



# Constitution

## Australian College of Perioperative Nurses Limited

ACN 071 142 768 | ABN 64 071 142 768

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## Part A – The Company

### 1. Name and type of company

- 1.1 The name of the Company is Australian College of Perioperative Nurses Limited.
- 1.2 The Company is a not-for-profit public company limited by guarantee.
- 1.3 The liability of Members is limited to the guarantee amount in clause 1.4.
- 1.4 Each Member must contribute an amount not more than \$1.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
  - a. debts and liabilities of the Company incurred before the Member stopped being a Member, or
  - b. costs of winding up.

### 2. Definitions and interpretation

- 2.1 In this Constitution unless contrary intention appears:

‘ACNC Act’ means the Australian Charities and Not-for-profits Commission Act 2012 (Cwlth).

‘Board’ means the Board of Directors that is constituted by the individuals who hold office as Directors, from time to time.

‘Board Chair’ means the individual elected or appointed as chair of the Board of Directors in accordance with this Constitution. The Board Chair shall chair a Board meeting as under clause 50.1.

‘Chair’ means the individual appointed to chair:

- a. a general meeting under clause 26, or
- b. a committee meeting under clause 34.

‘Company’ means Australian College of Perioperative Nurses Limited ACN 071 142 768.

‘Constitution’ means this Constitution as amended or supplemented from time to time.

‘Corporations Act’ means the Corporations Act 2001 (Cwlth).

‘Director’ means any individual holding a position of Director of the Company, including the Board Chair, as appointed or elected pursuant to this Constitution.

‘Local Association’ means an association listed in clause 10 or whatever their names may be in the future as a result of any legal name change, provided they remain an association recognised by the Board as representing perioperative nursing in an Australian state or territory.

‘Member’ means a Member of the Company pursuant to Part B – Membership. ‘Objects’ mean the objects of the Company as set out in clause 3.

‘Perioperative Nurse’ means a Registered nurse (Division 1) or Enrolled nurse (Division 2) involved, directly or indirectly, in the provision of care to perioperative patients.

‘Special Resolution’ means a resolution for which notice has been given under clause 22 and that has been passed by at least 75% of the votes cast by Voting Members entitled to vote on the resolution.

‘Voting Member’ means an Ordinary Member, Fellow or Honorary Fellow.

## 2.2 Reading this constitution with the Corporations Act:

- a. The replaceable rules set out in the Corporations Act do not apply to the Company.
- b. While the Company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- c. If the Company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.
- d. A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

## 2.3 The following rules of interpretation apply unless contrary intention appears:

- a. a reference to any legislation or to any provision of any legislation includes any regulations made under it and any statutory modification or replacements thereto for the time being in force
- b. a reference to a clause is a reference to a clause of this Constitution and includes any further embedded content
- c. the word person means a natural person and any company, corporation, association, body or entity whether incorporated or not
- d. the words writing and written means printing, typewriting and all other means of representing or reproducing words in visible form
- e. singular includes plural and vice versa
- f. where a word or phrase is defined, its other grammatical forms have corresponding meaning
- g. headings, bold type and italics are for convenience only and do not affect the interpretation of this Constitution.

### **3. Objects**

- 3.1 The charitable objects for which the Company is established are to:
- a. encourage and promote the pursuit of excellence in the perioperative phase of the surgical experience, for the advancement of the health and welfare of the community
  - b. assist providers of patient care in the perioperative phase of the surgical experience to reach the highest standards of nursing and professional competence, to assist them in the prevention and control of sickness and disease in the community
  - c. set, promote and continually review national 'best practice' standards for perioperative nursing in the community
  - d. provide a central reference point for, and consultancy service on, perioperative policy, procedures and practice, to assist other organisations and industry stakeholders to advance the health and welfare of the community
  - e. encourage and promote research projects relating to perioperative nursing to assist industry participants in the prevention and control of sickness and disease in the community and to increase knowledge and learning in the perioperative nursing field
  - f. promote educational opportunities for perioperative nurses to further their knowledge and skills, and
  - g. pursue other charitable objects that are ancillary or incidental to any of the above.

### **4. Powers**

- 4.1 The Company has the legal capacity and powers of a company set out under section 124(1) of the Corporations Act and may only exercise such powers to:
- a. pursue its Objects, and
  - b. do all things incidental or convenient in relation to the exercise of power under sub-clause (a).

### **5. Application of income and property**

- 5.1 The income and property of the Company will only be applied towards the promotion of the Objects.
- 5.2 The Company must not distribute any surplus, income or assets directly or indirectly to its Members in the form of dividends or distribution of profits.
- 5.3 Clause 5.2 does not prevent the Company from paying a Member:
- a. by way of reimbursement for expenses properly incurred by the Member on behalf of the Company
  - b. in return for any services rendered or goods supplied in the ordinary course of business to the Company
  - c. as a Director in accordance with clause 46, or
  - d. for any other bona fide reason or purpose for the attainment of the Objects.

