

Constitution of St Vincent's Hospital (Melbourne) Limited ACN 052 110 755

1. DEFINITIONS & INTERPRETATION

1.1 Replaceable Rules

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this constitution.

1.2 Definitions

The following definitions apply in this constitution:

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

Board means the board of Directors of the Company.

Chief Executive Officer means the most senior executive officer of the Company responsible for the conduct of the Hospital under the Health Legislation, with such powers exercisable by that role pursuant to any delegation, position, description, terms or conditions which the Board determines.

Company means St Vincent's Hospital (Melbourne) Limited.

Conditions of Funding means any standard condition of funding or any terms and conditions imposed by the Department on any grant, subsidy or other financial assistance given to the Health Facilities from money administered by the Department.

Department means the State Government department or departments relevant to the administration of the health and hospital system in Victoria, being at the date of this document, the Department of Human Services, Victoria.

Delegations means the delegations of authority for the corporate group of St Vincent's Health Australia approved by the Board and the Trustees and as amended from time to time.

Director means a person appointed to that position by the members.

Formation means any activities, interactions, experiences or learning that assists an individual to understand his/her vocation in life and the call to serve in the mission of the Catholic Church within the context of the specific works conducted by Mary Aikenhead Ministries.

Electoral College means the Electoral College established under rule 10.4.

Health Facilities means the Hospital together with any other hospitals, aged care facilities or health care facilities or services which the Trustees consent to being Health Facilities conducted by the Company as part of the St Vincent's Health Australia group.

Health Legislation means legislation of the State of Victoria from time to time regulating conduct of the Health Facilities.

Health Service means the St Vincent's Health Australia group, comprising all of the health and aged care facilities in Australia from time to time under the care of Mary Aikenhead Ministries.

Hospital means St Vincent's Hospital Melbourne, Victoria.

Insolvency Event means an event by which a person:

- (a) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (b) is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (c) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (d) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
- (e) is or applies to be protected from any of its creditors under any applicable legislation, or
- (f) has anything similar to any of the events in paragraphs (a) to (e) happen to it under the law of any applicable jurisdiction.

Mary Aikenhead Ministries means the public juridic person of that name in the Catholic Church.

Material Personal Interest means an interest in the affairs of the Company as described under rule 12.2(a).

Members means the members of this company.

Quality Assurance Committee means a committee appointed by the Board in accordance with rule 10.1(d) having functions including the assessment and evaluation of the quality of health services provided by the Company including the review of clinical practices or clinical competencies of persons providing those services.

Secretary means any person appointed to perform the duties of a Secretary of the Company.

Sister of Charity means a member of the Congregation of the Religious Sisters of Charity of Australia.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

TMAM means Trustees of Mary Aikenhead Ministries a Body Corporate pursuant to the provisions of the *Roman Catholic Church Communities' Lands Act 1942* (NSW).

Trustees means the governing trustees of Mary Aikenhead Ministries.

1.3 Interpretation

The following rules apply in interpreting this document:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) words or expressions defined in the Act have those meanings;
- (d) Except so far as the contrary intention appears in this constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) headings are for convenience only, and do not affect interpretation, and
- (f) a reference to:
 - (i) a party includes its administrators, successors, substitutes by novation and assigns;
 - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
 - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity, and
 - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented. replaced or novated.

2. NAME & STRUCTURE

2.1 Name of the Company

The name of the Company is St Vincent's Hospital (Melbourne) Limited.

2.2 Company limited by guarantee

The Company is limited by guarantee and the liability of the members is limited as provided in this document.

3. OBJECTS

The Company has the following objects:

