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## CONSTITUTION OF FINLEY REGIONAL CARE LIMITED

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A company limited by guarantee under the  
*Corporations Act 2001* (Cth)

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# Constitution of Finley Regional Care Limited ACN 003 153 240

## 1 PRELIMINARY

### 1.1 Definitions and interpretation

#### 1.1.1 In the Constitution:

- (a) **“Absolute Majority”** means a majority of the votes of all members of the Board of Management entitled to vote at the time, whether or not those Board of Management members are present, and whether or not they vote;
- (b) **“Board of Management”** means the board of directors of Finley Regional Care;
- (c) **“By-Laws”** means by-laws of Finley Regional Care made by the Board of Management pursuant to the Constitution, and for the time being in force;
- (d) **“Clause”** means a clause of the Constitution;
- (e) **“Commissioner”** means the commissioner who has responsibility for the tax or charitable status of Finley Regional Care;
- (f) **“Constitution”** means the constitution of Finley Regional Care as for the time being in force;
- (g) **“Corporations Act”** means the *Corporations Act 2001* (Cth);
- (h) **“Director”** means a member of the Board of Management;
- (i) **“Duties of the Officer”** includes, in any particular case where the Board of Management considers it appropriate, duties arising by reason of the appointment, nomination or secondment (in any capacity) of an Officer by Finley Regional Care or, where applicable, a subsidiary of Finley Regional Care, to any other corporation;
- (j) **“Finley Regional Care”** means the corporation established or continued in existence under the Constitution;
- (k) **“Gift Fund”** means a fund created in accordance with Clause 20 and/or prescribed by the Commissioner;
- (l) **“Liability”** includes costs, charges, losses, damages, expenses and penalties;
- (m) **“Manual”** means any charter or manual of the Board of Management concerning the conduct and behaviour of Directors and in relation to a committee of the Board of Management, the charter of that committee;
- (n) **“Member”** means a member for the time being of Finley Regional Care appearing as such in the register of members;
- (o) **“Objects”** means the objects contained in Clause 2;
- (p) **“Officer”** means:
  - (1) a Director; and
  - (2) a person:

- (A) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the affairs of Finley Regional Care;
  - (B) who has the capacity to affect significantly Finley Regional Care's financial standing; or
  - (C) in accordance with whose instructions or wishes the Board of Management are accustomed to act (excluding advice given by the person in a proper performance of functions attaching to the person's professional capacity or their business relationship with the Board of Management);
- (q) **"President"** means the Director appointed to the office of president in accordance with Clause 9.2.1;
- (r) **"Proceedings"** means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as an Officer, or in the course of acting in connection with the affairs of Finley Regional Care, or otherwise arising out of the Officer holding office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust, or breach of duty in relation to Finley Regional Care);
- (s) **"Secretary"** means the person holding office as secretary pursuant to Clause 9.2.1, to act as the secretary of Finley Regional Care for the purposes of the Corporations Act;
- (t) **"Specified Majority"** means a majority of at least 66% of the votes of all members of the Board of Management entitled to vote at the time, whether or not those Board of Management members are present, and whether or not they vote;
- (u) **"Terms of Reference"** means any terms of reference prescribed by the Board of Management for the administration of a committee of the Board of Management;
- (v) **"To the Relevant Extent"** means:
- (1) to the extent Finley Regional Care is not precluded by law from doing so;
  - (2) to the extent that such Liability:
    - (A) is not a Liability of the Officer to Finley Regional Care;
    - (B) does not arise out of conduct involving a lack of good faith;
    - (C) is not a Liability for costs and expenses incurred by the Officer in defending civil or criminal proceedings in which judgement is given against the Officer or in which the Officer is not acquitted; or
    - (D) is not a Liability for costs and expenses incurred by the Officer in connection with an unsuccessful application for relief under the Corporations Act, in connection with proceedings referred to in Clause 1.1.1(v)(2)(C);
  - (3) to the extent, and for the amount that the Officer is not otherwise entitled, to be indemnified and is not otherwise actually indemnified; and/or

(4) where the liability is incurred in or arising out of the conduct of the business of another corporation, or in the discharge of the duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and

(w) “**Vice President**” means the Director appointed to the office of vice president in accordance with Clause 9.2.1.

