

# Constitution

Effective 13 September 2022

# Constitution

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## TERMS

### 1. Replaceable rules

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#### 1.1 Name of Company

The name of the Company is Brisbane South PHN Ltd.

#### 1.2 Nature

The Company is a public company limited by guarantee.

#### 1.3 Liability of Members

The liability of Members is limited to the Guaranteed Amount.

#### 1.4 Replaceable Rules

The Replaceable Rules do not apply to the Company and are replaced by the rules set out in this Constitution.

### 2. Object

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The Company's object is to do the following:

- (a) Promote the prevention or the control of diseases in people.
- (b) Understand needs, engage and work within the health care system and local communities to improve the health and wellbeing of people.
- (c) Improve the delivery of primary healthcare services to patients by developing integrated and coordinated health services and programs.
- (d) Provide support to clinicians and health service providers to improve their patient care.
- (e) Co-design and commission services and interventions to improve health outcomes and reduce health inequalities.
- (f) Facilitate the implementation and successful performance of primary healthcare initiatives and programs to improve patient care.

### 3. Non-profit nature of the Company

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- (a) The income and property of the Company must only be applied towards the promotion of the object of the Company set out in this Constitution.
- (b) No income or property may be paid or transferred, directly or indirectly, to a Member except for payments to a Member in return for services rendered by or goods supplied by the Member to the Company in the ordinary and usual course of business.

### 4. Membership

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#### 4.1 Number of Members

- (a) At all times, there must be at least one Member.
- (b) The number of Members is unlimited, however the Directors may at any time set a limit on the maximum number of Members.

#### 4.2 Admission to membership

- (a) An applicant that supports the Company's object and is an Eligible Organisation is eligible to apply to become a Member.
- (b) Applications to become a Member must be in writing signed by the

applicant and in such form as the Board determines.

- (c) The Board may in its absolute discretion admit or reject any applicant for membership.
- (d) The Board may fix an application fee (if any) payable by an applicant for membership. The Board may not deal with any application for membership unless any application fee payable in respect of the application has been received by the Company.
- (e) If an application for membership is accepted, then the Secretary must—
  - (i) enter the applicant on the Register, and
  - (ii) confirm the approval of the applicant's membership application by Notice to the applicant.
- (f) If the applicant is not admitted to membership then the Secretary must—
  - (i) notify the applicant in writing of its unsuccessful application, and
  - (ii) return any monies paid by that applicant to the Company directly related to that application.

#### **4.3 Eligible Organisations**

An entity will be an Eligible Organisation if it satisfies the following criteria:

- (a) it is a company registered under the Corporations Act, an incorporated association or other body corporate established or registered under another statute, but does not include a natural person, partnership, trust or unincorporated association
- (b) its role is predominately that of a not-for-profit peak body whose purpose and mission is representative of a section, profession and/or industry which contributes to the object of the Company, and / or
- (c) it has a significant, active and demonstrable interest in primary healthcare in the Region (this does not preclude the Member from being a peak body or equivalent organisation with a national or state-wide focus, or from conducting activities outside of the Region), and
- (d) it is willing to provide advice to the Board in key areas of policy, health reform, and industry and profession related issues which are relevant to the object of the Company.

#### **4.4 Register**

- (a) A register of Members of the Company must be kept in accordance with the Corporations Act.
- (b) Each Member must notify the Secretary of any change to its Registered Address recorded on the register.

#### **4.5 Fees**

Application fees, subscription fees for different classes of membership, sponsorship payments and other periodical payments from Members will be in such amounts and due at such times as the Board determines.

#### **4.6 Classes of Members**

- (a) The Directors may—
  - (i) establish different classes of Members, and
  - (ii) prescribe qualifications, rights and privileges to Members of a class, provided they do not discriminate between individual

Members within a class.

- (b) Current Members as at the date of this Constitution will remain Members of the Company unless or until a Member ceases to be a Member in accordance with clause 4.7.

#### **4.7 Cessation of membership**

A Member ceases to be a Member if—

- (a) the Member resigns by giving a written notice to the Secretary
- (b) a Termination Event occurs in respect of the Member
- (c) any subscription or other fee payable by a Member remains unpaid for a period of six months, or
- (d) the Member is expelled in accordance with clause 4.9.

#### **4.8 Non-payment of subscription or other fees**

If any subscription or other fee of a Member remains unpaid for a period of two months, then the Member will be debarred from all privileges of membership. The Directors may, if they think fit, reinstate the Member upon payment of all arrears.

