



CONSTITUTION

OF

THE BURNSIDE WAR MEMORIAL HOSPITAL INCORPORATED

26 SEPTEMBER 2018

1. NAME

The name of the Hospital is “The Burnside War Memorial Hospital Incorporated.”

2. ESTABLISHMENT

The Hospital is an incorporated association in accordance with the meaning of that expression contained in the Act.

3. DEFINITIONS AND INTERPRETATIONS

3.1. Definitions

Act means the *Associations Incorporation Act 1985 (SA)*.

Board means the governing body of the Hospital as described in clause 7.

Board Member means a member of the Board.

Chief Executive Officer means the person engaged by the Board under Clause 14.1

Council means the Corporation of the City of Burnside (ABN 66 452 640 504) and its successors and permitted assigns.

Deductible Contributions means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Income Tax Assessment Act in relation to a fundraising event held for that purpose.

Gifts mean gifts of money or property for the principal purpose of the Hospital.

Gift Fund means a fund established in accordance with clause 6A.3 for the purposes of section 30-130 of the Income Tax Assessment Act.

Hospital means the Burnside War Memorial Hospital Incorporated being an incorporated association described in this Constitution and established under the Act with Registration number A1061 and ABN 84 816 192 280.

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

Object means the object of the Hospital as set out in clause 4.

Officer has the same meaning as in the Act.

Public Officer means a public officer appointed by the Board in accordance with the Act.

Secretary means the person appointed by the Board under clause 14.3.

Special Resolution¹ means a resolution of the Board:

¹ The definition of Special Resolution under this constitution only applies to the decisions that require a special resolution under this constitution, being clause 7.6 (removal of board member) and clause 18 (amendments to the constitution). It does not displace or modify the definition of Special Resolution under the *Associations Incorporation Act 1985 (SA)*, which continues to

- (a) of which at least 21 days' written notice specifying the intention to propose the resolution as a special resolution has been given to all Board Members (unless all Board Members consent to shorter notice being provided); and
- (b) which has been passed by at least 75% of the Board Members present at the meeting and entitled to vote on the resolution.

3.2. Interpretation

In this Constitution, unless the context otherwise requires:

- (a) headings do not affect interpretation;
- (b) singular includes plural and plural includes singular;
- (c) words of one gender include any gender;
- (d) reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (e) another grammatical form of a defined expression has a corresponding meaning;
- (f) mentioning anything after include, includes or including does not limit what else might be included;
- (g) a reference to the Constitution is a reference to this Constitution as amended, supplemented, varied or replaced from time to time; and
- (h) a reference to a person being present in person includes an individual participating in a meeting by technology as described in clause 9.3 (Mode of Meeting).

4. OBJECT OF THE HOSPITAL

In honour of the intent of the Deed of Gift between Otto Georg Ludwig von Rieben and the Council dated 14 March 1944, and in memory and honour of the sacrifice of those who gave their lives in World Wars 1 and 2, the Object of the Hospital is to:

- (a) establish, maintain and conduct a hospital at Kensington Road, Toorak Gardens in the area known as 'Attunga' or such other place or places within the City of Burnside or elsewhere;
- (b) provide and facilitate medical treatment and care, including by investing in and operating health care facilities and services;
- (c) provide education and training in professional and other fields of knowledge or expertise in relation to the provision of health services;

apply to the association and is relevant when a Special Resolution under the Act is required, such as to approve the winding up, amalgamation or deregistration of the association. In such circumstances, 21 days' notice of the resolution must be given under the Act and it is not permissible for the committee members to agree to shorter notice.

- (d) act as trustee and perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of the Object; and
- (e) do such other things as are incidental or conducive to the attainment of the Object.

5. POWERS OF THE HOSPITAL

For the purpose of carrying out its Object, and in accordance with the Act, the Hospital has the power to:

- (a) acquire, hold, deal with, and dispose of, any real or personal property;
- (b) administer any property on trust;
- (c) open and operate accounts with approved authorised deposit-taking institutions;
- (d) invest its moneys in any form of investment;
- (e) borrow money upon such terms and conditions as the Hospital thinks fit;
- (f) give such security for the discharge of liabilities incurred by the Hospital as the Hospital thinks fit;
- (g) appoint agents to transact any business of the Hospital on its behalf;
- (h) enter into any other contract it considers necessary or desirable;
- (i) do such other acts, matters and things as may be authorised by the Act from time to time;
- (j) subject to the prior written approval of the Council to amalgamate with any person or company.

6A. APPLICATION OF INCOME AND ASSETS FOR OBJECT ONLY

6A.1 Assets and income of the Hospital

The assets and income of the Hospital:

- (a) must be applied solely in furtherance of its Object; and
- (b) may not be paid or transferred to a Board Member, former Board Member, or associate of such persons, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

6A.2 Payment in good faith

Clause 6A.1 does not prevent payment in good faith to a Board Member:

- (a) of reasonable remuneration or fees for services to the Hospital;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from the Board Member;

- (d) of reasonable rent for premises let by the Board Member; or
- (e) in furtherance of the Object.

