

Constitution

MATER MISERICORDIAE LTD. ACN
096 708 922

Constitution of Mater Misericordiae Ltd.

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1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Auditor means the Company's auditor.

Church Law means the Code of Canon Law being the official law of the Roman Catholic Church as promulgated in 1983, any amendments or changes in the said Code from time to time, and the approved Statutes of Religious Congregations.

Company means Mater Misericordiae Ltd. being a Company Limited by Guarantee.

Constitution means the constitution of the Company as amended from time to time.

Director includes any person occupying the position of director of the Company., where appropriate, includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Health means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Member means Mercy Partners, the sole member of the Company as in clause 6.

Mercy Partners means the Mercy Partners incorporated under the Roman Catholic Church (Incorporation of Church Entities) Act 1994 (Qld) and given status as a Public Juridic Person by the Congregation for Institutes of Religious Life and Societies of Apostolic Life.

Register means the register of Members of the Company.

Representative means a person appointed as such under clause 11.

Reserve Powers means those matters set out in clause 9 and as amended from time to time in accordance with this Constitution.

Seal means the Company's common seal (if any).

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

Sisters of Mercy means the Sisters of Mercy Brisbane Congregation and the Institute of the Sisters of Mercy of Australia and Papua New Guinea and their successors as recognised in Church Law.

Stable Patrimony means all property, real or personal, moveable or immoveable, tangible or intangible, that, either of its nature or by explicit designation, is destined to remain in the possession of its owner for a long or indefinite period of time to afford financial security for the future.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Act. Where the expression has more than one meaning in the Act and a provision of the Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) a reference to a party includes that party's successors and permitted assigns;
- (b) the singular includes the plural and vice versa;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
- (g) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Act do not apply to the Company.

4. Objects

4.1 The objects for which the Company is established are:

- a) to carry on and promote a mission of healthcare based upon Gospel values and Catholic tradition and in conformity with the Church Law faithful to the charism of the Sisters of Mercy;
- b) to ensure through its governance policies and practices that each of the works and entities for which it is responsible operates in conformity with the teachings, discipline and laws of the Roman Catholic Church;
- c) to offer compassionate and non-discriminatory service and care to the sick and needy;
- d) to provide and maintain the facilities of the Company so as to ensure that the highest standards of health care are provided in accord with the total well-being of the person;
- e) to establish and support new health care initiatives consistent with the objects of the Company;
- f) to undertake and support health related research consistent with the objects of the Company;
- g) to provide and support educational and training programs and activities for persons who are engaged by or associated with the Company;
- h) to promote and strengthen relationships between the Company and other Mercy and Catholic healthcare organisations;
- i) to encourage and develop networks with other health related organisations, government bodies and the wider community;
- j) to collaborate with Mercy Partners on other agreed ministry projects.

- 4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- a) carry out the objects in this clause; and
 - b) do all things incidental or convenient in relation to the exercise of power under clause 4.2a).

5. Income and property of Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- 5.2 No income or property will be paid or transferred directly or indirectly to the Member of the Company (Mercy Partners) except for payments:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (b) of interest at a rate not exceeding current commercial interest rates for moneys lent; or
 - (c) to reimburse reasonable costs incurred in the carrying out of Membership duties; or
 - (d) according to covenants or agreements properly established at the time of transfer of ministries and property to the Company.

6. Membership

- 6.1 The Member of the Company is Mercy Partners

7. Substitution of the Member

- 7.1 The Member's membership of the Company will cease if:
- (a) the Member is dissolved under any relevant law; or,
 - (b) the Member is suppressed by the Holy See in accordance with the Member's approved statute or Church Law,

in which case the Member may be substituted with the public juridical person which is the successor to the Member under Church Law.

8. Powers of Directors

Subject to clause 9, the management of the Company is vested in the Board.

9. Powers of the Member (Mercy Partners)

The following powers are reserved to the Member of the Company:

- (a) To adopt or change the mission, statement of mission, philosophy and values of the Company or of any corporation of which the Company is the controlling shareholder or member
- (b) To review the effectiveness of the Company in fulfilling the mission, philosophy and values of the Company;
- (c) To receive and review the Annual Report;

