 41.11;
- (c) ceases to be a Member Representative of an Ordinary Member within the particular Division within the National Electorate or other Electorate referred to at rule 37.1 that he or she was appointed to represent;
- (d) becomes an insolvent under administration (within the meaning of the Act); or
- (e) is absent from 3 consecutive meetings of the Council without the permission of the Council and the Council resolves that his or her office be vacated.

42 Remuneration of Councillors – payment of expenses

- 42.1 The Association will pay, upon presentation of reasonable substantiation, all reasonable travelling, accommodation and other expenses incurred by a Councillor in consequence of his or her attendance at meetings of Councillors and otherwise in the execution of his or her duties as a Councillor.

PART H – MEETINGS OF COUNCIL

43 Calling meetings of Council

- 43.1 There shall be not less than 2 meetings of Council each year held at approximately 6 month intervals, as the Council may determine.
- 43.2 A Director or the Council may call a meeting of the Council.

44 Notice of meetings of Council

- 44.1 Notice of a meeting of Council must be given to each Councillor in accordance with this Constitution.

45 Persons entitled to notice of meeting of Council

- 45.1 Notice of a meeting of Council is not required to be given to any person other than the persons entitled to receive notices of meetings of Council under the Act.

46 Persons entitled to attend meetings of Council

- 46.1 All Councillors are entitled to receive notices of Council meetings and all Councillors and all Directors other than one appointed under rule 50.2 are entitled to attend meetings of Council, except as permitted under rule 50.5.

47 Proceedings at Meetings of Council

Meetings

- 47.1 Subject to the Act, the Council shall determine the procedures for conduct of its meetings.

Quorum

- 47.2 A quorum for a meeting of Council is that number of Councillors who comprise at least 55% of the total number of Councillors (including casual vacancies). Councillors will either attend personally or through their approved Alternate.

General conduct of Council meetings

- 47.3 Subject to the Act, the Chair of the Council will be responsible for the general conduct of meetings of Council and for the procedures to be adopted at meetings of Council, provided that the Chair of the Council may only permit an observer at a Council meeting with the approval of two thirds of the Councillors present and voting.

Votes at meetings of Council

- 47.4 At any Council meeting, a resolution put to the vote is decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- (a) the Chair of the Council; or
 - (b) a Councillor.
- 47.5 Unless a poll is so demanded, a declaration by the Chair of the Council that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Council, signed by the Chair of the Council of that or the next succeeding general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 47.6 If a poll is demanded, it must be taken in such a manner and either at once or after an interval or adjournment or otherwise as the Chair of the Council directs, and the result of the poll is the resolution of the general meeting at which the poll was demanded.
- 47.7 The demand for a poll does not prevent the continuance of a Council meeting for the transaction of any business other than the question on which a poll has been demanded.
- 47.8 The demand for a poll may be withdrawn.
- 47.9 If in the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the Council, in addition to his or her deliberative vote (if any), has a casting vote. The Chair of the Council has a discretion both as to the use of the casting vote and as to the way in which it is used.
- 47.10 An objection may be raised to the qualification of a voter only at the Council meeting or adjourned general meeting at which the vote objected to is given or tendered. The objection must be referred to the Chair of the Council whose decision is final. A vote not disallowed following the objection is valid for all purposes.

PART I – THE BOARD AND THE DIRECTORS

48 *The Board*

Constituency of the Board

- 48.1 The Board shall consist of:
- (a) up to eight (8) directors appointed by the Council (of which four (4) will also hold the role of President, Vice-President, Chair of Council and Treasurer);
 - (b) not more than two (2) additional directors as may be appointed pursuant to rule 50.2.

The Office Bearers

- 48.2 The office bearers shall be:
- (a) the President;
 - (b) the Vice-President;
 - (c) the Chair of the Council; and
 - (d) the Treasurer.

The President shall act as Chairperson

- 48.3 The President shall preside over all general meetings, each annual general meeting, and meetings of the Board at which he or she is present.
- 48.4 In the absence or inability of the President to act, the Vice-President shall preside in their stead.
- 48.5 In the absence or inability of the President and Vice-President to act, the Board shall appoint another Director to preside over meetings of the Board, the general meeting or annual general meeting.
- 48.6 In addition to his or her personal vote as a Member Representative, the person presiding over a general meeting or annual general meeting shall, in the event of an equality of votes at any meeting which he or she chairs under this Constitution, have a second or casting vote.
- 48.7 Rule 48.6 shall not apply in the case of an election held under this Constitution.
- 48.8 The person presiding over a Board meeting, general meeting and/or annual general meeting pursuant to rules 48.3 to 48.7 shall decide all disputed points of order at that meeting.