## Part B – Membership

### 6. Categories of membership

- 6.1 The categories of membership are:
- a. Ordinary Members
  - b. Fellows
  - c. Honorary Fellows
  - d. Local Associations, and
  - e. Affiliate Members.
- 6.2 The Board may create new categories or sub-categories of membership and determine:
- a. the rights attached to being a Member in such categories and sub-categories of membership, and
  - b. the eligibility criteria for such categories and sub-categories of membership.
- 6.3 The Board may re-name the existing categories of members.
- 6.4 The Board may delete a category of membership where no members exist in such category.
- 6.5 The Board may transfer a Member from one category of membership to another category provided the Member either applied for the transfer or consents to the transfer and satisfies the eligibility criteria for the new category.

### 7. Ordinary Members

- 7.1 Any individual who:
- a. is not less than 18 years of age at the date of application, and
  - b. is a Perioperative Nurse in Australia, and
    - i. if a Local Association exists in their state or territory,
    - ii. is a financial or life member of the Local Association, and
    - iii. is entitled to vote at a general meeting of the Local Association
- may apply for Ordinary Membership.
- 7.2 An Ordinary Member is entitled to:
- a. receive notices of and to attend and be heard at any general meeting
  - b. vote at any general meeting, and
  - c. be eligible for election or appointment as a Director.

## **8. Fellows**

- 8.1 Ordinary Members who meet certain criteria published from time to time by the Board may be admitted as Fellows.
- 8.2 The Board is responsible for the conferment of Fellowship as set out in the by-laws.
- 8.3 A Fellow is entitled to:
  - a. receive notices of and to attend and be heard at any general meeting
  - b. vote at any general meeting, and
  - c. be eligible for election or appointment as a Director.

## **9. Honorary Fellows**

- 9.1 Any individual who is not less than 18 years of age at the date of application and who meets certain criteria published from time to time by the Board may be admitted as an Honorary Fellow.
- 9.2 The Board is responsible for the conferment of Honorary Fellowship as set out in the Board Charter.
- 9.3 An Honorary Fellow is entitled to:
  - a. receive notices of and to attend and be heard at any general meeting, and
  - b. vote at any general meeting.

## **10. Local Associations**

- 10.1 A Local Association means each of the associations below:
  - a. New South Wales Operating Theatre Association Inc. (which includes Australian Capital Territory)
  - b. Victorian Perioperative Nurses Group Ltd
  - c. Australian College of Perioperative Nurses Tasmania Inc.
  - d. Australian College of Perioperative Nurses Queensland Inc.
  - e. South Australian Perioperative Nurses Association Inc.
  - f. Australian College of Perioperative Nurses Western Australia Inc., and
  - g. Northern Territory Perioperative Nurses Association Incorporated.
- 10.2 A Local Association:
  - a. is entitled to receive notices of general meetings, but
  - b. is not entitled to attend nor vote at general meetings.



## **11. Affiliate Members**

11.1 Any individual who is:

- a. a non-voting member of a Local Association
  - b. a non-nurse involved directly or indirectly in the provision of care to perioperative patients, or
  - c. an overseas perioperative nurse
- may apply for Affiliate Membership.

11.2 An Affiliate Member:

- a. is entitled to receive notices of and to attend and be heard at any general meeting, but
- b. is not entitled to vote at any general meeting, and
- c. is not eligible to be elected or appointed as a Director other than as an External Director in accordance with clause 41.

## **12. Applications for membership**

12.1 Applications for membership must be made in the form and manner prescribed by the Board from time to time.

12.2 The Board may at its discretion accept or reject an applicant as a Member.

12.3 The Board need give no reason for the rejection of an application.

12.4 The Board may delegate the authority to consider and determine membership applications.

12.5 The Company must notify the applicant of the Board's decision to accept or reject the application for admission to membership in accordance with the procedures determined by the Board from time to time.

12.6 Upon acceptance of an applicant to be a Member, the applicant must pay any subscriptions in accordance with clause 15.1 within a period as determined by the Board. If any such payment is not made then the Board may, in its discretion, cancel its acceptance of the applicant for membership of the Company.

12.7 Subject to clause 12.6, an applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the register of Members.

### **13. Legal effect of Constitution**

13.1 This Constitution constitutes a contract between:

- a. the Company and each Member
- b. the Company and each Director and other Officer, and
- c. each Member and each other Member

under which each person referred to above agrees to comply with and be bound by the provisions of this Constitution so far as they apply to that person.

### **14. Cessation of membership**

14.1 A Member may resign from membership of the Company by giving written notice to the Company.

14.2 The resignation of a Member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

14.3 A Member who is an individual ceases to be a Member:

- a. if membership lapses under clause 15.4
- b. on the death of the Member
- c. if the Member is expelled under clause 16
- d. if the Member is convicted of an indictable offence unless resolved otherwise by the Board, or
- e. in the case of an Ordinary Member and a Local Association exists in their State or Territory - when they no longer meet the requirements of clause 7.1.c).