- (a) to undertake the management and control of the Hospital and any other Health Facilities from time to time under its control;
- (b) to create, conduct and promote the development of the Health Facilities in accordance with the Mary Aikenhead Ministries Ethical Framework and the provisions of the Health Legislation;
- (c) to carry on or assist in the carrying on and promotion of the public benevolent and other charitable activities of Mary Aikenhead Ministries in connection with health and aged care and related services;
- (d) to conduct all of its activities in conformity with canon law and as part of the health care ministry of the Catholic Church and in strict conformity with the Mary Aikenhead Ministries Ethical Framework in fidelity to the teachings and example of Christ and the teaching of the Catholic Church, as determined from time to time by the Trustees;
- (e) to provide pastoral care service for the spiritual care and support of patients and staff of the Health Facilities, and relatives of patients;
- (f) to assist patients in obtaining appropriate medical and surgical services;
- (g) to continually evaluate, review and monitor the services and quality of care provided by the Health Facilities, to its patients and to rationalise services where appropriate with other institutions and by other means;
- (h) to enter into a revised agreement from time to time as the Company sees fit between the Company and the University of Melbourne setting out the conditions of recognition of the Hospital as a General Clinical School by the University of Melbourne and containing the Electoral College rules of procedure;
- (i) to provide education for undergraduate and post-graduate medical students, nursing and allied health personnel in conjunction with appropriate educational institutions;
- (j) to promote programmes and to provide a working environment for staff development and appraisal by means of teaching, continuing education, training activities and other means;
- (k) to provide education, counselling and support services in respect of the housing needs of the aged and infirm;
- (l) to foster medical research provided the research is consistent with the Mary Aikenhead Ministries Ethical Framework;
- (m) to undertake commercial exploitation of any research or intellectual property rights undertaken by or belonging to the Company for any purpose relating to

the carrying on of the Health Facilities;

- (n) to provide direct relief of sickness, suffering and distress by operating the Health Facilities to serve the people in Victoria and elsewhere in Australia;
- (o) to provide relief without discrimination to the people in Victoria and elsewhere in Australia;
- (p) to provide money or other support to any body associated with the provision of health and/or aged care provided that body is a body exempt from income tax which may receive tax deductible gifts or contributions under the Tax Act.

4. INCOME AND PROPERTY

- (a) The Company must apply its income and property solely towards promoting the objects of the Company as stated in rule 3. No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to any Member of the Company.
- (b) Nothing in this document prevents the payment in good faith of remuneration to any officers or employees of the Company or to any Member of the Company in return for:
 - (i) any services actually rendered by the Company;
 - (ii) goods supplied in the ordinary course and usual way of business;
 - (iii) interest on money lent to the Company at reasonable rates; or
 - (iv) reasonable rent for premises leased to Company.

5. DGR STATUS

5.1 Compliance with ATO requirements

If at any time the Company has the status of a company to which gifts can be deducted under the Tax Act, any provisions that are required from time to time in order to maintain that status are considered to form part of this constitution.

5.2 Compliance with applicable guidelines and directives

The Board must ensure that the Company complies with all relevant guidelines that apply to the Company and any reasonable directives issued to the Company by an authority in a jurisdiction in which the Company conducts charitable fundraising activities.

5.3 Change of DGR status

If the Company's endorsement as a company to which gifts may be deducted under Division 30 of the Tax Act is revoked, the Company must transfer to a fund, authority or institution gifts to which can be deducted under Division 30 of the Tax Act any surplus:

- (a) gifts of money or property for the principal purpose of the Company; and

- (b) contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund raising event as defined in the Tax Act held for that purpose; and
- (c) money received by the Company because of such gifts or contributions.

6. WINDING UP

6.1 Limited liability of Members

If the Company is wound up, each member of the Company undertakes to contribute to the assets of the Company an amount not exceeding \$100 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for 1 year after a member ceases to be a member of the Company.

6.2 Distribution of property

If the Company is wound up or dissolved, any property remaining after the satisfaction of the debts and liabilities of the Company will not be paid to or distributed among the Members but will be given or transferred to an organisation nominated by the Trustees which:

- (c) has similar objects to the Company;
- (d) is a deductible gift recipient for the purposes of the Tax Act; and
- (e) is exempt from income tax under the Tax Act.

7. MEMBERSHIP

7.1 Members

- (a) The only member of the Company at the time of adoption of this Constitution is St Vincent's Health Australia Limited ACN 073 503 536.
- (b) The Trustees may from time to time approve the admission of a substitute or additional member or members.

7.2 Cessation of membership

Any person will automatically cease to be a member of the Company if they:

- (a) resign as a member of the Company by notice in writing to the Company; or
- (b) become the subject of an Insolvency Event or subject to any form of insolvent administration.