49 *Election of office bearers and directors*

- 49.1 The Office Bearers must be Councillors and shall be elected by the Council in the manner provided hereunder and shall hold office until the next ensuing election or until their successors in office have been elected or appointed.

- 49.2 Nominations for each office shall be called by the Secretary by notice sent to each Councillor as soon as practicable following the declaration of the election of Councillors to the Council.
- 49.3 Nominations for particular offices shall be advised to the Secretary prior to the conduct of the election, including nominations received from the floor of a Council meeting.
- 49.4 A nominator may withdraw a nomination or a nominee may decline nomination by advising the Secretary.
- 49.5 The election for each office bearer shall be conducted separately in the order set out in rule 48.2, the four remaining directors shall be elected according to rules 49.6 through to 49.15 of this Constitution.
- 49.6 If there are no more nominations for an office than the number of vacancies to be filled the Secretary shall declare the nominee or nominees elected to the office for which they were nominated.
- 49.7 Where candidates exceed the number of vacancies an election shall be held on an elimination basis by secret ballot amongst the Councillors present at the Council meeting.
- 49.8 The Secretary shall prepare the ballot papers and determine the manner in which votes are to be marked thereon.
- 49.9 In the first ballot, the candidate who receives the lowest number of votes cast for each particular office shall be declared to have been eliminated from the ballot by the Secretary.
- 49.10 In the event that, in the first ballot:
- (a) there are more than two candidates; and
 - (b) two candidates equally receive the lowest number of votes cast,
- the Secretary shall hold a further ballot between those two candidates and the candidate who receives the lowest number of votes cast in that ballot shall be declared to have been eliminated from the ballot.
- 49.11 In the event that, in the first ballot:
- (a) there are only two candidates; and
 - (b) the two candidates receive an equal number of votes cast,
- the Secretary shall hold a further ballot between those two candidates and the candidate who receives the lowest number of votes cast in that ballot shall be declared to have been eliminated from the ballot.
- 49.12 In the event that both candidates in the ballot pursuant to rule 49.10 or rule 49.11 receive an equal number of votes cast, the Secretary shall:
- (a) nominate one candidate as a “head” and the other candidate as a “tail”;
 - (b) toss a coin; and

- (c) where the coin lands face up on “heads”, declare the candidate nominated as a “head” to have been eliminated from the ballot; or
 - (d) where the coin lands face up on “tails”, declare the candidate nominated as a “tail” to have been eliminated from the ballot.
- 49.13 If there are two candidates in the first ballot, the candidate who was not declared to have been eliminated shall be declared to have been elected.
- 49.14 If there are more than two candidates in the first ballot, the ballot process shall continue in the same manner referred to in rules 49.10 – 49.14 mutatis mutandis until all but one candidate is declared to have been eliminated, and that one candidate shall be declared to have been elected.
- 49.15 Where a Councillor has been nominated for more than one office then the Secretary shall withdraw Councillor’s nomination for all other offices immediately on the Councillor being declared elected to any office.

50 Directors – appointment and removal

Councillors may appoint other Directors

- 50.1 The provisions of Section 201H of the Act which apply as a replaceable rule are displaced
- 50.2 The Council may appoint a person as a director:
- (a) in order to make up a quorum for a meeting of the Board even if the total number of Directors of the Association is not enough to make up that quorum; or
 - (b) if the person has specific experience or independence that would be beneficial to the Board in fulfilling their duties to the Association.
- 50.3 If a person is appointed by the Council as a Director under clause 50.2, the Association must confirm the appointment by resolution at the Association’s next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the end of the annual general meeting.
- 50.4 A Director appointed under rule 50.2 has all the powers and functions of a Director that is appointed under rule 49.
- 50.5 A Director appointed under rule 50.2 is not a Councillor and does not have the functions or powers associated with being a Councillor unless specifically conferred by a resolution of the Council.

Casual vacancies – office bearers

- 50.6 If a casual vacancy occurs in any of the offices set out in rule 48.2 the Council shall as soon as practicable thereafter appoint a Councillor (including a Director) to fill such casual vacancy. The Council shall determine the method of appointment from time to time.
- 50.7 An officer appointed pursuant to rule 50.6 shall hold office for the period of the unexpired term for which his or her predecessor had been elected or appointed.