1.1.2 Unless the contrary intention appears in the Constitution:

(a) words importing the singular include the plural, and words importing the plural include the singular;

(b) words importing a gender include every other gender;

(c) words used to denote persons generally or importing a natural person include any corporation, body corporate or other body (whether or not the body is incorporated);

(d) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and

(e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.1.3 In the Constitution headings and boldings are for convenience only and do not affect its interpretation.

## **1.2 Application of the Corporations Act**

1.2.1 The Constitution is to be interpreted subject to the Corporations Act. However, the rules that apply as replaceable rules to companies under the Corporations Act do not apply to Finley Regional Care.

1.2.2 Unless the contrary intention appears, a word or expression in a Clause that is defined in section 9 of the Corporations Act has the same meaning in the Constitution as in that section.

## **2 OBJECTS**

The objects for which Finley Regional Care is established are to:

2.1 accept the value of aged people and their contribution to society and in doing so provide, facilitate, promote and initiate the provision of care, support and services to them, recognising each person’s health status, family and social contact, religion, culture and own special needs;

2.2 provide accommodation, facilities, assistance and related services to promote independence within each person’s capacity and choice and to assist in the relief of poverty, sickness, suffering, distress, misfortune, destitution, disability, disadvantage or helplessness;

2.3 work with organisations whose objects are altogether or in part similar to those of Finley Regional Care; and

2.4 do such things as may be incidental or conducive to the attainment of the preceding objects.

### 3 POWERS

Solely for the purpose of carrying out the Objects, Finley Regional Care may, in any manner permitted by the Corporations Act:

- 3.1 exercise any power;
- 3.2 take any action; and
- 3.3 engage in any conduct or procedure,

which, under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its constitution.

### 4 INCOME AND PROPERTY

#### 4.1 No distributions to Members

The income and property of Finley Regional Care, however derived, must be applied solely towards the promotion of the Objects of Finley Regional Care, and no portion of the income or property of Finley Regional Care may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to any Member.

#### 4.2 Payment for services rendered

Nothing in Clause 4.1 prevents the payment in good faith to an Officer or Member (whether directly or indirectly):

- 4.2.1 of remuneration for any services to Finley Regional Care;
- 4.2.2 for goods supplied in the ordinary and usual course of business;
- 4.2.3 of interest at a commercial rate on money borrowed from an Officer or Member;
- 4.2.4 of reasonable rent for premises let by an Officer or Member in the ordinary course of their business;
- 4.2.5 of any sum permitted to be paid under Clause 4.3; or
- 4.2.6 of any sum permitted to be paid under Clause 16 or under a deed entered into under Clause 16,

provided that any such payment, or any other payment permitted by the Constitution, made or proposed to be made to an Officer or Member, has been approved by the Board of Management (in any generic or specific case).

#### 4.3 Payments to Directors

Subject to Clause 4.4, the Directors may:

- 4.3.1 receive remuneration for their services provided that such remuneration has been approved by the Board of Management and that the rate of remuneration is fair and reasonable and is on reasonable commercial terms;
- 4.3.2 be reimbursed for out-of-pocket expenses incurred in carrying out the duties of a Director, where payment does not exceed any amount previously approved by the Board of Management;
- 4.3.3 be paid for any service rendered to Finley Regional Care in a professional or technical capacity, where the provision of that service has the prior approval of the Board of Management and the payment is fair and reasonable and is on reasonable commercial terms; and

- 4.3.4 receive remuneration as an employee of Finley Regional Care, where the terms of employment have been approved by resolution of the Board of Management.