#### **4.9 Disciplining Members**

- (a) The Board may resolve to warn, suspend or expel a Member from the Company if the Board reasonably believes—
  - (i) the Member has breached this Constitution, or
  - (ii) the Member's behaviour is causing, has caused or is likely to cause harm to the Company.
- (b) If the Board wishes to propose a resolution under clause 4.9, then at least 14 days prior to the date of the proposed Board meeting to consider the resolution, the Secretary must issue a written notice to the Member which includes the following information:
  - (i) The Member has breached the Constitution or the Member's behaviour is causing, has caused or is likely to cause harm to the Company and details of the breach or behaviour (as applicable).
  - (ii) The Board is proposing a resolution to warn, suspend or expel the Member and the exact nature of the resolution.
  - (iii) The resolution will be considered at the next meeting of the Board, and the date of that meeting.
  - (iv) That the Member may provide a statement to the Board, and details of how this may be completed and by when.
- (c) Before the Board passes a resolution under this clause 4.9, the Member must be provided an opportunity to provide a submission regarding their breach of the Constitution or behaviour by—
  - (i) providing a written submission before the Board meeting, or
  - (ii) providing an oral submission by speaking at the Board meeting.
- (d) After considering any explanation under clause 4.9(c), the Board may—

- (i) take no further action
  - (ii) issue the Member with a written warning
  - (iii) suspend the Member's rights as a Member for a period of no more than 12 months
  - (iv) expel the Member
  - (v) refer the decision to an unbiased, independent person on conditions the Board considers appropriate (however, the person can only make a decision the Board could have made under this clause), or
  - (vi) require the matter to be determined at a general meeting of Members.
- (e) The Board cannot fine a Member.
  - (f) The Secretary must give written notice to the Member of the decision under clause 4.9(d) as soon as possible.
  - (g) Disciplinary procedures must be completed as soon as reasonably practical.
  - (h) There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

## **5. Benefits, rights and obligations of Members**

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### **5.1 Right to attend and participate**

In addition to any rights granted pursuant to clause 4.6, each Member of has the right to attend and participate in discussions at a general meeting of the Company.

### **5.2 Variation of rights of Members**

If the membership of the Company is divided into different classes, then the rights attaching to any specific membership class (unless otherwise set out in the terms of application for membership of that class) may, whether or not the Company is being wound up, be varied only by Special Resolution of the relevant membership class.

### **5.3 Obligations**

Members must—

- (a) ensure at all times they are an Eligible Organisation
- (b) be willing to provide advice to the Board in key areas of policy advice, health reform, and industry and profession related issues which are relevant to the objects of the Company
- (c) act in a manner that supports and furthers the Company's object, and
- (d) comply with any other obligations of Members set out in this Constitution.



## 6. Meetings of Members

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### 6.1 Annual general meeting

The Company must hold an annual general meeting in accordance with section 250N of the Corporations Act.

### 6.2 Calling meetings of Members

- (a) A meeting of Members must be convened by the Board as required by the Corporations Act.
- (b) A meeting of Members may be convened at any other time by the Board or a Director.

### 6.3 Notice of meeting

- (a) Subject to the Corporations Act, the following people must receive at least 21 days' written notice of a meeting of Members:
  - (i) Each Member, whether or not the Member is entitled to vote at the meeting.
  - (ii) Each Director.
  - (iii) The Company's auditor.
- (b) The notice of meeting must be in a form which complies with the Corporations Act.
- (c) A notice required to be given under this clause may be given personally, by post or electronic means to each Member's Registered Address.

### 6.4 Postponement or cancellation

- (a) Subject to the requirements in sections 249D(5) and 250N of the Corporations Act, the Board may—
  - (i) postpone a meeting of Members
  - (ii) cancel a meeting of Members, or
  - (iii) change the place for a general meeting.
- (b) If a meeting of Members is postponed or adjourned for one month or more, then the Company must give new notice of the resumed meeting.

### 6.5 Technology

The Company may hold a general meeting of Members at:

- (a) one or more physical venues, or
- (b) one or more physical venues and using virtual technology, or
- (c) using only virtual technology

provided that the Members as a whole are given a reasonable opportunity to participate in the meeting.

### 6.6 Non-receipt

Resolutions passed at a meeting of Members are not void because of—

- (a) an accidental failure to give notice to any person entitled to receive notice, or
- (b) the non-receipt of notice by any person entitled receive notice.

## 7. Proceedings at meetings of Members

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### 7.1 Member present at meeting

If a Member has appointed a proxy or attorney to act at a meeting of Members, then that Member is taken to be present at a meeting at which the proxy or attorney is present.

### 7.2 Quorum

- (a) A quorum must be present at all times during the meeting.
- (b) If the Company has—
  - (i) 10 Members or less, then a quorum for a meeting of Members is the number that represents 50 percent of Members, and
  - (ii) more than 10 Members, then a quorum for a meeting of Members is five Members.