14.4 A Local Association ceases to be a Member:

- a. if membership lapses under clause 15.4
- b. if it is wound up or is, otherwise dissolved or deregistered, or
- c. if it is expelled under clause 16.

14.5 Any Member who ceases to be a Member:

- a. will not be entitled to any refund or part refund of any membership fee, and
- b. will not be readmitted as a Member until any unpaid monies outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding monies.

## **15. Membership fees**

- 15.1 The Board may from time to time charge fees to Members that may include joining or application fees and annual membership fees. The Board may determine the amounts of such fees for each Member or each category of membership and the time and manner of payment of such fees.
- 15.2 The Board may at its discretion determine that no fee, in full or in part, is payable by a Member or a particular category of membership.
- 15.3 A Member whose annual membership fee is in arrears by more than one month but less than three months ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the Board sees fit.
- 15.4 A Member whose annual membership fee is in arrears by three months or more, ceases to be a Member.

## **16. Disciplining Members**

- 16.1 Disciplinary action may be taken against a Member who, in the opinion of the Board:
  - a. has wilfully refused or neglected to comply with the provisions of this Constitution or the Board Charter, or
  - b. is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interest of the Company.
- 16.2 The Board may establish or delegate to a disciplinary committee that will have the power to:
  - a. investigate any complaints or disciplinary matters about a Member
  - b. determine the outcomes of any investigation or disciplinary hearing, and
  - c. recommend to the Board what penalties to impose, if any, against a Member.
- 16.3 The Board may determine the procedures and rules relating to the disciplining of Members and any appeals process. Any such procedures and rules must be followed by the disciplinary committee in exercising the power under clause 16.2.
- 16.4 Procedural fairness must be applied to any procedures and rules relating to the disciplining of Members and any appeals process. This includes ensuring that the Member:
  - a. is informed of the grounds upon which the disciplinary action is proposed to be taken, and
  - b. has been given an opportunity to be heard in relation to the matter.
- 16.5 The penalties that may be recommended by the disciplinary committee and imposed by the Board include, but are not limited to:
  - a. suspension of the membership rights of the Member for a specified period, or
  - b. expulsion of the Member from the Company.

- 16.6 If the Board determines that the membership should be suspended for a specified period, the Member should be expelled or some other penalty imposed on a Member, the Member must be notified in writing. The Member has 14 days from the time of receipt of such notice to advise the Directors in writing that the Member requires the matter be referred to mediation.
- 16.7 Any penalties imposed by the Board do not take effect until the expiration of the 14 days in clause 16.6 where the Member does not lodge a requirement for mediation. If the Member lodges a requirement for mediation in accordance with clause 16.6, then the penalty does not apply until the Board affirms the penalty under clause 16.12.
- 16.8 If the matter is referred to mediation, then the mediation must be conducted:
- a. in such manner as the Board reasonably determines, and
  - b. in accordance with the rules of procedural fairness.
- 16.9 The mediator:
- a. must be agreed by the parties to the dispute and, if the parties to the dispute do not agree, be a community justice centre that is convenient to the parties
  - b. may be a Member or former Member but must not have a personal interest in the dispute and must not be biased towards or against any party to the dispute, and
  - c. must when conducting the mediation:
    - i. allow the parties involved a reasonable chance to be heard
    - ii. allow the parties involved a reasonable chance to review any written statements
    - iii. ensure the parties involved receive procedural fairness, and
    - iv. not make a decision on the dispute which is for the parties involved to resolve if they can.
- 16.10 Each party to the mediation must pay an equal share of the cost of the mediation.
- 16.11 Nothing in this clause 16 affects the rights of Members in accordance with the law.
- 16.12 Once the mediation is concluded or if the Member gives no advice in writing under clause 16.6 then the Board may decide whether or not to implement the resolution under clause 16.6.
- 16.12 The Board's decision in clause 16.12 is final.

## **17. Rights not transferable**

- 17.1 A right, privilege or obligation which a person has by reason of being a Member:
- a. is not capable of being transferred or transmitted to another person, and
  - b. terminates upon the person ceasing to be a Member.

## **18. Dispute resolution**

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between Members (in their capacity as Members).
- 18.2 Those involved in the dispute must try to resolve it between themselves within 28 days of knowing about it.
- 18.3 If those involved in the dispute do not resolve it under clause 18.2, they must within 28 days:
- a. tell the Board about the dispute in writing;
  - b. agree or request that a mediator be appointed; and
  - c. attempt in good faith to settle the dispute by mediation.
- 18.4 The mediator must be chosen by agreement of those involved, or where those involved do not agree, a person chosen by the Board.
- 18.5 A mediator chosen by the Board under clause 18.4:
- a. may be a Member or former Member of the Company;
  - b. must not have a personal interest in the dispute; and
  - c. must not be biased towards or against anyone involved in the dispute.
- 18.6 When conducting the mediation, the mediator must:
- a. allow those involved a reasonable chance to be heard;
  - b. allow those involved a reasonable chance to review any written statements;
  - c. ensure that those involved are given natural justice; and
  - d. not make a decision on the dispute.

