



**Constitution of Carbal Aboriginal  
and Torres Strait Islander  
Health Services Ltd**

ACN: 611 551 369

Reg: 26/5/2017

*Trading as*

**Carbal Medical Services**

ABN: 50 275 271 535

## 1. Definitions

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1.1 The meanings of the terms used in this Constitution are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ACNC Act</b>	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth);
<b>Annual General Meeting</b>	means an annual general meeting of the Company in accordance with clause 13;
<b>Carbal Institute of Health Research</b>	means Carbal Aboriginal and Torres Strait Islander Institute of Health Research Limited ACN 633 662 674;
<b>Company</b>	means the company whose Members have adopted this Constitution;
<b>Constitution</b>	means those rules for the operation of the Company set out in this constitution;
<b>Director</b>	means each of the persons appointed as directors of the Company in accordance with clause 17;
<b>Elected Chairperson</b>	means a person elected by the Directors to be the Company's chairperson;
<b>General Meeting</b>	means a meeting of Members and includes the Annual General Meeting;
<b>Initial Member</b>	means a person who is named in the application for registration of the Company, with their consent, as a proposed member of the Company, which will include those members of Darling Downs Shared Care Incorporated who have signed the required consent;
<b>Law</b>	means the <i>Corporations Act 2001</i> (Cth), as amended or varied from time to time;

<b>Term</b>	<b>Meaning</b>
<b>Member</b>	means any person whose name appears in the Register as a member of the Company;
<b>Officeholders</b>	means the persons duly elected as Chairperson, Deputy Chairperson and Secretary of from time to time;
<b>Ordinary Resolution</b>	means a resolution passed by a simple majority of Members;
<b>Register</b>	means the register of Members required to be kept in accordance with the Law;
<b>Secretary</b>	means the person who is appointed secretary of the Company in accordance with clause 21; and
<b>Special Resolution</b>	has the meaning assigned to that expression by section 9 of the Law and at the time this Constitution was adopted means a resolution passed by at least 75% of Members in attendance (either in person or by way of proxy) and eligible to vote.

## **2. Name and Nature of the Company**

- 2.1 The name of the Company is Carbal Aboriginal and Torres Strait Islander Health Services Ltd.
- 2.2 The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

## **3. Effect of the Constitution**

- 3.1 This Constitution will have effect as a contract:
  - (a) between the Company and each Member;
  - (b) between the Company and each Director and secretary; and
  - (c) between a Member and each other Member;under which each Member agrees to observe and perform the Rules so far as they apply to that Member.

## **4. Limited liability of Members**

- 4.1 The liability of Members is limited to the amount of the guarantee in clause 4.2 below.

- 4.2 Each Member must contribute an amount not more than \$10 to the property of the Company if the Company is wound up while the Member is a member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
- (a) debts and liabilities of the company incurred before the Member stopped being a member, and
  - (b) to the costs, charges and expenses of winding up; and
  - (c) for the adjustment of the rights of the contributors among themselves.

## **5. Objects**

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- 5.1 The objects of the Company are to pursue the following purposes:
- (a) to develop, coordinate and conduct services that provide for the care and support in meeting the needs of Aboriginal and Torres Strait Islander individuals and groups in Toowoomba and the Darling Downs region;
  - (b) to coordinate and conduct services aimed at improving the health and wellbeing that meets the needs of Aboriginal and Torres Strait Islander people in Toowoomba and the Darling Downs region;
  - (c) to collaborate with and support research professionals or entities in the development and implementation of translational research that will improve the health and well-being outcomes within Aboriginal and Torres Strait Islander communities;

and to do all acts and things as may be deemed reasonably necessary or incidental to the achievement of similar objects.

## **6. Powers**

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- 6.1 Subject to clause 7, the Company has the following powers, which may only be used to carry out its objects set out in clause 5:
- (a) the powers of an individual, and
  - (b) all the powers of a company limited by guarantee under the Corporations Act.