### 7.3 Quorum not present

If a quorum is not present within 30 minutes after the time for which a meeting of Members is due to commence, then—

- (a) the meeting is adjourned to the day, time and place that the Board decides, and
- (b) the Board must provide Members with at least five business days' notice of the adjourned meeting.

### 7.4 Quorum at adjourned meeting

- (a) A quorum at an adjourned meeting is two Members. If a quorum is not present at an adjourned meeting, then—
  - (i) the adjourned meeting is adjourned to the day, time and place the Board decides, and
  - (ii) the Board must provide Members with at least five business days' notice of the second adjourned meeting.
- (b) A quorum at a second adjourned meeting is two Members. If a quorum is not present at a second adjourned meeting, then—
  - (i) the second adjourned meeting is adjourned to the day, time and place the Board decides, and
  - (ii) the Board must provide Members with at least five business days' notice of the third adjourned meeting.
- (c) A quorum at a third adjourned meeting is two Members. If a quorum is not present at the third adjourned meeting, then the meeting is dissolved.

### 7.5 Chairing meetings of Members

- (a) The Director appointed as Chair under clause 13.4 will chair the meetings of Members.
- (b) If the Director appointed to chair the meetings is not present within 15 minutes after the time for which a meeting of Members is due to commence or is not willing to chair the meeting, then the Directors present at the meeting must elect one of their number to chair the meeting.

## 7.6 Chairperson's powers

- (a) The chairperson of a meeting of Members has the sole responsibility to ensure the meeting is conducted in a proper and orderly manner. To ensure the meeting is conducted in such a manner, the chairperson may—
  - (i) terminate any discussion or debate on any matter being considered by the meeting
  - (ii) subject to the Corporations Act, eject a Member from the meeting, or
  - (iii) require the adoption of any procedure which is, in the chairperson's opinion, necessary for—
    - A. proper and orderly debate or discussion, or
    - B. the proper and orderly casting or recording of votes.
- (b) The chairperson may invite a person who is not a Member to attend and to speak at the meeting.
- (c) The chairperson may take any action he or she considers appropriate for the safety of persons attending the meeting and in this regard, may refuse admission to, or require the following people to leave the meeting:
  - (i) People possessing a placard or banner.
  - (ii) People possessing an article considered by the chairperson to be dangerous, offensive or liable to cause disruption.
  - (iii) People who behave or threaten to behave in a dangerous, offensive or disruptive way.

## 7.7 Right to attend meetings of Members

- (a) Every Member has the right to attend all meetings of Members whether or not they are entitled to vote.
- (b) Every Director has the right to attend and speak at all meetings of Members whether or not they are a Member.
- (c) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

## 7.8 Suspension of Member's rights

If a Member is debarred from all privileges of membership in accordance with clause 4.8, then the Member is not entitled to be present, speak or vote at, or be counted in the quorum for, a meeting of Members.

## 7.9 Adjournment

- (a) The chairperson of a meeting of Members at which a quorum is present may adjourn the meeting to another time and place.
- (b) If a meeting is adjourned, then only unfinished business from the original meeting may be considered at the resumed meeting.
- (c) If a meeting is adjourned for 30 days or more, then notice of the adjourned meeting must be given in accordance with clause 6.3.

## 8. Votes of Members

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### 8.1 Voting rights

- (a) Subject to any class rights granted pursuant to clause 4.6, each Member is entitled to one vote.
- (b) Each question submitted to a general meeting is to be decided by a show of hands of the Members present.
- (c) If the person appointed as proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

### 8.2 Casting vote of chairperson

If an equal number of votes are cast for and against a resolution, then the chairperson has a second or casting vote in addition to any votes the chairperson may have as a proxy or attorney.

### 8.3 Decision on right to vote

- (a) A Member or Director may challenge a person's right to vote at a meeting of Members.
- (b) A challenge or any other doubt as to the validity of a vote must be decided by the chairperson at the meeting. The chairperson's decision will be final.

### 8.4 Circulating resolution

- (a) If all the Members entitled to receive notice of a meeting of Members and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, then a resolution in those terms is passed at the time when a simple majority of Members entitled to vote on the resolution, sign the document.
- (b) A written resolution may be passed in counterparts provided each copy of the resolution signed by the Members is identical. For the purposes of this clause, facsimile or electronic message signed by a Member is sufficient.
- (c) A circulating resolution cannot be used—
  - (i) to pass a resolution to remove an auditor, or appoint or remove a Director
  - (ii) to pass a Special Resolution, or
  - (iii) where the Corporations Act or this Constitution requires a general meeting of Members to be held.