## Part C – General Meetings

### 19. Calling of general meeting

- 19.1 The Board may call a general meeting whenever it sees fit.
- 19.2 A written request to the Company for a general meeting to be held for a proper purpose may be made by Voting Members with at least 10% of the votes that may be cast at a general meeting.
- 19.3 The Board must:
- a. within 21 days of the Members' request in clause 19.2 give all Members notice of a general meeting, and
  - b. hold the general meeting within 2 months of the Members' request.
- 19.4 The percentage of votes that Members have (in clause 19.2) is to be worked out as at midnight (Australian Eastern Time) before the Members request the meeting.
- 19.5 The Members who make the request for a general meeting must:
- a. state in the request any resolution to be proposed at the meeting
  - b. sign the request, and
  - c. give the request to the Company.
- 19.6 Separate copies of a document setting out the request may be signed by the Members if the wording of the request is the same in each copy.

### 20. General meetings called by Members

- 20.1 If the Board does not call the meeting within 21 days of being requested under clause 19.2, 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- 20.2 To call and hold a meeting under clause 20.1, the Members must:
- a. as far as possible, follow the procedures for general meetings set out in this constitution;
  - b. call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Members making the request at no cost; and
  - c. hold the general meeting within 3 months after the request was given to the Company.
- 20.3 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.

## **21. Annual general meetings**

- 21.1 A general meeting called the annual general meeting must be held within 6 months at the end of the Company's financial year.
- 21.2 The business of the annual general meeting may include the following matters even if not referred to in the notice of meeting:
  - a. consideration of the annual financial report, directors' report and any auditor's report;
  - b. election or announcement of Directors; and
  - c. appointment of the auditor, if any.
- 21.3 All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.
- 21.4 The business of the annual general meeting also includes any other business which under this Constitution or the Corporations Act ought to be transacted at an annual general meeting.
- 21.5 If the Company's auditor or the auditor's representative is at the meeting, the Chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## **22. Notice of general meetings**

- 22.1 At least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.
- 22.2 Subject to clause 22.3, notice of a meeting may be provided less than 21 days before the meeting if:
  - a. for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand, or
  - b. for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 22.3 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - a. remove a Director;
  - b. appoint a Director in order to replace a Director who was removed;
  - c. remove an auditor; or
  - d. consider a Special Resolution.
- 22.4 Notice of a general meeting must be given to:
  - a. each Member;
  - b. each Director; and
  - c. the Company's auditor, if any.

22.5 No other person is entitled to receive notice of general meetings.

22.6 A notice of a general meeting must:

- a. set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
- b. state the general nature of the meeting's business;
- c. if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
- d. a statement that Voting Members have the right to appoint proxies and the relevant proxy form.

22.7 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

## **23. Cancellation or postponement of general meeting**

23.1 The Board may cancel or postpone or change the venue of a general meeting (other than a meeting requisitioned by Members) at any time prior to the meeting. The Board must endeavour to notify each person entitled to receive notice of the meeting of the cancellation, postponement or change of venue.

## **24. Technology**

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

24.2 Anyone using this technology is taken to be present in person at the meeting.

## **25. Quorum**

25.1 No business may be transacted at any general meeting unless a quorum of Members is present.

25.2 The quorum for a general meeting is 12 Voting Members entitled to vote being present in person or by proxy, who represent at least 5 States or Territories.

25.3 When determining whether a quorum is present, a person may only be counted once even if that person is a proxy of more than one Voting Member.

25.4 If a quorum is not present within 30 minutes after the time appointed for the meeting:

- a. where the meeting was convened upon the requisition of Members the meeting is dissolved, or
- b. in any other case:
  - i. the meeting stands adjourned to the day, and at the time and place, which the Board determine or, if no determination is made by the Board, to the same day in the next week at the same time and place, and



- ii. if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting the meeting is dissolved.

## **26. Chair for general meetings**

- 26.1 The Board Chair, will be the Chair for each general meeting.
- 26.2 If the Board Chair is not present within 15 minutes after the time appointed for the commencement, or is unable or unwilling to act, the following may chair the meeting (in order of precedence):
  - a. any other Director present who has been appointed as Chair by those other Directors present;
  - b. if none of the Directors are present or are able or willing to act, then a Voting Member present chosen by a majority of the Voting Members present.
- 26.3 Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the Chair of the meeting whose decision is final.