Casual vacancies – directors

- 50.8 If a casual vacancy occurs in any of the offices set out in rule 48.1 the Council shall as soon as practicable thereafter appoint a Councillor to fill such casual vacancy. The Council shall determine the method of appointment from time to time.
- 50.9 A Director appointed pursuant to rule 50.8 shall hold office for the period of the unexpired term for which his or her predecessor had been elected or appointed.

Term of Office

- 50.10 Subject to rule 50.12, a Director shall hold office from the end of the annual general meeting following his or her election until the end of the next Election Year AGM.

Resignation of Directors

- 50.11 A Director may resign from office on giving the Secretary notice in writing.

Vacation of office of Director

- 50.12 Each Director will remain in office until his or her office is vacated pursuant to rule 50.13.
- 50.13 The office of a Director is vacated if that Director:
- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (b) resigns the office of Director in accordance with rule 50.11;
 - (c) ceases to be a Member Representative of an Ordinary Member within the particular Division within the National Electorate or other Electorate referred to at rule 37.1 that he or she was appointed to represent;
 - (d) becomes an insolvent under administration (within the meaning of the Act);
 - (e) is absent from 3 consecutive meetings of the Board without the permission of the Board and the Board resolves that his or her office be vacated; or
 - (f) otherwise ceases to be, or becomes prohibited from being, a Director by virtue of the Act.

51 Defects in appointment or qualifications of Director

- 51.1 All acts:
- (a) done at any meeting of the Directors; or
 - (b) by any person acting as a Director, will be as valid as if every such person had been duly appointed and every Director was qualified and entitled to vote;

notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Director or of the person acting or any Director was disqualified or not entitled to vote.

52 Powers of the Directors

- 52.1 The business of the Association is to be managed by or under the direction of the Board.
- 52.2 The Board may exercise all the powers of the Association and do all such acts and things which the Association is authorised or permitted to exercise and do and which are not by this Constitution, the By-Laws or by the Act directed or required to be exercised or done by the Association in general meeting.

53 Remuneration of Directors

Remuneration of Directors

- 53.1 The provisions of Section 202A of the Act which apply as a replaceable rule are displaced.
- 53.2 The Council shall determine the amount of any remuneration payable to any Director other than the Chief Executive Officer.

Payments on retirement, loss of office or death of Director

- 53.3 Subject to the Act, the Directors may give a prescribed benefit including an exempt benefit to a person in connection with the retirement of a person from a prescribed office in relation to the Association.

Remuneration of Directors - payment of expenses

- 53.4 The Association will pay, upon presentation of reasonable substantiation, all reasonable travelling, accommodation and other expenses incurred by a Director in consequence of his or her attendance at meetings of Directors and otherwise in the execution of his or her duties as a Director.

54 Director's contracts with the Association

Director may hold other office of profit

- 54.1 A Director may hold any other office or place of profit in the Association (except that of auditor) in conjunction with the office of Director, on such terms as the Directors arrange. Any Director who is an employee of the Association will be remunerated for their work as an employee by way of fixed salary.

When Director may vote

- 54.2 A Director who has an interest in a matter that is being considered at a meeting of Directors, may be counted in a quorum at that meeting and, provided all requirements under the Act are met, may be present, vote and/or speak to that matter as the balance of the Board may determine.

54.3 No act of the Association is invalid or voidable by reason only of a failure of the Director to comply with a prohibition on voting, whether imposed by the Act or otherwise, in relation to a matter in which the Director is interested.

Director may act in professional capacity

54.4 Subject to the Act:

- (a) any Director may act by himself or herself, or the Ordinary Member of which the Director is the Member Representative may act, in a business capacity for the Association, as the Board may permit from time to time; and
- (b) that Director and the Ordinary Member of which the Director is the Member Representative will be entitled to remuneration for business services as if that Director were not a Director, but nothing in this rule 54.4 authorises a Director or the Ordinary Member of which the Director is the Member Representative to act as an auditor of the Association.

Director may sign or affix seal notwithstanding interest

54.5 Notwithstanding that a Director is interested in a contract or arrangement, that Director may be appointed as the Director to sign on behalf of the Association or in whose presence the Seal of the Association is to be affixed to any instrument to which the interest relates.

Disclosure of interest

54.6 A Director who is in any way, whether directly or indirectly, interested in a matter in which the Association has an interest will declare the nature of the interest at a meeting of the Directors as soon as practicable after the relevant facts have come to the Director's knowledge.