## 9. Proxies, attorneys and representatives

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### 9.1 Appointment of proxies

- (a) A Member is entitled to appoint one proxy to attend and act for the Member at a meeting of Members.
- (b) An appointment of proxy must be made by written notice to the Company in a form which complies with the Corporations Act and is signed or acknowledged by the Member.
- (c) A proxy need not be a Member entitled in their own right to vote.

- (d) The document appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the registered office of the Company, faxed to the registered office of the Company or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Board may decide and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting at which the person named in the document proposes to vote.
- (e) No document appointing a proxy is, except as set out in this clause, valid after the expiration of 12 months after the date of its execution. Any Member may deposit at the registered office of the Company a document duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

## **9.2 Member's attorney**

A Member may appoint an attorney to act at a meeting of Members.

## **9.3 Corporate representatives**

In accordance with section 250D of the Corporations Act, a body corporate Member may appoint an individual to act as its representative at meetings of Members.

## **9.4 Notification of appointment**

- (a) An appointment of a proxy, attorney or representative will be effective 48 hours after the Company receives evidence of the appointment.
- (b) For the purposes of this clause, the following documents will constitute evidence of the appointment:
  - (i) An original proxy form executed by the Member (or a certified copy of the original).
  - (ii) An original power of attorney (or a certified copy of the original).
  - (iii) A certified copy of the appointment of a corporate representative (such appointment must be in accordance with the provisions of the Corporations Act).

## **9.5 Standing appointments of proxies**

- (a) A Member may make a standing appointment.
- (b) If a Member wishes to revoke a standing appointment, then the Member must send the Company a written notice of revocation of appointment.

## **9.6 Suspension of proxy or attorney's powers**

A proxy or attorney has no power to act for a Member at a meeting at which the Member is present.

## **9.7 Board to issue forms of proxy**

- (a) The Board may issue with any notice of general meeting of Members or any class of Members, forms of proxy for use by the Members.
- (b) Each form must enable the Member to write in the proxy's name. It may provide that if the Member leaves this blank, the proxy is to be a person named on the form.
- (c) The form may include the names of any of the Directors, or of any other person, as a suggested proxy.

- (d) The forms must allow the Member to direct the proxy to vote for or against (or abstain from voting on) any proposed resolution.

## 10. Directors

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### 10.1 Number of Directors

- (a) The Company must have a minimum of three Directors and a maximum of nine Directors unless otherwise determined by the Board from time to time.
- (b) If the number of Directors at any time falls below the minimum number required by clause 10.1(a), then the Board may only act—
  - (i) to appoint new Directors so the Company has the minimum number of Directors required by clause 10.1(a)
  - (ii) to convene a meeting of Members, or
  - (iii) in emergencies.
- (c) The Board includes a Chair appointed in accordance with clause.13.4

### 10.2 Qualification for membership of the Board

- (a) All Directors must be natural persons and must not be prohibited from acting as a director under the Corporations Act or the ACNC Act.
- (b) Directors who are appointed by the Board under clause 10.3(a) must—
  - (i) in the reasonable opinion of the Board, understand and possess a genuine desire to carry out the objects of the Company in accordance with clause 2, and
  - (ii) have appropriate competencies, skills and experience having regard to the Skills Matrix.

### 10.3 Appointment, resignation and reappointment of Directors

- (a) To the extent permitted by the Corporations Act, and subject to the maximum number of Directors determined by the Board under clause 10.1(a) not being exceeded, Directors will be elected by an ordinary resolution of a general meeting of the Company.
- (b) At each annual general meeting:
  - (i) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
  - (ii) at least one-third of the remaining directors must retire.
- (c) The directors who must retire at each annual general meeting under clause 10.3(b)(ii) will be the directors who have been longest in office since last being elected. Where two or more directors were elected on the same day, the director(s) who must retire will be decided by a ballot of the Board unless the Board agrees otherwise.
- (d) Other than a director appointed under clause 10.6, a director's term of office starts at the end of the general meeting at which they are elected and ends at the end of the general meeting at which they retire.
- (e) Each director must retire at least once every three years.
- (f) A director who retires under clause 10.3(b)(ii) may nominate for election or re-election, subject to clause 10.3(g).
- (g) A director who has held office for a continuous period of nine years

must retire, and may only be re-appointed or re-elected:

- (i) by a special resolution; and
  - (ii) for a term no longer than one year.
- (h) If Members do not approve the appointment of a candidate nominated as a Director, or a Director ceases to be a Director in accordance with clause 10.5, then—
- (i) the Board may fill that vacancy in accordance with clause 10.6, and
  - (ii) subject to clauses 10.4(b) and 10.4(c), the Board may call an extraordinary general meeting of Members to appoint a new candidate as a Director, and
  - (iii) Members may not substitute their own preferred candidate for appointment to the Board where the candidate has not been recommended to the Members by the Board.