## **27. Adjournment of general meetings**

- 27.1 The Chair may with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 27.2 When a meeting is adjourned for 28 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- 27.3 Except as provided by clause 27.2, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **28. Voting and decisions**

- 28.1 Decisions made at a general meeting shall be determined by a majority of the votes cast by Members eligible to vote at that meeting, except in the case where a Special Resolution is required by law or this Constitution.
- 28.2 If the votes are equal, the motion is not carried.
- 28.3 Each Member entitled to vote will have 1 vote only on a matter, whether on a show of hands or a poll.
- 28.4 A Member will not be entitled to exercise their right to vote if at the time of the meeting, their membership fee is overdue and unpaid pursuant to clause 15.3.
- 28.5 A Member or the Chair may only challenge a person's right to vote at a general meeting at that meeting. If a challenge is made, the Chair must decide whether or not the person may vote. The Chair's decision is final.

- 28.6 At any general meeting a resolution put to the vote at the meeting shall be 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; or
  - b. at least 3 Voting Members present in person or by proxy and entitled to vote on the resolution.
- 28.7 On a show of hands, the Chair's decision is conclusive evidence of the result of the vote. The Chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
- 28.8 If a poll is duly demanded it will be taken when and how the Chair directs unless clause 28.9 applies.
- 28.9 A poll demanded on the election of a Chair or on the question of an adjournment must be taken immediately.
- 28.10 A demand for a poll may be withdrawn.

## **29. Appointment of proxy**

- 29.1 A Member who is entitled to attend and vote at a general meeting may appoint an individual as the Member's proxy to attend and vote for the Member at the meeting.
- 29.2 The proxy must be a Voting Member.
- 29.3 A proxy is entitled to:
- a. to speak at the meeting;
  - b. to vote on a poll (but only to the extent allowed by the appointment); and
  - c. to demand or join in a demand for a poll.
- 29.4 An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:
- a. the Member's name and address;
  - b. the Company's name;
  - c. the proxy's name or the name of the office held by the proxy; and
  - d. the general meeting(s) at which the appointment may be used.
- 29.5 A proxy appointment may be standing (ongoing).
- 29.6 Proxy forms must be received by the Company at the address, facsimile number or electronic mail address specified for the purpose in the notice of meeting or at the Company's registered address at least 48 hours before a meeting.
- 29.7 A proxy does not have the authority to speak and vote for a Member at a general meeting while the Member is at the meeting.

29.8 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:

- a. dies;
- b. is mentally incapacitated;
- c. revokes the proxy's appointment, or
- d. revokes the authority of a representative or agent who appointed the proxy.

29.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **30. Voting by proxy**

30.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a Voting Member appointed as

30.2 When a poll is held, a proxy:

- a. does not need to vote, unless the proxy appointment specifies the way they must vote;
- b. if the way they must vote is specified on the proxy form, must vote that way; and
- c. if the proxy is also a Voting Member entitled to vote or holds more than one proxy, may cast the votes held in different ways.

### **31. Members' resolutions**

31.2 A general meeting must not consider any resolution relating to special business, other than resolutions incidental to the business of the meeting, unless:

- a. the resolution has previously been approved by the Board; or
- b. Voting Members with at least 5% of the votes that may be cast on the resolution have given the Company written notice of the resolution or notice consistent with the requirements of section 249N of the Corporations Act has otherwise been given, and 2 months' notice has elapsed since the notice was given; and
- c. the resolution has been included in the notice of meeting.

### **32. Direct voting**

32.1 The Board may determine that at any general meeting, a Member who is entitled to vote at that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the Board. The Board may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

## Part D – Board of Directors

### 33. Powers of the Board

- 33.1 The business and affairs of the Company is managed by or under the direction of the Directors. The Directors may exercise all powers and do all such things that may be exercised or done by the Company, except for anything which must be exercised by the Company in general meeting as required by the Corporations Act or by this Constitution.
- 33.2 The Board may by resolution make, amend or revoke Board Charter for the purposes of giving effect to any provision of this Constitution or to govern the procedures and activities of the Company. These Board Charter are binding on the Board and the Members.
- 33.3 In exercising any power, the Directors must do so in accordance with any duties and obligations imposed on them by the ACNC Act and Corporations Act and in accordance with the duties imposed by the Corporations Act on directors of companies not registered under the ACNC Act.

### 34. Delegation of powers

- 34.1 The Board may delegate any of its powers and/or functions to one or more committees or any employee of the Company or any other person as the Board thinks fit.
- 34.2 In exercising any powers so delegated, the committee, employee or person must comply with any terms and conditions that may be set by the Board.

### 35. Number of Directors

- 35.1 The Board will comprise the following Directors:
- a. the Board Chair – elected by the Board in accordance with clause 37;
  - b. each Local Association will appoint a Director;
  - c. in a state or territory not represented by a Local Association – the Voting Members in that state or territory may elect a Director;
  - d. a Member Director elected by the Voting Members in accordance with clause 39.2
  - e. up to two (2) External Directors appointed in accordance with clause 41 should the Member Director position be vacant.