## **7. Not-for-profit**

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- 7.1 The income and property of the Company must be applied solely for the benefit and promotion of the Company's objects in clause 5.
- 7.2 The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 7.3 and clause 32.
- 7.3 Clause 7.1 does not stop the Company from doing the following things, provided they are done in good faith:
- (a) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or
  - (b) making a payment to a Member in carrying out the Company's charitable purposes.

7.4 Any payment made under clause 7.3 may be made only with the prior written approval of the Directors.

## **8. Amending the constitution**

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8.1 Subject to clause 8.2, the Members may amend this Constitution by passing a Special Resolution.

8.2 The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

## **9. Register of Members**

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9.1 The Company must establish and maintain a register of Members. The register of Members must be kept by the Secretary and must contain:

(a) for each current Member:

- (i) name;
- (ii) address;
- (iii) any alternative address nominated by the Member for the service of notices, and
- (iv) date the Member was entered on to the register.

(b) for each person who stopped being a member in the last 7 years:

- (i) name;
- (ii) address;
- (iii) any alternative address nominated by the member for the service of notices, and
- (iv) dates the Membership started and ended.

9.2 The Company must give current Members access to the register of Members.

9.3 Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members.

## **10. Membership**

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10.1 The Members of the Company are:

- (a) the Initial Members, and
- (b) any other person that the Directors allow to be a Member, in accordance with this Constitution

10.2 Membership of the Company must be maintained at a minimum of seven (7) Members in total, comprised of:

- (a) Members who live in, work in or otherwise represent the operational region for Carbal activities ('representation' to be determined by the Directors, in their sole discretion);
- (b) Members who formally identify as an Aboriginal or Torres Strait Islander (minimum 80% of total membership); and

- (c) Members who do not formally identify as an Aboriginal or Torres Strait Islander but have been accepted by the Directors as meeting the requirements of clause 10.5 (maximum of 20% of total membership).
- 10.3 A person who supports the purposes of the Company is eligible to apply to be a Member of the Company under this clause, provided:
- (a) they are not currently employed by the Company in any capacity; and
  - (b) they do not have more than three immediate family members who are already Members of the Company. In this clause, 'immediate family member' includes children, spouses or de factos, siblings (including step-siblings), parents (including step-parents), grandparents (including step-grandparents), first cousins, aunts or uncles.
- 10.4 In this clause 10, 'person' means an individual.
- 10.5 A person may apply to become a Member of the Company by writing to the Secretary (using any application form provided by the Company) stating that they:
- (a) wish to become a Member;
  - (b) support the purposes, operations and best interests of the Company, and
  - (c) agree to comply with this Constitution, including paying the guarantee under clause 4 if required.
- 10.6 The Company may specify the inclusion of a requirement in the application form referred to in clause 10.5 that a person applying to be a Member must be nominated and seconded in writing by two current Members. In this case, no current Member can nominate or second the application of a proposed member, if they have already nominated or seconded two other current Members.
- 10.7 The Directors must consider an application for Membership within a reasonable time after the Secretary receives the application. The Directors may approve or reject any applicant in the Directors' sole discretion.
- 10.8 An applicant for Membership must provide in writing, any other information in addition to that contained in the application, as the Directors require.
- 10.9 If the Directors approve an application, the Secretary must as soon as possible:
- (a) enter the new Member on the register of Members, and
  - (b) write to the applicant to advise that their application was approved, and the date that their Membership started.
- 10.10 If the Directors reject an application, the Secretary must write to the applicant as soon as possible to advise that their application has been rejected, stating reasons for the decision.
- 10.11 For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in clause 10.5. In that case, by applying to be a Member, the applicant agrees to those three matters.
- 10.12 Other than Initial Members, an applicant will become a Member when they are entered on the register of Members.
- 10.13 A person immediately stops being a Member if they:
- (a) die or are found to be of unsound mind;
  - (b) commits an act of bankruptcy or if declared bankrupt;

- (c) resign or surrender their membership, by writing to the Secretary;
- (d) are expelled under clause 28; or
- (e) have not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

10.14 Membership of the Company is not transferable by operation of law or otherwise. All rights and privileges of Membership of the Company will cease immediately upon a person ceasing to be a Member for any reason.