6A.3 Gift Fund

- (a) The Hospital must establish and operate a Gift Fund to be called the 'Burnside Hospital Foundation Fund', or such other name as determined by the Board.
- (b) The Gift Fund must be applied solely in furtherance of the Object.
- (c) The Gift Fund may be maintained as a management account or separate bank account, and must:
 - i. identify and record Gifts and Deductible Contributions;
 - ii. identify and record any money received by the Hospital because of those Gifts and Deductible Contributions; and
 - iii. not identify and record any other money or property.
- (d) The Gift Fund forms part of the accounts of the Hospital.

6B. WINDING UP, DEREGISTRATION OR DISSOLUTION

6B.1 Winding up, deregistration or dissolution

The Hospital may be wound up, deregistered or dissolved in the manner provided for in the Act.

6B.2 Application of Property

- (a) If any property of the Hospital remains on the winding up, deregistration or dissolution of the Hospital and after satisfaction of all its debts and liabilities, then, subject always to clause 6B.3, the Act and any court order under the Act, that property must be given or transferred to one or more funds or institutions, that:
 - i. has charitable purposes similar to, or inclusive of, the Object; and
 - ii. is a not-for-profit entity, whose governing documents prohibit the distribution of its income and property among its members (if it has members).
- (b) The funds or institutions will be determined by the Council at or before the time of winding up, deregistration or dissolution, taking into account recommendations from the Board.

6B.3 Transfer of surplus assets – deductible gift recipient

- (a) If the Hospital has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act as an entity, where:
 - i. the Hospital is wound up, dissolved or deregistered; or

- ii. the endorsement of the Hospital under Subdivision 30-BA of the Income Tax Assessment Act is revoked;

then any surplus asset of the Gift Fund remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 6B.2 (a) and are deductible gift recipients.

- (b) The funds or institutions will be determined by the Council at or before the time of winding up, deregistration or dissolution, taking into account recommendations from the Board.

7. THE BOARD

7.1 Number of Board Members

The Board must be comprised of not more than 10 persons, including two medical practitioners.

7.2 Appointment of Board Members by Council

- (a) The Council must appoint the Board Members from time to time, having regard to the recommendations made by the Board.
- (b) The Council must provide notice to the Board of a new appointment (or reappointment).

7.3 Appointment of Chairman and Deputy Chairman

- (a) The Board must appoint from its number the Chairman and Deputy Chairman and may also determine the period for which the persons elected are to hold office.
- (b) The Chairman, or in his absence, the Deputy Chairman, must be the chairman of all meetings of the Board.
- (c) If neither are present, or willing or able to act at a meeting of the Board, the Board must elect one of the Board Members present to act as chairman at such meetings.

7.4 Term and retirement of Board Members

- (a) At the last meeting of the Board in a calendar year, any Board Member who has held office for 3 calendar years or more since last being appointed, must retire from office, but subject to clause 7.5 is eligible for reappointment. A retiring Board Member holds office until the conclusion of the meeting at which that Board Member retires.
- (b) The Council may increase or decrease the period of time that a Board Member holds office, and may remove any Board Member from office before the expiration of that Board Member's period of office, and may appoint another person in place of that Board Member.

7.5 Reappointment of Board Members

Board Members are entitled to seek reappointment as a Board Member on 3 occasions provided that their period of continuous service to the Hospital does not exceed a period of 12 years unless otherwise determined by the Board.

7.6 Vacation of Office

The office of a Board Member becomes vacant if the Board Member:

- (a) resigns from the office by notice in writing the Hospital;
- (b) is not present at 3 successive meetings of the Board without leave of absence from the Chairman;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) becomes bankrupt;
- (e) becomes prohibited, disqualified or removed from being a Board Member by reason of any order of any court of competent jurisdiction or regulator;
- (f) dies; or
- (g) is removed by a Special Resolution of the Board (the Board Member whose removal is under consideration is not entitled to vote on the Special Resolution).

8. POWERS AND DUTIES OF THE BOARD

8.1 Board to manage the Hospital

The Board is to manage the affairs of the Hospital in furtherance of the Object and may exercise all of the powers of the Hospital.

8.2 Delegation

- (a) The Board may delegate any of its powers and functions to a committee, a Board Member, an employee (such as the Chief Executive Officer), or any other person as it considers appropriate.
- (b) The power may be delegated for such time as determined by the Board and the Board may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Board.