### 36. Director eligibility

- 36.1 A person is not eligible to be a Director if they are ineligible to be a director under the Corporations Act or the ACNC Act.
- 36.2 Each Director other than the External Director must be:
- a. a Perioperative Nurse; and
  - b. an Ordinary Member or Fellow of the Company.

### **37. Board Chair**

- 37.1 Prior to the annual general meeting when Directors' terms are due to end, the Directors will elect amongst themselves who will be Board Chair for the following 2 years.
- 37.2 The Board Chair must:
- a. be a Director at the time of nomination as Board Chair;
  - b. be a Perioperative Nurse and an Ordinary Member or Fellow;
  - c. satisfy the eligibility criteria under clause 36.1; and
  - d. have been a Director for a minimum of 2 years within the previous 4 years.
- 37.3 The individual so elected will remain on the Board as Board Chair with their term as Board Chair commencing from the end of the annual general meeting following the election until the end of the second following annual general meeting, but may be re-elected for one further two-year term.

### **38. Local Association appointed Director**

- 38.1 Each Local Association may appoint one of its members as a Director under clause 35.1.b). The Director must satisfy the eligibility criteria under clause 36.
- 38.2 Appointments of a Director must be in writing addressed to the Board and consented to in writing by the appointee.
- 38.2 The Board may prescribe further requirements in the Board Charter with regards to the manner in which Directors are appointed by the Local Associations.

### **39. Elections**

- 39.1 Pursuant to clause 35.1.c), in a State or Territory not represented by a Local Association, the Voting Members in that State or Territory may elect a Director. Such Director:
- a. will be elected by the Voting Members of the Company residing in the relevant State or Territory according to the address recorded in the register of Members; and
  - b. must ordinarily reside in the relevant State or Territory at the time of nomination; and
  - c. must meet the eligibility requirements of clause 36.
- 39.2 Elections will be held prior to each second annual general meeting in accordance with the procedures determined by the Board and set out in the Board Charter.
- 39.3 If the number of nominations exceeds the number of vacancies to be filled, a ballot must be held prior to the annual general meeting, which may include an electronic ballot as determined by the Board.
- 39.4 If insufficient nominations are received to fill the positions under this clause 39:
- a. the candidates nominated shall be declared elected at the annual general meeting following the election; and
  - b. any unfilled positions remaining shall be deemed casual vacancies.

- 39.5 If the number of nominations received is equal to the number of vacancies to be filled, the candidates nominated shall be declared elected at the annual general meeting following the election.

#### **40. Term of office**

- 40.1 In an election year, results of the elections and Directors appointed by the Local Associations will be announced at the annual general meeting. Directors will hold office for a term of approximately 2 years commencing from the end of that annual general meeting until the end of the second following annual general meeting.
- 40.2 An External Director will hold office for a term determined by the Board not exceeding 2 years from the date of appointment, but may be re-appointed subject to clause 40.3.
- 40.3 Subject to clause 40.4, a Director may not serve more than 6 consecutive years as a Director. Upon serving 6 consecutive years, a Director may only stand for re-election or reappointment after a period of at least 2 years following the expiration of their 6th year.
- 40.4 Any time served by a Director as Board Chair will suspend the counting of the 6 years in clause 40.3 but will resume again if after their term(s) as Board Chair the individual remains a Director.

#### **41. External Directors**

- 41.1 The Board may by resolution appoint up to two (2) additional persons as External Directors to serve on the Board at any one time, where appropriate skill, experience or knowledge is sought that complement the existing skills on the Board and to enhance the ability of the Board to discharge its duties and advance the Objects of the Company.
- 41.2 An External Director may be, but is not required to be, a Member.

#### **42. Alternate Directors**

- 42.1 Alternate Directors are not permitted.

#### **43. Casual vacancies**

- 43.1 In the event of a casual vacancy occurring on the Board the vacancy may be filled by:
- a. in the case of the Board Chair, the Board appointing another eligible Director;
  - b. in the case of a Director appointed by a Local Association, the Local Association appointing another eligible individual;
  - c. in the case of a Director elected by a State or Territory not represented by a Local Association, the Board appointing another eligible individual from the relevant State or Territory;
  - d. in the case of the Member Director, the Board appointing another eligible individual
  - e. in the case of an External Director, the Board appointing another eligible individual.
- 43.2 Any individual so appointed to fill a vacancy will hold office for the remainder of the term of that vacancy.

43.3 The Board may act even if there are vacancies on the Board. However, if the number of Directors is reduced below the minimum of 3 Directors, the continuing Directors may act only:

- a. in an emergency; or
- b. for the purposes of appointing additional Directors up to the minimum number; or
- c. to convene a general meeting.