#### **10.4 Nominations Committee**

The Nominations Committee will—

- (a) nominate the number of candidates for election as Directors equal to the number of vacancies. The Board will determine which candidates it recommends for election by the Members at an annual general meeting
- (b) only nominate candidates who meet the criteria set out in clause 10.2(b), and
- (c) provide written notice of the nominated candidates to the Secretary at least 60 days prior to each annual general meeting.

#### **10.5 Cessation of Director's appointment**

A person automatically ceases to be a Director if the person—

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) or the ACNC Act to be a Director
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company pursuant to sections 206F or 206G of the Corporations Act
- (c) becomes of unsound mind
- (d) is physically or mentally incapable of acting as Director of the Company
- (e) fails to attend three consecutive Board meetings without first obtaining a leave of absence from the Board
- (f) resigns by notice in writing delivered to the Secretary
- (g) is removed from office, or
- (h) if the person was appointed to the office for a specified period, then on expiration of that period.

## 10.6 Casual vacancies

- (a) The Board has power to appoint a qualified person as a Director to fill a casual vacancy among the Board.
- (b) Any person appointed under this clause holds office until the next general meeting when an election must be held to fill the vacancy. Any person appointed to fill a casual vacancy under this clause is eligible for election at that general meeting.

## 10.7 Transitional

- (a) This constitution supersedes the constitution in force immediately before the adoption of this constitution.
- (b) Everything done under any previous constitution of the company continues to have the same operation and effect after the adoption of this constitution as if properly done under this constitution. In particular (without limitation):
  - i. every director, alternate director and secretary in office immediately before the adoption of this constitution is taken to have been appointed and continues in office under this constitution; and
  - ii. every member listed on the register of members immediately before the adoption of this constitution continues to be a member under this constitution.

## 11. Duties of Directors

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### 11.1 ACNC Governance Standards

The Directors must comply with their common law duties, duties imposed on Directors under the Corporations Act, the ACNC Act. In addition, the Directors must comply with Governance Standard 5 which prescribes the following duties:

- (a) To exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company
- (b) To act in good faith in the best interests of the Company and to further the objects of the Company described in clause 2 of this Constitution.
- (c) Not to misuse their position as a Director.
- (d) Not to misuse information they gain in their role as a Director
- (e) To disclose any perceived or actual material conflicts of interest in the manner set out in clause 11.2.
- (f) To ensure that the financial affairs of the Company are managed responsibly.
- (g) Not to allow the Company to operate while it is insolvent.

### 11.2 Conflicts of interest

- (a) 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 meeting of Directors (or that is proposed in a circulating resolution)—
  - (i) to the other Directors, or
  - (ii) if all of the Directors have the same conflict of interest, to the Members at the next general meeting of the Company, or at an earlier time if reasonable to do so.



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- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circulating resolution) must not, except as provided under clause 11.2(d)—
  - (i) receive Board papers on the matter
  - (ii) be present at the meeting while the matter is being discussed, or
  - (iii) vote on the matter.
- (d) A Director may still be present and vote in the circumstances set out in the Corporations Act.

## 12. The Board

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### 12.1 ACNC Governance Standards

The Board must ensure the Company complies with the ACNC Governance Standards at all times.

### 12.2 Powers generally

- (a) The management and control of the business and affairs of the Company are vested in the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers and do all things within the power of the Company.

### 12.3 Power of attorney

The Board may, from time to time, by power of attorney, appoint any corporation, firm, or person or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (but not exceeding those vested in or exercisable by the Board under this Constitution) and for such period and subject to such conditions as it thinks fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board thinks fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### 12.4 Related party transactions

The Company must not enter into a related party transaction, unless it complies with the requirement to obtain Member approval, or the transaction falls within one of the exceptions, under Chapter 2E of the Corporations Act, and the Department's consent is also obtained.

## 13. Proceedings of the Board

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### 13.1 Convening Board meetings

A Board meeting is to be convened when there is a written request to the Chair from any three Directors to do so.

### 13.2 Notice

- (a) The Secretary (or convenor of the meeting) must give each Director who is in Australia at least 72 hours' notice of each Board meeting.
- (b) Notice under this clause may be given orally or in writing.
- (c) The failure to give a notice to a Director or the non-receipt of a notice by a Director will not void any decisions made at a Board meeting where a Director was not present because that Director did not receive notice of the meeting.

### 13.3 Use of technology

- (a) A Board meeting may be held using any technology which enables each Director participating to hear and be heard by each other Director.
- (b) A Board meeting held solely or partly by technology is treated as being held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairperson of the meeting is located.