## **11. Calling of General Meetings**

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11.1 The Directors may call a General Meeting.

11.2 If Members representing at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Directors must:

- (a) within 21 days of the Members' request, give all Members notice of a General Meeting, and
- (b) hold the General Meeting within 2 months of the Members' request.

11.3 The percentage of votes that Members have (in clause 11.2) is to be worked out as at midnight before the Members request the meeting.

11.4 The Members who make the request for a General Meeting must:

- (a) state in the request any resolution to be proposed at the Meeting;
- (b) sign the request, and
- (c) give the request to the Company.

11.5 The Directors may refuse to convene the General Meeting if the voting on the proposed resolution is not within the power of the Members

11.6 If the Directors do not call the meeting within 21 days of being requested under clause 11.2, 50% or more of the Members who made the request may call and arrange to hold a General Meeting.

11.7 To call and hold a meeting under clause 11.6 the Members must:

- (a) as far as possible, follow the procedures for General Meetings set out in this Constitution;
- (b) call the Meeting using the list of Members on the Company's member register, which the Company must provide to the Members making the request at no cost, and
- (c) hold the General Meeting within three months after the request was given to the Company.

11.8 Notice of a General Meeting must be given to:

- (a) each Member entitled to vote at the meeting;
- (b) each Director, and
- (c) the auditor (if any).

11.9 Notice of a General Meeting must be provided in writing at least 21 days before the Meeting.

11.10 Subject to clause 11.11, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand, or
- (b) for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

11.11 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (a) remove a Director;
- (b) appoint a Director in order to replace a Director who was removed, or
- (c) remove an auditor.

11.12 Notice of a General Meeting must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
- (d) a statement that Members have the right to appoint proxies and that, if a member appoints a proxy:
  - (i) the proxy must be a Member of the Company;
  - (ii) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
  - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.

11.13 The Directors may postpone a General Meeting or change the venue for the General Meeting by giving written notice to all Members who received the original notice of meeting at least 24 hours before the appointed time. That notice must specify the time and place for the postponed meeting.

11.14 If a General Meeting is adjourned (put off) for one month or more, the Members must be given new notice of the resumed meeting.

11.15 If a Member does not receive a meeting notice or the Directors accidentally omit to give a Member a meeting notice, that omission does not invalidate the proceedings or any resolution passed at the General Meeting.

11.16 No business is to be transacted at any General Meeting except that contained in the meeting notice unless all the Members agree otherwise.

## **12. Conduct at General Meetings**

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### **Quorum**

12.1 For a General Meeting to be held, at least four (4) Directors and a minimum of seven (7) members overall (a quorum) must be present (in person, by proxy or by representative) for the whole meeting.



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

- 12.2 A quorum of Members must be present throughout each General Meeting. If a quorum is not present at any time the meeting is not validly convened but without affecting the validity of any business conducted before the absence of quorum occurs.
- 12.3 No business may be conducted at a General Meeting if a quorum is not present.
- 12.4 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 12.5 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

#### **Auditor's Attendance**

- 12.6 The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 12.7 The Company must give the auditor (if any) any communications relating to the General Meeting that a Member of the Company is entitled to receive.

#### **Use of Technology**

- 12.8 The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 12.9 Anyone using this technology is taken to be present in person at the Meeting.

#### **Chairperson**

- 12.10 The Elected Chairperson is entitled to chair General Meetings.
- 12.11 The Members present and entitled to vote at a General Meeting may choose a Director or Member to be the chairperson for that Meeting if:
- (a) there is no Elected Chairperson, or
  - (b) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the Elected Chairperson is present but says they do not wish to act as chairperson of the Meeting.
- 12.12 The chairperson is responsible for the conduct of the General Meeting and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 12.13 The chairperson does not have a casting vote.