#### **44. When a Director stops being a Director**

44.1 A Director stops being a Director if they:

- a. die;
- b. cease to meet the eligibility criteria under clause 36.2 and are not an External Director;
- c. are a Director appointed by a Local Association under clause 35.1.b) and they cease to be a member of that Local Association;
- d. become bankrupt or makes any arrangement or composition with creditors generally;
- e. become ineligible to be a director under the Corporations Act or the ACNC Act;
- f. resign their office by written notice given to the Company;
- g. are removed from office pursuant to clause 45.1;
- h. become 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;
- i. are absent from three consecutive meetings of the Board without permission of the Board;
- j. are convicted on indictment of an offence and the Board does not resolve to confirm the Director's appointment following the conviction; or
- k. fail to disclose a material personal interest in breach of the law unless at the next meeting of the Board the Board resolves otherwise.

#### **45. Removal of Director**

45.1 Voting Members may by ordinary resolution in a general meeting remove any Director from office in accordance with the Corporations Act.

#### **46. Payments to Directors**

46.1 The Company must not pay fees to a Director for acting as a Director.

46.2 The Company may pay Directors for:

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

46.3 The Company may pay premiums for insurance indemnifying Directors, as allowed by law and this Constitution.



## Part E – Board meetings

### **47. Calling of Board meetings**

- 47.1 The Board will meet for the dispatch of business, adjourn and otherwise regulate its meetings at such place and time as the Board may determine.
- 47.2 The Board Chair or any two (2) or more Directors may at any time, and the Company Secretary must on the request of the President and any two (2) or more Directors, call a Board meeting.

### **48. Notice**

- 48.1 Subject to clause 48.2, Directors will be given at least 7 days' notice of a Board meeting.
- 48.2 In cases of urgency, a meeting can be held without notice being given in accordance with clause 48.1 provided that as much notice as practicable is given to each Director by the quickest means practicable.
- 48.3 Notice may be given orally or in writing and using any technology.

### **49. Quorum**

- 49.1 No business shall be transacted by the Board unless a quorum is present. The quorum for a meeting of the Board shall be a majority (more than 50%) of the number of Directors currently in office.

### **50. Board Chair and Deputy Chair**

- 50.1 At a meeting of the Board, the Board Chair shall preside as Chair. If the Board Chair is absent or unwilling to act, then the Deputy Chair shall preside as Chair at the meeting.
- 50.2 Despite anything in clause 50.1, if the Board Chair later attends a meeting of Directors or is later willing to act then they must take the role of Chair of the meeting.

### **51. Voting and decisions**

- 51.1 Decisions made at a meeting of the Board will be determined by a majority of votes cast by Directors present and eligible to vote at the meeting. Each Director has 1 vote.
- 51.2 In the event of an equality of votes on any question, the motion is not carried and the Chair does not have a second or casting vote.

### **52. Use of technology**

- 52.1 A Board meeting may be held using any technology consented to by all the Directors. The consent may be a standing one.
- 52.2 A Director may only withdraw their consent to the use of technology proposed for a Board meeting if they do so at least 48 hours before the meeting.
- 52.3 A Board meeting held by means of technology is taken to be held at the place where Chair of the meeting is, or at such other place as determined by the Chair of the meeting provided that at least 1 of the Directors involved was at that place for the duration of the meeting.

52.4 A Director who participates in a Board meeting permitted under clause 52.1 is taken to be present at the meeting and is entitled to vote.

### **53. Resolutions made outside of Board meetings**

53.1 The Board may pass a resolution without a Board meeting being held. The resolution may be passed by written or electronic communication.

53.2 The resolution is passed if at least a majority of Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clauses 53.3 or 53.4.

53.3 The Directors may sign a single document setting out the resolution and containing a statement that they agree to the resolution or there may be multiple copies of the same document, each signed by one or more of the Directors.

53.4 The Company may send the proposed resolution by email or other electronic message to the Directors and the Directors may agree to the resolution by sending a reply email or message to that effect, including the text of the resolution in their reply.

53.5 The resolution is taken to be passed when the last Director who constitutes a majority in favour signs or otherwise agrees to the resolution in the manner set out in clauses 53.3 or 53.4.

### **54. Directors' interests**

54.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a resolution made outside of a Board meeting):

- a. to the other Directors; or
- b. if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.

54.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

54.3 Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a resolution made outside of a Board meeting) must not, except as provided under clause 54.4:

- a. be present at the meeting while the matter is being discussed, or
- b. vote on the matter.

54.3 A Director may still be present and vote if:

- a. their interest arises because they are a Member of the Company, and the other Members have the same interest;
- b. their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 65);

- c. their interest relates to a payment by the Company under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the Act;
- d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
- e. the Directors who do not have a material personal interest in the matter pass a resolution that:
  - i. 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
  - ii. says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **55. Validity of acts**

- 55.1 Any act done by the Board is valid and effective despite any defect that may afterwards be discovered in the appointment or qualification of any Director.
- 55.2 A procedural defect in decisions made by the Board will not result in such decisions being invalidated.