7.3 Trustees to appoint member if Company has no members

If at any time the Company has a sole member and that sole member ceases to be a member of the Company, the Trustees will appoint a new member who must agree to their membership being effective from the date the last member ceased to be a member of the Company.

7.4 Resolutions while Company has one member

While there is only one member of the Company, all resolutions and decisions required by the Act or by this constitution to be made by the member will be passed and made by the member recording the resolution or decision and signing the record, without holding any annual general meeting or other general meetings.

7.5 Annual General Meeting

An Annual General Meeting of the Company will be held in accordance with the Act provided however that where there is only 1 Member, the Member may elect not to hold an annual general meeting in accordance with the Act.

7.6 Department consultation required before resolving to wind up

In the case of a resolution to wind up the Company, the Board must first consult the Department.

8. BOARD OF DIRECTORS

8.1 Number

- (a) The management of the Company will be vested in the Board which will consist of not less than 6 persons appointed by the members in the manner provided in rule 8.4.
- (b) The Board may include the Chief Executive Officer of the Company.
- (c) The Board may include a Sister of Charity.

8.2 Commitment of board directors

All Directors must demonstrate a commitment to Catholic health care, the teachings of the Catholic Church, the mission and Mary Aikenhead Ministries Ethical Framework and the continued formation of the Board and members of the executive of the Company.

8.3 Term

- (a) A Director will be appointed for a term not exceeding 3 years and subject to the Act will be eligible for reappointment provided that a Director will retire after holding office for 9 consecutive years (unless that Director holds the position of Chief Executive Officer of the Company or, in any other case, that Director is reappointed annually by the Members).
- (b) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:
 - (i) is absent without the consent of the Board from 3 successive meetings of the Board and the member resolves that his or her office be vacated;

- (ii) resigns by notice in writing to the Trustees and to the Board;
- (iii) becomes of unsound mind or physically or mentally incapable of performing the duties of that office as resolved by the Board;
- (iv) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the interest as required by the Act;
- (v) is removed from office by the member.

8.4 Method of appointment and removal of directors

- (a) The Members will make appointments and re-appointments of Directors, and nominate their terms of office, and subject to the Act may remove Directors by notice in writing addressed to the Board.
- (b) The Members will appoint the Chair of the Board and will nominate the term of office. The Board will appoint one of their number to be Deputy Chair and will nominate the term of office.

8.5 Casual vacancies

Whenever a casual vacancy occurs in the office of Chair or Director the members will appoint a person to fill the vacancy and in the case of a casual vacancy in the office of Deputy Chair the Board will appoint a person to fill the vacancy.

9. OPERATION OF THE COMPANY

9.1 Approval of Trustees

The approval of the Trustees notified to the Board is required as a prerequisite to any decision of the Board becoming effective in the following events where:

- (a) at the meeting of the Board at which the decision is made any Director advises that such decision is in his or her opinion not in accordance with the Mary Aikenhead Ministries Ethical Framework, or
- (b) the decision is outside the delegations, limits and conditions from time to time determined by the Trustees and notified to the Board in writing.

9.2 Procedure for approval

Where a decision requires approval under rule 9.1:

- (a) the Board must provide the Trustees with a written statement of the issues and the reasons in support of the Board's decision, in accordance with the requirements from time to time of the Trustees, and
- (b) a response will be given in writing by a person authorised by the Trustees.

9.3 Powers and duties of the board

Except as otherwise required by the Act, any other applicable law or this constitution, the Board:

- (c) has the power to manage the business of the Company;
- (d) while the Company is a wholly owned subsidiary of a body corporate forming part of the Health Service, the Board may act in the best interests of any holding company which is a body satisfying the requirements of rule 3(p); and
- (b) may exercise every right, power or capacity of the Company as are not by the Act or by this constitution otherwise required to be exercised by the Company in a general meeting.

9.4 Negotiable instruments

All negotiable instruments must be executed, accepted or endorsed by the Company by the signature of 2 Directors or in any other manner as the Board determines.