## **13.4 Chairing Board meetings**

- (a) At the first Board meeting following each annual general meeting of the Company, the Board must elect a Director to chair its meetings for the period until the first Board meeting following the next annual general meeting.
- (b) If the elected chairperson is not present within 15 minutes after the time for which a Board meeting is called or is otherwise unwilling to act as chairperson, then the Directors present must elect a Director present to chair the meeting.
- (c) The Board may by resolution remove the Chair at any time and appoint another Director to act as chair.
- (d) The Board may elect, by simple majority of Directors present, a Director as Deputy Chair to chair Board meetings in the appointed Chair's absence.
- (e) The Board may remove, by resolution, the Deputy Chair at any time and appoint another Director as Deputy Chair.

## **13.5 Quorum**

- (a) A quorum must be present for the whole meeting.
- (b) Unless the Board decides otherwise, the quorum for a Board meeting is the number of Directors equal to one half of the Directors holding office plus one.
- (c) A Director is treated as present at a meeting held by means of technology provided the Director is able to hear and be heard by all others attending.

## **13.6 Resolutions**

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.
- (b) If an equal number of votes is cast for and against a resolution, then the chairperson has a second or casting vote.
- (c) If the chairperson is not entitled to vote on the resolution, then there will be no casting vote and the Board will be deemed to have voted against the resolution.

## **13.7 Circulating resolutions**

- (a) If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, then a Board resolution in those terms is passed at the time when the last Director signs the document.
- (b) A written resolution may be passed in counterparts provided each copy of the resolution signed by the Directors is identical. For the purposes of this clause, facsimile or electronic message signed by a Director is sufficient.

## **13.8 Valid proceedings**

Each resolution passed by a person acting as a Director or member of a committee is valid even if it is later discovered that there was a defect in the appointment of the person or that the person was disqualified from voting on the resolution.

## **13.9 Delegation of powers to Committees**

- (a) The Board may, subject to the law, delegate any of its powers to Committees consisting of one or more Directors or any other person the Board thinks fit.
- (b) A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (c) The Board must establish a Nominations Committee comprised of Directors only. The purpose of the Nominations Committee is to—
  - (i) in consultation with the Board, review the Skills Matrix and ensure it reflects the object of the Company from time to time
  - (ii) evaluate applications for prospective Directors, and
  - (iii) nominate candidates to the Board to consider for election as Directors by the Members.

## **13.10 Proceedings of Committees**

- (a) Committee proceedings are governed by the proceedings in this Constitution that apply to meetings and proceedings of the Board.
- (b) A Committee must follow instructions imposed by the Board.
- (c) A Committee is under the control and direction of the Board and has no power in the management of the Company.

## **13.11 Validity of acts**

Acts of the Board, a Committee or a Director, even if it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or that any of them were disqualified, are valid as if each person was duly appointed and qualified, and continued to be a Director or a member of the Committee (as the case may be).

## **14. Directors' remuneration**

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### **14.1 Fees**

The Directors must be paid a reasonable fee for their services determined from time to time by the Members in a general meeting.

### **14.2 Additional remuneration for extra services**

If a Director is asked by the Board to perform additional services on behalf of the Company, then the Company may pay that Director an additional sum which the Board determines is appropriate for the performance of the services.

### **14.3 Expenses**

The Company may pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director—

- (a) in attending meetings of the Company, the Board, or a committee of the Board, or
- (b) in carrying out duties as a Director.

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## **15. Chief Executive Officer**

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- (a) The Board may from time to time appoint a person to the position of Chief Executive Officer for the period and on the terms (including remuneration) determined by the Board.
- (b) The Chief Executive Officer cannot be a Director for the period he or she is the Chief Executive Officer.
- (c) Subject to the law, the Board may terminate the appointment of the Chief Executive Officer.

## **16. Secretary**

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- (a) The Company must have at least one secretary who resides in Australia
- (b) The Board may appoint one or more secretaries and may terminate the appointment of the secretary at any time.
- (c) The Secretary holds office on the terms and conditions the Board decides.

## **17. Minutes**

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### **17.1 Contents of minutes**

The Board must ensure that minutes of meetings are duly recorded in any manner it thinks fit and include—

- (a) the names of the Directors present at each meeting of the Company, the Board and of Committees, and
- (b) details of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and Committees.

### **17.2 Signing of minutes**

The minutes of a meeting of the Board, of a Committee or of the Company, if signed by the Chair of the meeting or by the Chair of the next meeting, are prima facie evidence of the matters stated in the minutes.

## **18. Financial records**

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### **18.1 Financial year**

The Company's financial year commences on 1 July and ends on 30 June unless the Board resolves to change the Company's financial year.