- (d) To fix the number of Directors of this Company (subject to clause 19), appoint the Board of Directors of this Company, appoint the Chair and Deputy Chair from time to time and remove such Directors at any time with or without cause;
- (e) To approve any agreement pursuant to which a third party obtains the right or obligation to manage all or substantially all of the operations of the Company or approve any agreement pursuant to which the Company manages any entity or institution not sponsored by Mercy Partners;
- (f) To approve:
 - the dissolution and/or liquidation of this Company or any Corporation of which this Company is the controlling shareholder or member;
 - the consolidation or merger of this Company with another corporation or entity;
 - the establishment of any new subsidiary or affiliate of the Company or the establishment of any joint venture or other corporate affiliation relating to a substantial component of the business of the Company;
 - the closure of any institution or major industry or work conducted by the Company;
 - the sale, transfer, lease, alienation, sub-lease, licence, assignment or encumbrance of the Stable Patrimony of the Company or any corporation of which the Company is the controlling shareholder or member provided however this shall only refer to leases, sub-leases and licences for a longer term than 16 years.
 - any capital borrowing by the Company where the amount borrowed in any one single instance exceeds the sum of \$100 million;
 - for this Company, or for any corporation for which this Company is the controlling shareholder or member, the acquisition of land, buildings or assets which constitute any new hospital in addition to those held at the passing of this Constitution;
- (g) To approve the appointment, engagement and removal of the Auditors of the Company.
- (h) To amend or repeal any clauses of this Constitution or of the Constitution of any corporation of which this Company is the controlling shareholder or member

10. Powers of attorney

- 10.1 If the Member (Mercy Partners) executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- 10.2 If the Company asks the Member (Mercy Partners) to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 10.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

11. Representatives

- 11.1 The Member (Mercy Partners) may by written notice to the Secretary:
 - (a) appoint a natural person to act as the Representative of the Member in all matters connected with the Company as permitted by the Corporations Act;
 - (b) remove a Representative.

- 11.2 A Representative is entitled to exercise at a general meeting all the powers which the organization appointing him or her could exercise if the Member were a natural person.
- 11.3 A letter executed by the Chairperson of the Member is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 11.4 The appointment of a Representative may set out limitations on the Representative's powers.

12. General Meetings

- 12.1 The Member (Mercy Partners) may call a General Meeting at any time by providing written notice to the Chairperson of the Directors of the Company.

13. Notice of general meeting

- 13.1 Subject to the provisions of the Act allowing general meetings to be held with shorter notice, the Member (Mercy Partners) will give at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) of any general meeting.
- 13.2 A notice calling a general meeting
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) must state the general nature of the business to be transacted at the meeting.
- 13.3 The Member may postpone or cancel any general meeting whenever it sees fit.
- 13.4 The Member must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 39.1 entitled to receive notices from the Company.

14. Member

In clauses 15, 16, and 18, reference to the Member is to the appointed representative of Mercy Partners.

15. Quorum

- 15.1 A Quorum consists of the Representative of the Member (Mercy Partners) named as in clause 11. No business may be transacted at a general meeting unless the Representative is present.

16. Chairperson

- 16.1 The chairperson of each general meeting will be the Representative nominated by the Member as in clause 11.

17. Adjournment

- 17.1 Any general meeting may be adjourned at the discretion of the Chairperson who is the Representative of the Member (Mercy Partners). If the Annual General Meeting is adjourned for more than 21 days, those entitled to notice must receive notice of the time and place of the meeting. An adjourned general meeting may take place at a different venue to the initial general meeting.
- 17.2 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

18. Entitlement to vote

18.1 The Member (Mercy Partners) is entitled to one vote.

19. Number of Directors

19.1 There will not be fewer than 7 nor more than 9 Directors.

19.2 All Directors must demonstrate a commitment to the objects of the Company.

20. Appointment and removal of Directors

20.1 The Member (Mercy Partners) may:

- (a) subject to clause 20.5 appoint new Directors;
- (b) fix the term of office for a Director;
- (c) subject to clause 19.1 increase or reduce the number of Directors;
- (d) remove any Director before the end of the Director's period of office;

20.2 If the conduct or position of any Director is such that continuance in office appears to the Member to be prejudicial to the interests of the Company, the Member at a general meeting specifically called for that purpose may suspend that Director.

20.3 Within 14 days of the suspension, the Member must call a general meeting, at which the Member may either confirm the suspension and remove the Director from office in accordance with clause 20.1 (d) or annul the suspension and reinstate the Director.

20.4 The Member acknowledges except in extraordinary circumstances (to be determined at the Members sole discretion) it will not remove more than half of the directors within a twelve month period.

20.5 The Board must establish a Board Nominations Committee which shall discern the qualifications, experience and interests that a candidate for a vacant Board position shall possess and then seek out a candidate with these attributes. . If the Board is satisfied with a candidate's suitability, a recommendation under the hand of the Chairperson shall be forwarded to Mercy Partners together with the candidate's curriculum vitae and any other necessary information. If thought appropriate Mercy Partners may then proceed with the appointment to the Board. Mercy Partners may in its own absolute discretion appoint new Directors.

21. Retirement of Directors

21.1 A Director may retire by submitting a letter of resignation to the Chairperson of the Member (Mercy Partners). A copy of the letter is sent to the Chairperson of the Directors by the retiring Director.

21.2 Directors are eligible for reappointment.

22. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs,

to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;

- (c) resigns by notice in writing to the Member (Mercy Partners).