9.5 Formation

The Board will cooperate with the Trustees to effectively promote Mary Aikenhead Ministries' mission and ethical framework in health care within Australia, and in particular:

- (a) consult with the Trustees to facilitate the ongoing formation of the Board and leadership personnel of the Company for their participation in the mission of Mary Aikenhead Ministries;
- (b) participate in seminars arranged by the Trustees for boards and leadership personnel; and
- (c) will assist in such other ways as are considered by the Board to be appropriate or as may be requested by the Trustees.

9.6 Powers in accordance with Health Legislation

The Board:

- (c) must use all reasonable endeavours to ensure that the services provided by the Health Facilities comply with the requirements of the Health Legislation and the objects of the Company;
- (d) will comply with any direction given under the Health Legislation and any Conditions of Funding issued by the Department; and
- (e) must ensure that the appointment of the Chief Executive Officer and all conferring powers by the Board comply with any relevant requirements of the Health Legislation and of any agreement made by the Company with the Department.

10. DELEGATION OF BOARD POWERS

10.1 Delegation

(a) The Board may delegate any of its powers:

- (i) to the Chief Executive Officer of the Company, or to other executives within the Health Service;
- (ii) to a committee consisting of at least 1 Director which may also include people who are not Directors, or
- (iii) to an attorney,

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to the Act. Powers delegated must be exercised in accordance with any direction of the Board.

(b) The Board may at any time dissolve any committee or may terminate the appointment of any member of a committee.

(c) Directors are entitled to attend, speak and vote at any meeting of a committee.

(d) The Board will appoint a Quality Assurance Committee in accordance with rule 10.1(a) and will see approval of the Minister as an Approved Quality Assurance Body under section 139 of the *Health Services Act 1988* (Vic). The functions of the Quality Assurance Committee will include the assessment and evaluation of the quality of health services provided by the Company including the review of clinical practices or clinical competence of persons providing those services.

10.2 Terms of delegation

(a) A delegation of powers under rule 10.1 may be on any terms and subject to any restrictions as the Board decides.

(b) Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

10.3 Proceedings of committees

The Board may prescribe the functions and procedures of any committee and the constitution of each committee must be as approved by the Board.

10.4 Electoral College

The Board will establish and maintain an Electoral College constituted by rules and procedures agreed between the University of Melbourne and the Company to function in accordance with the agreed rules.

11. PROCEEDINGS OF THE BOARD

11.1 Board meetings

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as the Board thinks fit.
- (b) The Chair or any 2 Directors may at any time and the Secretary must on the requisition of 2 Directors convene a meeting of the Board.
- (c) A Board meeting may be held with one or more of the Directors taking part by telephone, audiovisual link up or other instantaneous communication medium, if the meeting is conducted so that Directors are able to hear the proceedings of the entire meeting and to be heard by all others attending the meeting.
- (d) A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if equal numbers of Directors are located in each of two or more places, at the place where the Chair of the meeting is located.

11.2 Notice of Board Meeting

The convenor of each Board meeting:

- (c) must give as much notice as is reasonably possible of the meeting (and, if it is adjourned, of its resumption) individually to each Director;
- (d) must give that notice in writing directed to such address as the Director in question furnishes to the Secretary from time to time; and
- (e) must give that notice containing as much information as is reasonably possible concerning the business to be dealt with by the meeting to which it relates,

but failure to give notice to, or non receipt of notice by, a Director does not result in a Board meeting being invalid.

11.3 Voting

Subject to this constitution, questions arising at a meeting of the Board will be decided by a majority of votes of Directors present and voting and any such decision will be deemed a decision of the Board. In the case of an equality of votes the Chair of the meeting will not have a second or casting vote and if a majority decision cannot be reached a resolution will not be passed.

11.4 Quorum

At a meeting of the Board one half of the number of Directors constitutes a quorum. No business will be transacted at any such meeting unless a quorum is present at the time the meeting proceeds to business.

11.5 Continuing Directors

In the event of a vacancy or vacancies in the office of a Director or offices of

Directors the remaining Directors may act but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board they may act only:

- (a) for the purpose of requesting the members to appoint additional Directors
- (b) to convene a meeting of members, or
- (c) in emergencies.

11.5 Written resolution

If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Director or if the Directors signed the document on different days on the day on which and at the time at which the document was last signed by a Director.

11.6 Attendance of non-directors

The Chair or a majority of the Directors may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration.