8.3 By-laws

- (a) Subject to this Constitution, the Board may from time to time by resolution make or adopt by-laws (including rules, policies, terms of reference or guidelines) to give effect to this Constitution.
- (b) By-laws are binding for the management and conduct of the business of the Hospital and must be complied with as if they are part of this Constitution.

9. MEETINGS OF THE BOARD

9.1 Meetings of the Board

- (a) The Board may meet together for conducting business, adjournment and otherwise regulate its meetings as it thinks fit, and must meet at least 6 times each calendar year.
- (b) A Board Member may at any time, and the Secretary must on the written request of a Board Member, convene a meeting of the Board Members.

9.2 Notice of Meeting

- (a) A least 7 days' notice of any Board meeting must be given to Board Members, unless all Board Members consent in writing to shorter notice. The notice must set out where and when the meeting will be held and particulars of the nature of the business to be transacted at the meeting.
- (b) At least 24 hours' notice (or shorter notice as reasonably practicable in the circumstances) of a special Board meeting must be given to the Board (for example, convened to deal with an urgent or emergency matter). The notice must set out where and when the meeting will be held, and particulars of the nature of the business to be transacted at the meeting.
- (c) A notice may be given to any Board Member by delivering the notice to the address last notified by the Board Member to the Hospital or by sending it by post or email to the address last notified by the Board Member.
- (d) Where a notice is sent by post, service of the notice is effected if properly addressed and posted to the Board Member by ordinary prepaid mail. Where a notice is sent by email, service of the notice is effected at the time shown in a delivery confirmation report generated by the sender's email system.
- (e) The Secretary may, with the authority of the Chairman and by notice to each Board Member, alter the time, date and/or place of any meeting.

9.3 Mode of Meeting

The Board may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means), provided that each Board Member who participates is able to hear each of the other participating Board Members addressing the meeting and to address each of the other participating Board Members simultaneously.

9.4 Quorum at Board Meetings

- (a) An item of business may not be transacted at a Board Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) At any meeting of the Board, the number of Board Members whose presence in person is necessary to constitute a quorum is a majority of Board Members holding office, or 4, whichever is the greater.

- (c) If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting must be dissolved or, if agreed by the Board Members present, stand adjourned to such other day, time and place as agreed by the Board Members present. If a quorum is not present at such adjourned meeting, the meeting is dissolved.

9.5 Voting at Meetings – Questions decided by Majority

- (a) Each Board Member has one vote.
- (b) Questions arising at any meeting of the Board must be determined by a majority of Board Members present and entitled to vote at the meeting, unless a Special Resolution is required under law or this Constitution.
- (c) If there is an equality of votes, then the Chairman of the meeting is not entitled to a casting vote in addition to any votes to which the Chairman is entitled as a Board Member, and consequently the resolution fails.

9.6 Written Resolution of Board Members

- (a) The Board may pass a resolution without a Board meeting being held if each of the Board Members entitled to receive notice of a meeting receives notice of the proposed resolution and not less than 75% of those Board Members sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution in those terms is for all purposes treated as having been passed at a duly convened meeting of the Board held on the date and at the time when the document is last signed by a Board Member.
- (c) For the purposes of clause 9.6 (a):
 - i. each Board member may sign a single document setting out the resolution and containing a statement that they agree to the resolution, or separate copies of a document provided that the wording of the resolution is identical in each copy; and
 - ii. a resolution may be sent by email or fax to the Board Members and the Board Members may agree to the resolution by sending a reply email or fax to that effect, including the text of the resolution in their reply.

9.7 Validity of Acts of Board Members

Subject to the Act, each act, resolution or thing performed, passed or done by, or with the participation of, a person acting as a Board Member or member of a committee in respect of whom it is later discovered there was some defect in appointment to, or continuation in, office of that person or that the person was disqualified or not entitled to perform, vote on or do the act, resolution or thing, is as valid and effective as if that Board Member or member of committee had been validly appointed, had validity continued in office, had not been disqualified and was entitled so to perform, vote or do.

10. REMUNERATION AND EXPENSES OF BOARD MEMBERS

10.1 Remuneration of Board Members

The Board Members may be paid fair and reasonable remuneration for their services as Board Members.

10.2 Expenses for Board Members

(a) A Board Member may be reimbursed out of the funds of the Hospital for such reasonable travelling, accommodation and other expenses as the Board Member may incur when travelling to or from meetings of the Board, or a committee or when otherwise engaged on the business of the Hospital.

(b) Any payment to a Board Member must be approved by the Board (and this may be done by the adoption of a Board policy).

11. CONFLICTS OF INTEREST

11.1 Disclosure of Conflict of Interest

A Board Member must disclose in writing as soon as practicable to the Board the nature and extent of any actual or perceived material conflict of interest in a matter that is to be, or is being, considered at a meeting of the Board (or that is proposed in a written resolution).