#### **Adjournment of Meetings**

12.14 If a quorum is present, a General Meeting must be adjourned if a majority of Members present direct the chairperson to adjourn it.

12.15 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

12.16 If a General Meeting is to be adjourned for thirty (3) days or more, notice of the adjourned meeting must be given as if it was an original meeting.

#### **Attendance by Non-Members**

12.17 Even if they are not Members of the Company, any external advisor who has been engaged by the Directors prior to the General Meeting to provide the Directors with advice may be invited by the Directors and has the right to attend any General Meeting and, if requested by the Directors, to speak at the General Meeting.

### **13. Annual General Meeting**

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13.1 A General Meeting, called the Annual General Meeting, must be held at least once in every calendar year.

13.2 Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:

- (a) a review of the Company's activities;
- (b) a review of the Company's finances;
- (c) any auditor's report;
- (d) the election of Directors, and
- (e) the appointment and payment of auditors, if any.

13.3 Before or at the Annual General Meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last Annual General Meeting.

13.4 The chairperson of the Annual General Meeting must give Members as a whole a reasonable opportunity at the Meeting to ask questions or make comments about the management of the Company.

### **14. Resolutions and Statements**

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14.1 Members with at least 20% of the votes that may be cast on a resolution may give:

- (a) written notice to the Company of a resolution they propose to move at a General Meeting (**Members' Resolution**); and/or
- (b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (**Members' Statement**).

14.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

14.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.

- 14.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 14.5 The percentage of votes that Members have (as described in clause 14.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 14.6 If the Company has been given notice of a Members' resolution under clause 14.1(a) the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 14.7 This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.
- 14.8 If the Company has been given a notice or request under this clause:
- (a) in time to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, it must do so at the Company's cost, or
  - (b) too late to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members' resolution or a copy of the Members' statement. However, at a General Meeting, the Members may pass a resolution that the Company will pay these expenses.
- 14.9 The Company does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:
- (a) it is more than 1000 words long;
  - (b) the Directors consider it may be defamatory;
  - (c) clause 14.8(b) applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' resolution or a copy of the Members' statement to Members, or
  - (d) in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Members.
- 14.10 Subject to clause 14.12, the Directors may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).
- 14.11 The Directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- 14.12 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a Director or remove a Director;
  - (b) for passing a Special Resolution; or
  - (c) where the Law or this Constitution requires a meeting to be held.
- 14.13 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 14.14 or 14.15.
- 14.14 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or

- (b) separate copies of that document, as long as the wording is the same in each copy.

14.15 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **15. Voting at General Meetings**

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15.1 Each Member has one vote.

15.2 A Member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.

15.3 If a challenge is made under clause 15.2, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

15.4 Voting must be conducted and decided by:

- (a) a show of hands;
- (b) a vote in writing, or
- (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

15.5 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

15.6 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

15.7 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

15.8 A vote in writing may be demanded on any resolution instead of a vote by a show of hands by:

- (a) at least five Members present;
- (b) Members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
- (c) the chairperson.

15.9 A vote in writing must be taken when and how the chairperson directs, unless clause 15.10 applies.

15.10 A vote in writing must be held immediately if it is demanded under clause 15.8:

- (a) for the election of a chairperson under clause 12.11, or
- (b) to decide whether to adjourn the meeting.

15.11 A demand for a vote in writing may be withdrawn.

## **16. Proxy Voting**

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16.1 A Member may appoint a proxy to attend and vote at a General Meeting on their behalf.