#### **4.4 Limits on payments to Directors**

- 4.4.1 If it is a requirement of an authority or approval conferred on Finley Regional Care that the remuneration of Directors be limited or prohibited, nothing contained in the Constitution authorises a payment beyond the scope of the limitation imposed on Finley Regional Care by that authority or approval, and the making of payments is to be conditional upon a variation, waiver or revocation of the applicable authority or approval.
- 4.4.2 Any permitted remuneration of a Director must be in line with and not exceed the then current remuneration guidelines and policies applicable to an organisation of the type and kind of Finley Regional Care or in the absence of any such guidelines and policies, those nearest to the type and kind of Finley Regional Care, including guidelines and policies for government bodies or government appointments.

## **5 MEMBERSHIP**

### **5.1 Members**

The following persons are Members:

- 5.1.1 the Directors; and
- 5.1.2 any other person who becomes a Member by virtue of Clause 5.2.

### **5.2 Admission to membership**

- 5.2.1 Membership is open to:
- (a) persons who become members of the Board of Management; and
  - (b) any other persons who, being eligible to become a member in accordance with the Constitution and the By-Laws, are admitted to membership by the Board of Management.
- 5.2.2 If the Board of Management invites applications for membership, the decision of the Board of Management on a valid application, and as to the class (if any), of membership for which the applicant is eligible is final and conclusive and binding on the applicant.
- 5.2.3 The Board of Management will not be required to acknowledge or give any reason for the rejection of any application for membership.

### **5.3 Classes and rights may be set out in By-Laws**

Different:

- 5.3.1 classes of membership;
- 5.3.2 eligibility criteria for admission to and continuation of membership;
- 5.3.3 subscriptions and fees payable as a condition of membership; and
- 5.3.4 events resulting in the suspension or termination of membership,

may be set out in the By-Laws and subject to the Constitution, the rights and benefits, duties and obligations, and status of Members, within the various classes of membership may be defined by the By-Laws.

**5.4 Rights not transferable**

The rights of Members are not transferable, and end when the Member ceases to be a Member.

**5.5 Position if no By-Laws**

If there are no By-Laws regulating voting rights and/or classes of membership (whether because no By-Laws have been enacted or because By-Laws have been set aside):

5.5.1 all Members will have one vote; and

5.5.2 there will be deemed to be one class of membership known as "Ordinary Members", who must support the Objects,

until such time as one or more By-Laws are enacted to the contrary.

**5.6 Changes to classes of membership**

5.6.1 The Board of Management may dissolve any present or future class or classes of membership of Finley Regional Care and may create new or further class or classes of membership.

5.6.2 The Board of Management may from time to time temporarily or permanently close any class of membership.

**5.7 Liability of Members and Members' guarantee**

5.7.1 Subject to Clause 5.7.2, the liability of Members is limited and Members are not liable by reason only of their membership to contribute towards the payment of the debts and liabilities of Finley Regional Care.

5.7.2 Each Member undertakes to contribute to the property of Finley Regional Care, in the event of its being wound up while the Member's membership is current or within one year after the Member ceases to be a Member, for payment of the debts and liabilities of Finley Regional Care contracted before the Member ceases to be a Member and the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$10.00.

**6 REGISTER OF MEMBERS**

Finley Regional Care must maintain a register of Members, incorporating the particulars prescribed in the Corporations Act.

**7 MEETINGS OF MEMBERS****7.1 Annual general meeting**

7.1.1 An annual general meeting of Finley Regional Care must be held in accordance with the requirements of the Corporations Act and at such times and places as the Board of Management may determine.

7.1.2 The ordinary business of the annual general meeting is:

- (a) to receive and consider the accounts, balance sheets and the reports of the Directors and the auditors and any other documents required by law to be laid before the meeting;
- (b) to appoint Directors in place of those retiring or ceasing to hold office; and



- (c) to transact any other business which under the Constitution or the Corporations Act ought to be transacted at an annual general meeting.

7.1.3 No business may be transacted at an annual general meeting other than:

- (a) the ordinary business referred to in Clause 7.1.2; and
- (b) any special business set out in the notice of meeting.