### **18.2 Keeping of financial records**

- (a) The Board must cause proper books and financial records to be kept in accordance with the Corporations Act.
- (b) The financial records of the Company must be kept—
- (c) in such manner as to enable them to be conveniently and properly audited
- (d) for a period of seven years after the completion of the transactions or operations to which they relate, and
- (e) at the Company's registered office or at such other place as the Directors think fit.
- (f) The financial records must at all times be open to inspection by the Directors.
- (g) To the extent required by the Corporations Act, the Board must cause the Company to—
- (h) notify each Member of the Member's right to receive reports from the Company, and

- (i) provide Members with reports, in a form and within the time required by the Corporations Act.

### **18.3 Appointment of auditor**

- (a) The Company must appoint a qualified auditor.
- (b) The auditor's duties must be regulated in accordance with the Corporations Act.
- (c) No Member may be appointed to act as the Company's auditor.

### **18.4 Inspection of records of the Company**

- (a) The Board may decide whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection by Members other than the Board.
- (b) No Member other than a Director has the right to inspect any document of the Company except as set out in the Corporations Act or as authorised by the Board.

## **19. Notices**

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### **19.1 Form of notices**

Notices given under this Constitution must be—

- (a) in writing
- (b) signed by the party giving the notice or its authorised representative
- (c) if being given to a Member, then addressed to the Registered Address recorded in the Register (or the alternate address, if any) of the Member person to whom it is to be given
- (d) if being given to the Company, then addressed to the registered office of the Company
- (e) if being given to a Director, then addressed to the Director's address recorded in ASIC's public register, or such other address the Directors has notified to the Company, and
- (f) in the English language and legible.

### **19.2 Delivery by hand or electronic means**

If, after 8.30am and before 5.00pm local time on a Business Day in the place of delivery, a party delivers a notice by hand or by electronic means, then the notice will be taken as given on the day of delivery or transmission. If delivery is made before 8.30am, but after 12.00am on that same day, then the delivery is taken to have occurred at 8.30am on that day so long as it is a Business Day. If any delivery is made after 5.00pm on the Business Day, then delivery is taken to have occurred on the next Business Day.

### **19.3 Notices by post**

If a party gives notice by post, then the notice will be taken as given on the sixth Business Day after the notice is posted.

## 20. Indemnity and insurance

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### 20.1 Indemnity

- (a) The Company must indemnify, to the maximum extent permitted by the Corporations Act, every person who is or has been an Officer of the Company against all losses or liabilities (including any claim, action, suit, proceeding, investigation, inquiry, damage, cost or expense) incurred by the person as an Officer of the Company, including a liability for negligence or for legal costs on a full indemnity basis.
- (b) The indemnity in clause 20.1(a)—
  - (i) is a continuing obligation and is enforceable by a person to whom clause 20.1(a) applies even though that person may have ceased to be an Officer of the Company
  - (ii) operates only to the extent the loss or liability is not covered by insurance, and
  - (iii) is enforceable without the person to whom clause 20.1(a) applies first having to incur any expense or make any payment.
- (c) The Company may indemnify, to the extent permitted by the Corporations Act, its auditor against liability incurred as a result of the auditor's appointment or nomination by the Company, unless the liability arises out of conduct involving a lack of good faith.
- (d) The Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer, employee or auditor in defending an action for a liability incurred by that person whilst acting in their capacity as an Officer, employee or auditor of the Company.

### 20.2 Insurance

Subject to the Corporations Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

## 21. Winding up

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### 21.1 No distribution of profits to Members on winding up

- (a) Where property remains after the winding-up or dissolution of the Company, and satisfaction of all its debts and liabilities, that property must not be distributed among the Members.
- (b) If any property remains following the winding up of the Company, then the property must be given or transferred to an income tax exempt corporation, association or entity—
  - (i) which has objects similar to the objects of the Company, and
  - (ii) whose constitution requires it to apply its profits (if any) or other income in promoting its objects and has a prohibition on distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution.
- (c) If such a corporation, association or entity cannot be identified, then the surplus property of the Company must be given or transferred to a tax exempt charitable organisation.

- (d) The corporation, association or entity which receives any property under clauses 21.1(b) or 21.1(c) must be determined by the Directors at or before the time of dissolution.

## **21.2 Limited liability on winding up**

- (a) The liability of the Members is limited.
- (b) If the Company is wound up while a person is a Member, or within one year after the person ceases to be a Member, the person must contribute to the property of the Company for—
  - (i) payment of the debts and liabilities of the Company contracted before the person ceased to be a Member
  - (ii) the costs, charges and expenses of winding up, and
  - (iii) the adjustment of the rights of the contributors among themselves.
- (c) The maximum liability of each Member under clause 21.2(b) is the Guaranteed Amount.



# Constitution

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This Constitution is effective on and from the 13<sup>th</sup> day of September 2022 being the date its adoption was approved by Special Resolution.