Record of disclosures by Directors

54.7 It is the Secretary's duty to record in the minutes any disclosure given by a Director under rule 54.6.

PART J – MEETINGS OF DIRECTORS

55 *Meetings of Directors*

55.1 The Directors may hold a meeting, adjourn and otherwise regulate their meetings as they think fit.

55.2 The Board may include observers at meetings of the Board and may determine that all or part of a meeting be held in camera. Persons who attend meetings of the Board as observers do so at their own expense.

55.3 The Board, in its absolute discretion, may invite State Association and State Branch Chief Executive Officers to attend Council and Board meetings as observers.

55.4 If State Association and State Branch Chief Executive Officers are invited to either a Council or Board meeting as contemplated by rule 55.3, the Board shall ensure that the relevant Chief Executive Officers receive reasonable notice of that meeting.

56 Quorum for meetings of Directors

- 56.1 The provisions of Section 248F of the Act which apply as a replaceable rule are displaced.
- 56.2 The quorum necessary for the transaction of business shall be four (4) Directors.
- 56.3 A meeting of the Directors during which a quorum is present is competent to exercise all or any of the authorities, powers and discretions under this Constitution and the By-Laws for the time being vested in or exercisable by the Directors generally.
- 56.4 Where a quorum cannot be established for a meeting of Directors (or consideration of a particular matter) for a period of not less than 28 days, a Director may convene a general meeting of Members to deal with the matter or the matters in question.
- 56.5 The Directors do not need to be present in the same place to satisfy the quorum requirement.

57 Notice of meetings of Directors

- 57.1 Notice of every Board meeting must be given to each Director.
- 57.2 Notice of a Board meeting may be given:
 - (a) in writing, by electronic mail to an electronic address or by any Technology; and
 - (b) provided it is in writing, in different ways to different Directors.
- 57.3 If notice of a Board meeting cannot be given to a particular Director in accordance with rule 57.2, written notice served on:
 - (a) the usual residential address of that person;
 - (b) the alternative address of that person notified under the Act; or
 - (c) such other address (including an electronic address) provided to the Association by that person for the purpose of serving notice on that person;will constitute notice to that person of that meeting for the purposes of rule 57.1

58 Meetings by using Technology

- 58.1 Without limiting the discretion of the Directors to regulate their meetings under rule 55.1, the Directors may, if they think fit, confer using any Technology.
- 58.2 Notwithstanding that the Directors are not present together in one place at the time of the conference, a resolution passed by the conference will be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held.
- 58.3 The provisions of this Constitution relating to proceedings of Directors apply to the conference to the extent that they are capable of applying, and with the necessary changes.

- 58.4 A Director present at the commencement of the conference will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the conference.
- 58.5 Any minutes of a conference of the type referred to in rule 58.2 purporting to be signed by the Chairperson of that conference or by the Chairperson of the next succeeding meeting of Directors will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the conference.
- 58.6 When, by the operation of rule 58.2, a resolution is deemed to have been passed at a meeting of the Directors, that meeting will be deemed to have been held at such place as is determined by the Chairperson of the relevant conference, provided that at least one of the Directors who took part in the conference was at that place for the duration of the conference.

59 *Votes at meetings of Directors*

- 59.1 The provisions of Section 248G of the Act which apply as a replaceable rule are displaced.
- 59.2 Motions and resolutions arising at any meeting of the Directors will be decided by a majority of votes of those present at the meeting and each Director has one vote.
- 59.3 Subject to the Act, in case of an equality of votes, the Chairperson of a meeting of Directors will have a casting vote in addition to any vote he or she has in his or her capacity as a Director.

60 *Minutes*

- 60.1 The Directors will cause minutes of:
- (a) all proceedings and resolutions of meetings of Members;
 - (b) all proceedings and resolutions of meetings of the Directors, including meetings of committees of Directors;
 - (c) all resolutions passed by Members without a meeting; and
 - (d) all resolutions passed by the Directors without a meeting of Directors in accordance with this Constitution, to be duly entered in books kept for that purpose in accordance with the Act.

61 *Secretary*

- 61.1 A Secretary or Secretaries will be appointed (and may be removed) by the Directors in accordance with the Act.