## **7.2 Special general meetings**

7.2.1 A general meeting of Members other than the annual general meeting is called a special general meeting.

7.2.2 The Board of Management may, whenever it thinks fit, convene a general meeting and must convene a general meeting on a requisition of Members, as provided for by the Corporations Act.

7.2.3 The requisition for a special general meeting must state the objects of the meeting and must be signed by the Members making the requisition and be sent to the office of Finley Regional Care and may consist of several documents in a like form, each signed by one or more of the Members making the requisition.

7.2.4 Special general meetings may only consider business of which notice has been given in accordance with Clause 7.3.

## **7.3 Notice of general meetings**

7.3.1 Subject to the provisions of the Corporations Act, and of the Constitution, not less than twenty one clear days notice of a general meeting must be given in the manner provided in Clause 22 to the Members, Directors and if applicable auditors of Finley Regional Care, specifying the place, day and hour of the meeting and in the case of special business the general nature of that business.

7.3.2 The accidental omission to give notice of a general meeting to, or the non-receipt of any such notice by, any of the Members does not invalidate any resolution passed at any such meeting.

7.3.3 A Member desiring to bring any business before a meeting may give notice of that business in writing to the Board of Management who must include all legitimate business in the notice calling the next general meeting after the receipt of the notice.

## **7.4 Right of others to attend a general meeting**

Any other person who is not a Member but who is requested by the Board of Management to attend a general meeting is entitled to be present and, at the request of the chair of the meeting, to speak at that general meeting.

## **7.5 Ballots**

7.5.1 Subject to the provisions of the Corporations Act, whenever the Board of Management thinks fit it may submit any question or resolution to the vote of all Members entitled to a vote at a general meeting of Finley Regional Care by means of a postal ballot or electronic means, in such form and returnable in such manner as the Board of Management decides, provided that notice of any ballot must be given to each Member in the manner provided in Clause 7.3.

7.5.2 A resolution approved by a majority or specific majority of the Members voting by such ballot will have the same force and effect as such a resolution would

have if carried by such a majority or specific majority at a duly constituted general meeting of Finley Regional Care competent to pass such a resolution.

## **7.6 Use of Technology**

General meetings may be held at more than one place, provided that the technology that is used enables each Member present at all places the meeting is held to clearly and simultaneously communicate with every other Member.

## **8 PROCEEDINGS AT GENERAL MEETINGS**

### **8.1 Quorum**

8.1.1 No business may be transacted at a general meeting unless a quorum is present at the commencement of business.

8.1.2 The quorum for consideration of the business of a general meeting is at least:

- (a) 50% of the Directors present in person (rounded up if not a whole number); and
- (b) 5% of any other Members who are not Directors present in person, by proxy or attorney.

### **8.2 Chairing**

8.2.1 The President is entitled to chair general meetings.

8.2.2 If at a general meeting:

- (a) a President has not been elected by the Directors; or
- (b) the elected President is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chair of the meeting (in order of entitlement):

- (c) the Vice President (if any); and
- (d) a Director chosen by a majority of the Directors present.

### **8.3 Absence of quorum**

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, will be dissolved. In any other case it will stand adjourned to the same day in the next week at the same time and place, or to such other day and/or at such other time and place as the Board of Management may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Directors present will be a quorum, provided that if three Directors are not present, the meeting will be dissolved.

### **8.4 Adjournment of meeting**

The chair of a meeting may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Save as aforesaid it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

## **8.5 Poll**

- 8.5.1 At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- (a) the chair of the meeting;
  - (b) any Director; or
  - (c) any other Member present in person, by proxy or attorney.
- 8.5.2 Unless a poll is so demanded a declaration by the chair that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of Finley Regional Care will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

## **8.6 Manner of taking poll**

If a poll is duly demanded it must be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chair directs, but a poll demanded on the election of a chair or on a question of adjournment must be taken forthwith. The result of the poll is the resolution of the meeting at which the poll was demanded.