11.2 Disclosure Recorded in Minutes

The disclosure of a conflict of interest by a Board Member must be recorded in the minutes of the meeting at which disclosure is made (or first held following the disclosure).

11.3 Material Personal Interest

Each Board Member who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a written resolution) must not, except as provided under clause 11.4:

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

11.4 Present and Voting

A Board Member with a material personal interest in a matter may still be present and vote if:

- (a) their interest arises because they are a Board Member and the other Board Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Board Member against liabilities that the Board Member incurs as an Officer;

- (c) their interest relates to a payment by the Hospital under clause 12, or any contract relating to an indemnity that is permitted by law;
- (d) the Board Members who do not have material personal interest in the matter pass a resolution that:
 - i. identifies the Board Member, the nature and extent of the Board Member's interest in the matter and how it related to the affairs of the Hospital; and
 - ii. says that those Board Members are satisfied that the interest should not stop the Board Member from voting or being present.

12. INDEMNITY

- (a) To the extent permitted by law, the Hospital:
 - i. must indemnify each person who is, or has been, a Board Member against any liability incurred by the person as a Board Member;
 - ii. may pay a premium for a contract insuring a Board Member against that liability.
- (b) To the extent permitted by law, the Hospital may enter into an agreement or deed with a Board Member in the form, or substantially in the form, of the document in **Annexure A** under which the Hospital must to the extent it is permitted by law, do all or any of the following:
 - i. keep a set of the Hospital's records (including minute books and Board papers) and allow the Board Member and the Board Member's advisers access to the books for any period agreed;
 - ii. indemnify the Board Member against any liability incurred by the Board Member as a Board Member;
 - iii. keep the Board Member insured for any period agreed in respect of any act or omission by the Board Member while a Board Member.

13. COMMITTEES

- (a) The Board may appoint committee(s) for such time and such purposes as it considers fit, with power to invite other persons to act on such committee(s) at the Board's discretion.
- (b) Committees must appoint a chairman amongst their membership.
- (c) The Chairman of the Board must be an ex-officio member of all such committees.
- (d) Committees must report to meetings of the Board as required.

14. EXECUTIVE AND OTHER STAFF

14.1 Appointment and Powers of Chief Executive Officer

- (a) The Board must appoint the Chief Executive Officer on such terms as it thinks fit.
- (b) The Board may delegate any of its powers to the Chief Executive Officer:
 - i. on the terms and subject to any restrictions they decide; and
 - ii. so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.
- (c) Without affecting the generality of the foregoing, the Chief Executive Officer must be delegated the power to:
 - i. be responsible for the operations of the Hospital;
 - ii. to the extent that the resources available permit, implement the policies of the Board;
 - iii. prepare an annual report for the Board on the work and activities of the Hospital during the preceding 12 months ending on 30 June in each year; and
 - iv. exercise such other functions, duties and responsibilities as may be determined from time to time by the Board.

14.2 Appointment of Public Officer

The Board must appoint a person as Public Officer of the Hospital in accordance with the Act. The Chief Executive Officer may be appointed as Public Officer.

14.3 Appointment of Secretary

- (a) The Board must appoint at least one Secretary. The Public Officer may be appointed as Secretary.
- (b) The Board may suspend or remove a Secretary from that office.
- (c) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Board.
- (d) Unless otherwise determined by the Board, it is the duty of the Secretary to keep minutes of:
 - i. all appointments of Board Members;
 - ii. the names of Board Members present at a Board meeting; and
 - iii. all proceedings at Board meetings.

- (e) Minutes of the proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

15. EXECUTION OF DOCUMENTS

Documents executed for and on behalf of the Hospital must be executed by:

- (a) 2 Board Members;
- (b) a Board Member and the Secretary; or
- (c) such other persons as the Board by resolution appoints from time to time.

16. STATEMENT OF ACCOUNTS

- (a) The Board must prepare financial reports as at 30 June each year for the year ending on that date.
- (b) The Board must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Hospital or otherwise considered by the Board to be appropriate, cause the accounts of the Hospital to be audited or reviewed accordingly.

17. REPORTS TO COUNCIL

- (a) The Board must provide to Council, before 31 December each year, a report on the conduct and management of the Hospital and copies of the audited or reviewed financial reports together with such other information as the Council may reasonably require.
- (b) The Board must, if and when reasonably required by the Council, provide a full and detailed report in respect of any matter concerning the Hospital.

18. AMENDMENTS TO CONSTITUTION

- (a) Provided that the Council has granted its approval, the Board may from time to time, amend, repeal or add to this Constitution by Special Resolution.
- (b) The Board must not pass a Special Resolution that amends this Constitution if passing it causes the Hospital to no longer be a charity.
- (c) Any modification of this Constitution takes effect on the date the Special Resolution is recorded and signed, or any later date specified, or provided for, in the Special Resolution.

Annexure A

Indemnity Form