16.2 A proxy must be a Member.

- 16.3 A proxy appointed to attend and vote for a Member has the same rights as the Member to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 15.8.
- 16.4 An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:
- (a) the Member's name and address;
  - (b) the Company's name;
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 16.5 If the document appointing a proxy specifies how the proxy is to vote in relation to a resolution, the proxy must vote as specified in the document. Any vote tendered otherwise is invalid and must be disregarded.
- 16.6 A proxy appointment may be standing (ongoing).
- 16.7 An appointment of a proxy may be revoked at any time before the vote to which the proxy relates is exercised by written notice delivered to the Secretary.
- 16.8 Proxy forms must be received by the Company at the address stated in the notice under clause 11.12 at least 48 hours before a meeting.
- 16.9 A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- 16.10 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- (a) dies;
  - (b) is mentally incapacitated; or
  - (c) revokes the proxy's appointment.
- 16.11 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 16.12 A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).
- 16.13 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
  - (b) if the way they must vote is specified on the proxy form, must vote that way; and
  - (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

## 17. Appointment and Retirement of Directors

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- 17.1 The Company must have at least five (5), but no more than seven (7) Directors at any one time.
- 17.2 At least fifty per cent (50%) of the Directors must identify as an Aboriginal or Torres Strait Islander.
- 17.3 A person is eligible for election as a Director of the Company if they:
- (a) are a Member of the Company;
  - (b) are not a direct relative or extended family member of an existing Director;
  - (c) are nominated by two Members entitled to vote (unless the person was previously elected as a Director at a General Meeting and has been a Director since that meeting);
  - (d) give the Company their signed consent to act as a Director of the Company;
  - (e) are not ineligible to be a Director under the Corporations Act or the ACNC Act; and
  - (f) agree that if they are appointed as an Officeholder, they will fulfil the role of director of the Carbal Institute of Health Research and will sign such consent to act as a director of the Carbal Institute of Health Research as required.
- 17.4 The Directors may appoint a person as a Director to fill a casual vacancy if that person:
- (a) is a Member of the Company;
  - (b) gives the Company their signed consent to act as a Director of the Company, and
  - (c) is not ineligible to be a Director under the Corporations Act or the ACNC Act.
- 17.5 If the number of Directors is reduced to fewer than five, the continuing Directors may act for the purpose of increasing the number of Directors to a minimum of five or calling a General Meeting, but for no other purpose.
- 17.6 The Directors must elect a Director as the Company's Elected Chairperson, who must identify as an Aboriginal or Torres Strait Islander.
- 17.7 The Elected Chairperson will also be the elected chairperson of the Carbal Institute of Health Research.
- 17.8 An eligible person may apply to be a Director by:
- (a) completing an appropriate application for appointment as a Director, as published by the Company from time to time, in the Board's discretion (**Application**);
  - (b) having their Application signed by two current Members, as nominator and seconder; and
  - (c) submitting the Application to the Company Secretary at least seven (7) days prior to the Annual General Meeting.
- 17.9 Upon receiving an Application, the Company Secretary will:
- (a) review the Application to ensure the requirements set out in clauses 17.3 and 17.8 above have been met; and
  - (b) if (a) is satisfied, add the applicant's name to the list of Director Nominees;

- (c) if (a) if not satisfied, contact the person applying for the directorship and notify them that they must address those matters and re-submit their Application.

17.10 Five (5) days before the Annual General Meeting, the Company Secretary will disseminate a list of Director Nominees to all Members, as well as details of the number of vacancies available on the Board. A voting slip will also be provided to Members, to allow them to submit a postal vote or email vote for the election of Directors. Postal votes and email votes must be received by the Company Secretary prior to the AGM in order to be valid.

17.11 At the Annual General Meeting, voting slips will be disseminated to Members for the purpose of voting for Director Nominees to fill the vacancies on the Board. Members must select their preferred candidates to fill the vacancies on the Board and the votes will be counted and the elected Directors will be declared at the Annual General Meeting.