## Part F – Records

### **56. Minutes**

56.1 The Board must ensure that minutes are made and kept of:

- a. proceedings and resolutions of meetings of the Company's Members;
- b. proceedings and resolutions of Board meetings (including meetings of a committee of the Board); and
- c. resolutions passed by the Board without a meeting.

56.2 Without limiting clause 56.1, the Board must record in the minute books:

- a. all appointments of officers;
- b. the names of the Directors present at all meetings of the Board and the Company;
- c. in the case of a technology meeting, the nature of the technology; and
- d. each notice and standing notice given by a Director of a material personal interest.

### **57. Registers**

57.1 The Company must keep all registers required by this Constitution and the Corporations Act.

57.2 The registers must be made available as required by the Corporations Act.

### **58. Financial records**

58.1 The Company must keep written financial records that:

- a. correctly record and explain its transactions and financial position and performance;  
and
- b. would enable true and fair financial statements to be prepared and reviewed or audited.

### **59. Inspection of records**

59.1 A Member is not entitled to inspect the financial records or other documents of the Company unless authorised by the Board or the Act.

## Part G – Administration

### **60. Company Secretary**

60.1 There must be at least 1 Company Secretary appointed by the Board on any terms as the Board sees fit. The Board may remove or terminate such appointment subject to law. Any such appointment should require that the individual appointed as Company Secretary undertakes to meet the obligations of an officer in accordance with the Corporations Act.

### **61. Financial year**

61.2 Until such time as the Board otherwise decide, the Company's financial year is the period beginning on 1 January and ending on 31 December of each year.

### **62. Auditor**

62.1 If required by law the Company shall appoint an auditor, whose appointment, removal and duties shall be regulated by relevant sections of the Corporations Act and ACNC Act.

### **63. Alteration of Constitution**

63.1 This Constitution may only be altered by the Voting Members passing a Special Resolution.

### **64. Notices**

64.1 Any notice required to be given to the Company may be given by:

- a. delivering it to the Company's registered office;
- b. posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;
- c. email to the email address nominated by the Company for that purpose;
- d. sending it to the fax number notified by the Company to the Members as the Company's fax number.

64.2 Any notice required to be given to a Member under this Constitution may be given:

- a. in person;
- b. by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the Member for service of notices;
- c. sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
- d. sending it to the fax number nominated by the Member as an alternative address for service of notices (if any); or
- e. if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

64.3 If the Company does not have an address for the Member, the Company is not required to give notice in person.

64.3 A notice:

- a. delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- b. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- c. sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- d. given under clause 64.2.e) is taken to be given on the business day after the notification that the notice is available is sent.

## **65. Indemnity and insurance**

65.1 For the purposes of this clause 65, 'officer' has the same meaning as in the Corporations Act including a person who is or has been a Director or Company Secretary.

65.2 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.

65.3 In clause 65.2, 'to the relevant extent' means:

- a. to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
- b. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

65.5 To the extent permitted by law (including the Corporations Act), and if the Board considers it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

## **66. Seal and execution of documents**

66.1 If the Company has a common seal, the seal shall be kept in the custody of the Company Secretary or their nominee.

66.2 The seal shall not be affixed to any instrument except by authority of the Board and the affixing thereof shall be attested by the signatures of:

- a. 2 Directors; or
- b. a Director and the Company Secretary,

and that attestation is sufficient for all purposes that the seal was affixed by authority of the Board.

66.3 Notwithstanding clauses 66.1 and 66.2, the Company may execute a document without use of the seal or in any other manner as permitted by law.

## **67. Winding Up**

67.1 In the event of the winding up or the dissolution of the Company, the surplus assets of the Company must not be distributed to any Members or former Members unless that Member or former Member is an organisation described in clause 67.2.

67.2 The surplus assets must be given to an organisation that:

- a. has similar objects to the Company and whose constitution requires it to apply its income in promoting those objects;
- b. whose constitution prohibits it from making distributions to its members to at least the same extent as in clause 5; and
- c. if the Company is an endorsed deductible gift recipient just before the winding up of the Company, then such organisation must be one that is endorsed as a deductible gift recipient.

67.3 The organisation to which the surplus assets are to be given is to be determined by the Voting Members at or before the time of winding up, or failing that, by the Board at or before the time of winding up, and failing such determination, by application to a court that has jurisdiction in the matter.

67.4 If the Company has been endorsed as a deductible gift recipient by the Australian Tax Office and the Company maintains accounts or a gift fund pursuant to such endorsement, the Company must on the earlier of the winding up of such accounts or gift fund or of the Company having its deductible gift recipient endorsement revoked, transfer any surplus assets of those accounts or gift fund to another organisation or gift fund which is endorsed as a deductible gift recipient. The organisation to which the assets are to be given is to be determined by the Voting Members, or failing that, by the Board, and failing such determination, by application to a court that has jurisdiction in the matter.