23. Directors' meetings

- 23.1 If more than one-third of the total number of Directors request a Director's meeting the Secretary shall call such a Director's meeting.
- 23.2 Apart from meetings according to an agreed schedule, a Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.
- 23.3 Subject to the Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 23.4 Subject to clause 26, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 23.5 Clauses 23.3 to 23.4 apply to meetings of Directors' committees as if all committee members were Directors.
- 23.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 23.7 A quorum is a majority of Directors for the time being.
- 23.8 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may refer the matter to a general meeting of the Member (Mercy Partners).
- 23.9 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

24. Decision on questions

- 24.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 26, each Director has one vote.
- 24.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.

25. Payment of Directors' fees

No payment will be made to any Director of the Company other than payment:

- (a) of Director's fees as set by a general meeting of the Company as recommended by the Board.
- (b) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (c) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved

- by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (d) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
 - (e) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

26. Directors' interests

- 26.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is voided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 26.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 26.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 26.4 Subject to clause 25, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as auditor in the Company; and
 - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 26.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must declare that interest and must not:
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,
- unless permitted by the Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 26.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

27. Remaining Directors

- 27.1 The Directors may act even if there are vacancies on the board.

28. Chairperson of Directors' Meeting

- 28.1 If neither the Chairperson nor the Deputy Chairperson are present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

29. Delegation of Powers to Committee or Management

- 29.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or management of the Company.
- 29.2 The Directors may at any time revoke any delegation of power to a committee or to management of the Company.
- 29.3 At least one member of each committee must be a Director.
- 29.4 A committee or management of the Company must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 29.5 A committee or management of the Company may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 29.6 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

30. Written resolutions

- 30.1 The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 30.2 For the purposes of clause 30.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 30.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 30.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 30.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

31. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, or member of a Directors' committee; or

(b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

32. Minutes and Registers

32.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 30;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 26.

32.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting (if that chairperson was present at the relevant meeting and if not by a director person who was present at the relevant meeting) of the relevant body.

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

33. Local management

33.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

34. Appointment of attorneys and agents

34.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions, determined by the Directors.

34.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any sub-committee established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm; or
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

- 34.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 34.4 The Directors may appoint attorneys or agents by facsimile transmission, or electronic means to act for and on behalf of the Company. A copy of the appointment should be kept on file.
- 34.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

35. Secretary

- 35.1 There must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 35.2 The Secretary is entitled to attend at all Directors' and general meetings and the Annual General Meeting.
- 35.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

36. Common Seal

- (a) If the Company has a Seal: the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

37. Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face;
- (b) must not be used except with the authority of the Directors.

38. Inspection of records

The Member (Mercy Partners) may inspect any document or record of the Company kept by the Secretary that the Member wishes to see.

39. Persons entitled to notice

- 39.1 Notice of the annual general meeting must be given to:
- (a) the Member (Mercy Partners);
 - (b) every Director; and
 - (c) the Auditor.
- 39.2 No other person is entitled to receive notice of a general meeting.

40. Audit and accounts

- 40.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Act.
- 40.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Act.

41. Winding up

- 41.1 If the Company is wound up the Member undertakes to contribute to the property of the company for the:
- (a) payments of debts and liabilities of the Company and payment of costs, charges and expenses of winding up; and
 - (b) adjustment of the rights of the contributories amongst themselves,
- an amount as may be required, not exceeding \$10.00.
- 41.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed to the Member (Mercy Partners), but will be given or transferred to another entity which is:
- (a) another organization for which Mercy Partners is a Member;
 - (b) an institution of the Sisters of Mercy; or
 - (c) a Roman Catholic Ecclesial body.
- provided that entity is not carried on for the profit or gain of its individual members and has objects similar to the Company.
- 41.3 If the Company is registered as a Deductible Gift Recipient under Division 30 of the Income Tax Assessment Act 1997 or its replacement and it maintains a Gift Fund in accordance with the Act then upon:
- (a) the winding up of the Gift Fund; or
 - (b) the Company ceasing to be endorsed as a Deductible Gift Recipient under Subdivision 30-BA of the Income Tax Assessment Act 1997;

any surplus assets of the Gift Fund must be transferred to a fund, authority or institution which is charitable at law and gifts to which can be deducted under Division 30 of the Income Tax Assessment Act 1997.

42. Indemnity

- 42.1 To the extent permitted by law and subject to the restrictions in section 199A of the Act the Company indemnifies every person who is or has been an officer of the Company against:
- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); or
 - (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

42.2 The amount of any indemnity payable under clauses 42.1(a) or 42.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

42.3 For the purposes of this clause, officer means:

- (a) a Director; or
- (b) a Secretary.

43. Amendment

43.1 The terms of this Constitution may only be amended by the Member.