17.12 Vacancies on the Board will exist in the following circumstances:

- (a) if a Director has given notice that they are resigning from their position, effective at the Annual General Meeting;
- (b) if a Director has been appointed in accordance with clause 17.4 to fill a casual vacancy since the previous Annual General Meeting, that Director must retire;
- (c) if neither (a) or (b) apply, but the Company Secretary has received at least one Application as per clause 17.9(b) since the last Annual General Meeting, then the current Director (excluding the Company's Elected Chairperson) who has been a Director for the longest consecutive time (including as a Member of the Management Committee of the Company's former identity as Darling Downs Shared Care Inc.) must retire;
- (d) if neither (a), (b) or (c) apply, no vacancies will exist and an election for Directors will not be required to be held at the Annual General Meeting.

17.13 A Director who retires under clause 17.12 may nominate for election or re-election, subject to clauses 17.14 and 17.15.

17.14 Other than a Director appointed under clause 17.4, a Director's term of office starts at the end of the annual General Meeting at which they are elected and ends at the end of the annual General Meeting at which they retire.

17.15 A person becomes ineligible for nomination as a Director if they have served as a Director of the Company for six (6) consecutive years, unless at least two (2) years has passed since they last served as a Director of the Company.

17.16 A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the Company;
- (b) die or become mentally incapacitated;
- (c) are removed as a Director by a resolution of the Members;
- (d) stop being a Member of the Company;
- (e) are absent for three Directors' meetings in a calendar year without approval from the Directors, or
- (f) become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.

## 18. Powers of Directors

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- 18.1 The Directors are responsible for managing and directing the activities of the Company to achieve the objects set out in clause 5.
- 18.2 The Directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by Members.
- 18.3 Without limiting clause 18.2, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
  - (b) charge any property or business of the Company or all or any of its uncalled capital;
  - (c) issue debentures; or
  - (d) give any other security for a debt, liability or obligation of the Company.
- The Directors acknowledge and agree that they must act reasonably and with regard to prudent business practices when exercising these powers.
- 18.4 The Directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under clause 18.6, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 18.5 The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a Members' resolution at a General Meeting.
- 18.6 The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate. The delegation must be recorded in the Company's minute book.
- 18.7 The Company must not pay fees to a Director for acting as a Director.
- 18.8 The Company may:
- (a) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- 18.9 Any payment made under clause 18.8 must be approved by the Directors.
- 18.10 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this Constitution.
- 18.11 The Directors may resolve that the Company adopt a common seal. If the Company adopts a common seal, it will include the Company's name, the expression 'ACN' and its Australian Company Number in all other cases.
- 18.12 The Company may execute a document with or without using a common seal if the document is signed by:
- (a) two Directors of the Company; or



- (b) one Director where authorised by a resolution of a Director's meeting; or
- (c) a Director and the Secretary.

18.13 Any expenditure which is outside of the budget approved by the Directors must be approved by any two (2) Directors. The Directors can otherwise make policies in relation to which employees are authorised to effect payments on behalf of the Company.

## 19. Duties of Directors

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19.1 The Directors must comply with their duties as directors under legislation and common law and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (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 set out in clause 5;
- (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 19.2;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

19.2 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 circular resolution):

- (a) to the other Directors, or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

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

19.4 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clause 19.5:

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

19.5 A Director may still be present and vote if:

- (a) their interest arises because they are a Member of the Company and the other Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 26);
- (c) their interest relates to a payment by the Company under or any contract relating to an indemnity that is allowed under the Corporations Act;

- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
- (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
  - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## 20. Directors' meetings