# Constitution

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## Schedule 1—Dictionary

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ACNC Act	The Australian Charities and Not-for-profits Commission Act 2012 (Cth) as amended from time to time together with the ACNC Regulations.
ACNC Governance Standards	The governance standards prescribed by the ACNC Regulations.
ACNC Regulations	The Australian Charities and Not-for-profits Commission Regulation 2013 (Cth).
ASIC	The Australian Securities and Investments Commission.
Board	The board of directors of the Company.
Business Day	Any day other than a Saturday, Sunday or public holiday in Brisbane.
Committee	A committee to which powers have been delegated by the Board under clause 13.9.
Company	Brisbane South PHN Ltd ACN 151 707 765.
Constitution	This document including all of its annexures, schedules and recitals and as amended from time to time.
Corporations Act	The Corporations Act 2001 (Cth) as amended from time to time together with the Corporations Regulations 2001 (Cth).
Director	A person who is, for the time being, a director of the Company.
Eligible Organisation	An entity that meets the criteria set out in clause 4.3.
Guaranteed Amount	\$10.
Insolvency Event	In relation to a Member, means any of the following events: <ul style="list-style-type: none"><li>(a) An application is made to a court for an order, or an order is made appointing a liquidator or provisional liquidator (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things).</li><li>(b) Proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Member or an order is made or any effective resolution is passed for the winding up of the Member.</li><li>(c) The Member enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any class of its creditors.</li></ul>

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	<p>(d) A controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of or the Member.</p> <p>(e) The Member is or is deemed or presumed by law or a court to be insolvent.</p> <p>(f) The Member takes any step to obtain protection or are granted protection from their creditors under any applicable legislation or an administrator is appointed to the Member.</p> <p>(g) Anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the Member under the law of any applicable jurisdiction.</p>
Member	Any person who becomes a member of the Company under the Corporations Act or this Constitution.
Nominations Committee	A committee established by the Board to identify appropriate individuals for appointment or election as Directors (as the case may be) in accordance with this Constitution.
Officer	<p>For the purposes of clause 20, means a director or Secretary of the Company or a person—</p> <p>(a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company</p> <p>(b) who has the capacity to affect significantly the Company's financial standing, or</p> <p>(c) under whose instructions or wishes the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Board or the Company).</p>
Region	The applicable geographic region in which the Company conducts its core activities, as may be determined by the Board from time to time.
Register	The register of Members established under the Corporations Act.
Registered Address	The address of the Member specified in the Register or another address notified by the Member to the Company as the place they will accept service of notices.

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Replaceable Rules	The replaceable rules under the Corporations Act and includes any replaceable rules that become or may become a provision of the Corporations Act.
Secretary	A person appointed as a secretary of the Company in accordance with this Constitution.
Skills Matrix	Any matrix of competencies, skills and/or experience (or equivalent document) adopted by the Nominations Committee from time to time that specifies the desired range of competencies, skills and/or experience to be demonstrated by the Directors and the Board for the time being, taking into account the Company's needs and objectives and other relevant matters at the time.
Special Resolution	A resolution passed by at least 75 percent of the votes cast by those Members entitled to vote on the resolution.
Termination Event	In relation to a Member, means— <ul style="list-style-type: none"><li>(a) the deregistration or dissolution of the Member</li><li>(b) an Insolvency Event occurs in respect of the Member, or</li><li>(c) a Member ceases to be an Eligible Organisation.</li></ul>

## Schedule 2—Rules for interpretation

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In this Constitution unless the context indicates a contrary intention—

- (a) words denoting any gender include both genders
- (b) the singular number includes the plural and vice versa
- (c) references to any legislation includes any legislation which amends or replaces that legislation and any subordinate legislation
- (d) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns
- (e) a person includes companies and corporations and vice versa
- (f) except in the dictionary, headings do not affect the interpretation of this Constitution
- (g) the construction least favourable to the party responsible for drafting the Constitution will not be adopted against that party merely because that party put forward the first draft of this Constitution
- (h) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause
- (i) amounts of money are expressed in Australian dollars unless otherwise expressly stated
- (j) a reference to a document includes any variation or replacement of it
- (k) a reference to anything includes the whole or each part of it
- (l) words defined in the Corporations Act have the same meaning when used in this Constitution except where the context otherwise requires
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, then the obligation must be performed or the event must occur on or by the next Business Day
- (n) where time is to be calculated by reference to a day or event, then that day or event is excluded
- (o) the defined terms in Schedule 1 have the meaning given them in that schedule except where the context otherwise requires, and
- (p) specifying anything in this Constitution after the words 'includes' or 'for example' or similar expressions does not limit what else is included.