11.7 Procedure at board meetings

Subject to this constitution and the Act the procedure to be followed at a meeting of the Board will be as the Board decides.

12. DIRECTOR'S DUTIES AND INTERESTS

12.1 Holding offices or entering into agreements

A person is not disqualified by reason only of being a Director of the Company from:

- (a) holding any office or place of profit or employment, other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor, or
- (b) entering into any agreement with the Company.

12.2 Duty to disclose material personal interests

- (a) For the purposes of this rule 12, a Director has a Material Personal Interest in a matter that relates to the affairs of the Company if that Director:
 - (i) is in any way interested in a contract or proposed contract with the Company, or
 - (ii) holds any office or possesses any property as a result of which duties or interests might be created which are directly or indirectly in conflict

with that Director's duties or interests as a Director,

or is otherwise deemed to have a Material Personal Interest under the Act.

- (b) Unless the Act says otherwise, a Director who has a Material Personal Interest in a matter that relates to the affairs of the Company must, at a Directors' meeting as soon as practicable after the Director's appointment or after the Director becomes aware of their interest in the matter (whichever is later), give the other Directors notice of the interest which must include details-of:
 - (i) the nature and extent of the interest;
 - (ii) the relation of the interest to the affairs of the Company; and
 - (iii) any other information the Director is required to disclose under the Act.
- (c) A Director does not need to give notice of an interest under rule 12.2(b) if he or she is not required to do so under the Act:
- (d) A Director who is required to disclose a Material Personal Interest to the Company under this Constitution or the Act must ensure that the nature and extent of the interest is tabled at a Directors' meeting and recorded in the minutes of that meeting.

12.3 Effect of Director having a material personal interest

- (a) Each Director must comply with the Act in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a Material Personal Interest.
- (b) The Director who has a Material Personal Interest in a matter that is being considered at a Directors' meeting must not be present and vote on the matter.

13. CHIEF EXECUTIVE OFFICER

The Board will appoint a person as the Chief Executive Officer of the Company.

14. BY-LAWS

The Board has power to make vary and repeal by-laws from time to time for the proper conduct and management of the Company. The Board must not make, amend, alter or repeal its by-laws without the approval in writing of the Department.

15. SECRETARY

At least one Secretary of the Company will be appointed by the Board and hold office on such terms and conditions as the Board determines.

16. COMPANY SEALS

16.1 Common seal

The Company will not have a common seal unless the Board resolves to adopt one.

16.2 Use of seals

Any common seal adopted by the Board may only be used with the authority of the Board.

16.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 directors;
- (b) by 1 director and 1 Secretary, or
- (c) by any other way resolved by the Board.

17. ACCOUNTS AND AUDIT

17.1 Keeping accounts

The Board must cause the Company to keep written financial records that:

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

17.2 Right of access

A Director has a right of access to financial records of the Company at all reasonable times.

17.3 Financial report

The Board must cause the Company to prepare a financial report and a directors' report that comply with the Act and the Health Legislation and must report to members in accordance with the Act.

17.4 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report in accordance with the Act and the Health Legislation.

17.5 Inspection of financial records and books

The books of account of the Company must be kept at the registered office of the

Company or at such other place as the Board thinks fit and will be open to inspection by the members of the Company on such conditions as the Board determines.

18. ANNUAL REPORT

The Board will in respect of each financial year prepare an Annual Report for the members.

19. INDEMNITY

19.1 Indemnity

Subject to the Act, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer (as defined in the Act) of the Company against a liability:

- (a) incurred, in their respective capacities, to the Company, to a related body corporate or to a person other than the Company (including a liability incurred as a result of appointment or nomination of the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith or is for a pecuniary penalty order or compensation under the Act, and
- (b) for costs and expenses incurred by the officer or auditor in defending civil or criminal proceedings in which judgment is given in favour of that person or in which that person is acquitted, or in connection' with an application in relation to those proceedings in which the court grants relief to that person under the Act.

19.2 Insurance

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

19.3 Former officers

The indemnity in favour of officers under rule 20.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer at the time the claim is made.

20. AMENDMENTS TO CONSTITUTION

This constitution may be varied or amended from time to time in accordance with the Act and subject to compliance with any applicable provisions of the Health Legislation.