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- 20.1 The Directors may decide how often, where and when they meet.
- 20.2 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- 20.3 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.
- 20.4 The Directors shall appoint an executive consisting of a Chairperson, Deputy Chair, Treasurer and Secretary (**the Executive Directors**) following confirmation of an incoming board of Directors at the Annual General Meeting. The Chairperson is entitled to chair Directors' meetings.
- 20.5 The Directors at a Directors' meeting may choose a Director to be the chairperson for that meeting if the Elected Chairperson is:
  - (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as chairperson of the meeting.
- 20.6 Unless the Directors determine otherwise, the quorum for a Directors' meeting is at least four Directors, two of whom must be Executive Directors.
- 20.7 A quorum must be present for the whole Directors' meeting.
- 20.8 The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors. The Directors' agreement may be a standing (ongoing) one. A Director may only withdraw their consent within a reasonable period before the meeting.
- 20.9 A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.
- 20.10 The Directors may pass a circular resolution (also called 'flying minute') without a Directors' meeting being held.
- 20.11 A circular resolution is passed if all Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 20.12 and 20.13.
- 20.12 Each Director may sign:
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

20.13 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

20.14 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clauses 20.12 and 20.13.

## **21. Secretary**

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21.1 The Company must have at least one Secretary, who may also be a Director.

21.2 A secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed by the Directors.

21.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.

21.4 The role of the Secretary includes:

- (a) maintaining a register of the Company's Members, and
- (b) maintaining the minutes and other records of General Meetings (including notices of meetings), Directors' meetings and circular resolutions.

## **22. Minutes and records**

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22.1 The Company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of General Meetings
- (b) minutes of circular resolutions of Members
- (c) a copy of a notice of each General Meeting, and
- (d) a copy of a Members' statement distributed to Members under clause 14.8(a).

22.2 The Company must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees), and
- (b) minutes of circular resolutions of Directors.

22.3 To allow Members to inspect the Company's records:

- (a) the Company must give a Member access to the records set out in clause 22.1; and
- (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in clause 22.2 and clause 22.6.

22.4 The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

- 22.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.
- 22.6 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 22.7 The Company must also keep written records that correctly record its operations.
- 22.8 The Company must retain its records for at least 7 years.
- 22.9 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

## **23. By-laws**

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- 23.1 The Directors may at any time and from time to time issue and/or impose a code of conduct, rules and/or any other by-laws, regulations or standards for the Company which may deal with any matter within the power of the Directors including (without limitation):
- (a) the admission and/or disqualification or termination of Members;
  - (b) any fees and levies payable by Members;
  - (c) conditions of membership;
  - (d) availability of services or facilities of the Company and/or access to them by Members;
  - (e) the rights attaching to membership;
  - (f) the conditions for the use or licence of any trade or other mark or property of the Company; and/or
  - (g) qualification required for Membership.
- 23.2 Members and Directors must comply with by-laws as if they were part of this constitution.
- 23.3 In the event of any inconsistency or conflict between this Constitution and any by-laws, this Constitution will prevail to the extent of any inconsistency or conflict.

## **24. Notice**

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- 24.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to this clause 24, unless specified otherwise.
- 24.2 This clause does not apply to a notice of proxy under clause 16.
- 24.3 Written notice or any communication under this constitution may be given to the Company, the Directors or the secretary by:
- (a) delivering it to the Company's registered office;
  - (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;

- (c) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address; or
- (d) sending it to the fax number notified by the Company to the Members as the Company's fax number.

24.4 Written notice or any communication under this constitution may be given to a Member:

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

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

24.6 A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 24.4(e) is taken to be given on the business day after the notification that the notice is available is sent.

## **25. Financial year**

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25.1 The Company's financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

## **26. Indemnity, insurance and access**

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

26.2 In this clause, 'officer' means a Director or secretary and includes a Director or secretary after they have ceased to hold that office.

26.3 In this clause, 'to the relevant extent' means:

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

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

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

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

26.7 If the Directors agree, the Company must give a Director or former Director access to:

- (a) certain documents, including documents provided for or available to the Directors; and
- (b) any other documents referred to in those documents.

## 27. Dispute resolution

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27.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a Member or Director and:

- (a) one or more Members;
- (b) one or more Directors, or
- (c) the Company.

27.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 28 until the disciplinary procedure is completed.