62 *Committees*

- 62.1 The Board may, by instrument in writing, delegate to or confer on any one or more Directors, a sub-committee of one (1) or more Ordinary Members, the Chief Executive Officer or any employee or agent of the Association, such of the functions of the Board as are specified in the instrument, other than:
- (a) this power of delegation; or

- (b) a function that is a function imposed on the Board by the Act or by resolution of the Association in general meeting.
- 62.2 A function that has been delegated may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- 62.3 A delegation under this rule may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- 62.4 Notwithstanding any delegation under this rule, the Board may continue to exercise any function delegated.
- 62.5 Any act or thing done in the exercise of a delegation under this rule has the same force and effect as it would have if the Board had done it.
- 62.6 The Board may, by instrument in writing, revoke wholly or in part any delegation under this rule.
- 62.7 The Board may include as a member of any committee any person, regardless of that person having or not having any current or prior relationship with the Association.

63 *Transitional Provisions*

- 63.1 In respect of the election of the first President after the adoption of this Constitution, rule 49.2 shall not apply.
- 63.2 Rules apply to a person who is a Director upon adoption of this Constitution.
- 63.3 The office of a Director whose term was, under the previous constitution, due to expire in either in 2008 or in 2009 is vacated at the end of the first Election Year AGM after the adoption of this Constitution unless it is vacated earlier pursuant to rules 50.11 and 50.13.
- 63.4 A Director whose office is vacated pursuant to rule 63.3 may be nominated as a candidate to take office from the end of the first Election Year AGM after the adoption of this Constitution if he or she is otherwise entitled to be so nominated under this Constitution.

PART K – CHIEF EXECUTIVE OFFICER

64 *Appointment of Chief Executive Officer*

- 64.1 The Board will appoint a person as the Chief Executive Officer:
 - (a) either for a fixed term or without any limitation as to the period for which the person appointed is to hold the office; and
 - (b) subject to this Constitution, on such terms and conditions that the Board determines, including the terms on which the Board will appoint a person as a temporary substitute for the Chief Executive Officer while he or she is absent or unable to act.

65 *Removal, suspension, replacement of absent Chief Executive Officer*

- 65.1 Subject to the provisions of any contract between the Chief Executive Officer and the Association, the Directors may:
- (a) remove or dismiss or suspend the Chief Executive Officer from that office and appoint another in his or her place; or
 - (b) appoint a temporary substitute for the Chief Executive Officer while the Chief Executive Officer is absent or unable to act.

66 *Powers of Chief Executive Officer*

- 66.1 The Directors may entrust to and confer on the Chief Executive Officer such of the powers exercisable under this Constitution or the By-Laws by the Directors as the Directors think fit.
- 66.2 Notwithstanding any provision of this Constitution, the Chief Executive Officer will at all times and in all respects be subject to the control and direction of the Board.

PART L – BRANCHES

67 *Formation of Branches*

- 67.1 Ordinary Members in a particular State or Territory of Australia may, with the consent of the Board, establish a State Branch of the Association in that State or Territory.
- 67.2 There will be no more than one State Branch of the Association in each State or Territory.
- 67.3 An Ordinary Member wishing to establish a State Branch must apply to the Board and provide the following information to it:
- (a) the name of the proposed State Branch; and
 - (b) the names and signed agreement of any Member Representatives or Chief Representatives of any Ordinary Members who are a Private Hospital or Day Hospital in that State or Territory prepared to form an interim Branch Committee.
- 67.4 The Board is not bound to agree to establish the State Branch and is not required to give reasons for its decision.
- 67.5 Where a State Branch is established, each Ordinary Member within the State or Territory of the State Branch is eligible to be a member of that State Branch.

68 *Branch Powers*

- 68.1 A State Branch shall have such powers as may be granted to it by the Board from time to time.

- 68.2 The Board may make conditions for the exercise of the powers it grants a State Branch and the Board may revoke, vary, amend or add to any powers that it grants to a State Branch.

69 *Dissolution of Branch*

- 69.1 The Board may dissolve a State Branch when the Board is satisfied that the State Branch is no longer performing a useful purpose.

PART M – GENERAL

70 *Accounts*

- 70.1 The Association will keep all accounting and other records of the business of the Association as it is required to keep by the Act.

71 *Auditors – appointment and removal*

- 71.1 The auditors of the Association will:
- (a) be appointed and may be removed as provided in the Act; and
 - (b) perform the duties and have the rights and powers as may be provided in the Act.

72 *Records*

- 72.1 The accounting records of the Association and its published audit reports will be open to the inspection of Members.