27.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

27.4 If those involved in the dispute do not resolve it under clause 27.3, they must within 10 days:

- (a) tell the Directors about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

27.5 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
  - (i) for disputes between Members, a person chosen by the Directors, or
  - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the President of the Queensland Law Society.

27.6 A mediator chosen by the Directors under clause 27.5(b)(i):

- (a) may be a Member or former Member of the Company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

27.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

## **28. Disciplining Members**

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28.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:

- (a) the Member has breached this constitution, or
- (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company..

28.2 At least 14 days before the Directors' meeting at which a resolution under clause 28.1 will be considered, the secretary must notify the Member in writing:

- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
- (b) that this resolution will be considered at a Directors' meeting and the date of that meeting;
- (c) what the Member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the Member may provide an explanation to the Directors, and details of how to do so.

28.3 Before the Directors pass any resolution under clause 28.1, the Member must be given a chance to explain or defend themselves by:

- (a) sending the Directors a written explanation before that Directors' meeting; and/or
- (b) speaking at the meeting.

28.4 After considering any explanation under clause 28.3, the Directors may:

- (a) take no further action;
- (b) warn the Member;
- (c) suspend the Member's rights as a Member for a period of no more than 12 months;
- (d) expel the Member;

- (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or
- (f) require the matter to be determined at a General Meeting.

28.5 The Directors cannot fine a Member.

28.6 The secretary must give written notice to the Member of the decision under clause 28.4 as soon as possible.

28.7 Disciplinary procedures must be completed as soon as reasonably practical.

28.8 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.

## **29. Reserves**

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29.1 The Directors may:

- (a) write off from the Company's earning any amount for loss or depreciation of any property;
- (b) set aside any amount out of the Company's profits;

as a reserve fund to meet contingencies or for repairing, improving and/or maintaining any of the Company's property and/or for any other purposes which are conducive to the interests of the Company.

29.2 Only in furtherance of the objects of the Company as specified in clause 5, the Directors may:

- (a) invest, lend or dispose of any reserved amounts in any way;
- (b) deal with, vary and dispose of any investments or parts of them for the benefit of the Company;
- (c) divide the reserve fund into special funds; and/or
- (d) employ the assets constituting the reserve fund in the business of the Company and without being bound to keep the same separate from other assets.

## **30. Deductible Gift Recipient**

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30.1 If the Company is ever endorsed as a deductible gift recipient and that endorsement of the Company as a deductible gift recipient is ever revoked, the following shall be transferred to another organisation to which income tax deductible gifts can be made - any surplus:

- (a) gifts of money or property for the principal purpose of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (c) money received by the Company because of such gifts and contributions.



## 31. Carbal Institute of Health Research

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- 31.1 The persons who are the Officeholders pursuant to this Constitution will be the directors of the Carbal Institute of Health Research, while ever those persons are Officeholders. Should any person cease being an Officeholder in accordance with the terms of this Constitution, they will also cease being a director of the Carbal Institute of Health Research.
- 31.2 The Company must always be a member of the Carbal Institute of Health Research and despite anything to the contrary in this Constitution or otherwise, neither the Members nor the Directors may pass a resolution, nor take any other action, to terminate or cease being a member of the Carbal Institute of Health Research.
- 31.3 The Company will provide services to the Carbal Institute of Health Research (in exchange for payment at commercial rates) as required by the Carbal Institute of Health Research from time-to-time. Despite anything to the contrary in this Constitution or otherwise, neither the Members nor the Directors may pass a resolution, nor take any other action, to cease providing services required by the Carbal Institute of Health Research, unless the parties have first engaged in good faith negotiations and have been unable to reach agreement on the commercial terms of the provision of the services.

## 32. Winding up

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- 32.1 If the Company is wound up, any surplus assets must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is a charity described in clause 32.2.
- 32.2 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the objects in clause 5; and
  - (b) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Company.
- 32.3 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## 33. Reading this Constitution with the Corporations Act

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