73 *Officers of Association not to disclose information*

- 73.1 Every Officer, auditor, trustee, agent, or accountant of the Association is bound to observe confidentiality with respect to all transactions of the Association.
- 73.2 If required by the Directors, every such person will, before commencing that person's duties or employment or at any time afterwards, sign and make a declaration in a book to be kept for that purpose that they will not reveal or make known any of the matters, affairs or concerns which may come to their knowledge as Officer, auditor, trustee, agent, or accountant of the Association and whether relating to transactions of the Association with its customers or the state of the account of any individual or to anything else, to any person or persons except:
- (a) in the course and in the performance of their duties; or
 - (b) under compulsion or obligation of law; or
 - (c) when officially required so to do by the Directors or by the auditors for the time being, or by any general meeting of Members.

74 *Winding up*

- 74.1 If on a winding up of the Association there remains a surplus, the liquidator must give or transfer the property comprising that surplus to another organisation with objects which are similar to the objects of the Association as set out in clause 4

and with a constitution which prohibits it from paying or distributing its income and property amongst its members.

75 Indemnities and insurance

Indemnity against liabilities

75.1 To the extent permitted by law, the Association:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been, an Officer or Director of the Association,

against a liability incurred by that person, in his or her capacity as such a Director, Secretary or Officer, to another person (other than the Association or a related body corporate of the Association) provided that the liability does not arise out of conduct involving a lack of good faith.

Indemnity for costs and expenses

75.2 To the extent permitted by law, the Association:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been, an Officer or Director of the Association,

against a liability for costs and expenses incurred by that person:

- (i) in defending any Proceedings in which judgment is given in that person's favour, or in which that person is acquitted; or
- (ii) in connection with an application in relation to any Proceedings in which the Court grants relief to that person under the Act.

Insurance

75.3 To the extent permitted by law and subject to rule 75.4, the Association may pay, or agree to pay, a premium in respect of a contract insuring a person who is, or has been, an officer or director of the Association Officer or director of the Association against a liability:

- (a) incurred by that person:
 - (i) in his or her capacity as an Officer or Director of the Association;
 - (ii) in the course of acting in connection with the affairs of the Association; or
 - (iii) otherwise arising out of the person holding office as an Officer or Director of the Association; and
- (b) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

75.4 Rule 75.3 does not apply where the liability arises out of conduct involving:

- (a) a wilful breach of duty in relation to the Association; or
- (b) a contravention of the Act.

76 *By-Laws*

76.1 Without limiting the general powers conferred on the Board by this Constitution and by the Act, the Board shall have the power to make, alter and repeal all By-Laws necessary, expedient or convenient for the proper conduct and management of the Association and in particular but not exclusively may make such By-Laws to regulate:

- (a) the determination of the number of Beds;
- (b) the form of the application to be a Member;
- (c) the process of seeking written consent to transfer Membership;
- (d) the determination of the amount of the joining fee and the amount of the annual subscription fee; and
- (e) the rules regarding electronic addresses for service for both the Association and the Members.

76.2 Once By-Laws are determined by the Board, the By-Laws must be published and freely available to Members.

76.3 To the extent of any inconsistency between these By-Laws and the Constitution, the provisions of the Constitution prevail.

76.4 The By-Laws shall not be deemed to be inconsistent with the Constitution merely because one shall deal with the same or a related subject more exhaustively than the other.

77 *Use of Technology*

77.1 Where any notice or document is required to be given, sent or served under this Constitution, such notice or document shall be given by electronic mail to the electronic address for service nominated by the Association or the Member(s) (whichever is applicable), or any other method or Technology as the Board may prescribe from time to time.

77.2 If a notice is or document is given, sent or served by:

- (a) pre-paid post to an address within Australia, then it is taken to be received on the second Business Day after the date of its posting;
- (b) pre-paid post to an address outside Australia, then it is taken to be received on the seven Business Day after the date of its posting;
- (c) facsimile or electronic transmission, then it is taken to be received on the next Business Day following its dispatch.

77.3 Where a nomination may be made under this Constitution or the By-Laws, such nominations shall be by electronic mail (or other such method or Technology as the Board may prescribe from time to time) and:

- (a) the Board may prescribe the method by which a nomination form will be considered to be in writing and signed by the nominator and how a nomination form will be considered to be assented to in writing and signed by the nominee and/or Chief Representative (as applicable);
- (b) the Board may prescribe the method by which a completed nomination forms is to be forwarded to the Secretary;

provided that:

- (c) the Board must advise the relevant parties of the prescriptions made in accordance with sub-rules 77.3(a) and (b) within the nomination form.

77.4 All such prescriptions by the Board as to the method of nomination, including how a nomination is deemed to be "signed" shall be made by the Board considering the effect of the provisions of the *Electronic Transactions Act 1999* (Cth) (as amended or replaced from time to time).