## **8.7 Casting vote by chair**

In the case of an equality of votes whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded will be entitled to a second or casting vote.

## **8.8 Voting**

- 8.8.1 Subject to Clause 5.5.1, the voting rights of the Members will be set out in the By-Laws.
- 8.8.2 Each Member who has the right to vote may vote:
- (a) in person;
  - (b) by the appointment of a single proxy, who will be entitled to vote on a show of hands as well as on a poll; or
  - (c) by attorney.
- 8.8.3 A proxy or attorney:
- (a) need not be a Member, but cannot be a salaried employee of Finley Regional Care; and
  - (b) may be appointed for all, any number of, or for a particular meeting.
- 8.8.4 The decision of the chair as to the validity of a proxy or power of attorney will be final and conclusive.
- 8.8.5 Where a person present at a general meeting represents personally, by proxy and/or power of attorney, more than one Member, the following provisions apply to a vote taken on a show of hands:
- (a) if the person has been directed to vote in favour of or against a resolution, the person must vote once as directed, with the person's vote

being taken as having been cast for all the directing Members the person represents; and

- (b) if the person has not been directed how to vote and is to vote as they think fit, the person must vote once in the same manner for all applicable Members, with the person's vote being taken as having been cast for all the Members the person represents.

## **8.9 Qualification of voters**

An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection must be referred to the chair, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

## **8.10 Proxies**

- 8.10.1 An appointment of a proxy is valid if it meets the requirements of the Corporations Act and the Constitution.
- 8.10.2 The instrument appointing a proxy must be in writing, in a common or usual form.
- 8.10.3 The instrument appointing a proxy must be lodged at the registered office of Finley Regional Care or such other place as is specified for that purpose in the notice convening the meeting not less than 48 hours before the proxy purports to vote at any general meeting of Finley Regional Care. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member is entitled to instruct their proxy to abstain or vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as they think fit.
- 8.10.4 Unless Finley Regional Care has received written notice of the matter before the start or resumption of the meeting at which a proxy or attorney votes, a vote cast by the proxy or attorney will be valid even if, before the proxy or attorney votes:
  - (a) the appointing Member dies;
  - (b) the Member is mentally incapacitated;
  - (c) the Member revokes the proxy's or attorney's appointment; or
  - (d) the Member revokes the authority under which the proxy or attorney was appointed by a third party.
- 8.10.5 The appointment of a proxy or attorney is not revoked by the appointer attending the general meeting, but:
  - (a) if the appointer votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on that resolution; and
  - (b) if the appointer otherwise takes part in the meeting in relation to a resolution the proxy or attorney must not take part in the meeting in relation to that resolution.

## **9 STRUCTURE OF THE BOARD**

### **9.1 Directors**

9.1.1 The affairs of Finley Regional Care are to be managed by a Board of Management constituted as provided in this Clause 9.

9.1.2 The Board of Management is to consist of no less than three but not more than any limit determined by the Board of Management and if prescribed under the Corporations Act, endorsed by the Members. The number of Directors fixed by the Board of Management (and if necessary, endorsed by the Members) is to apply until such time as the Board of Management resolves to increase or decrease numbers, within the prescribed limits.

### **9.2 Office Bearers**

9.2.1 The office bearers of Finley Regional Care consist of:

- (a) a President;
- (b) a Vice President;
- (c) a Treasurer; and
- (d) a Secretary.

9.2.2 Each office bearer position becomes vacant at the beginning of the first meeting of the Board after each annual general meeting of Finley Regional Care, provided that an officer bearer is eligible for re-election and may be removed from that office by the Board of Management before the expiration of their term.

9.2.3 The Board of Management may determine the method of election of office bearers from among the Directors.

## **10 APPOINTMENT OF THE BOARD**

### **10.1 Qualification of Directors**

No person is eligible to be appointed or act as a director of Finley Regional Care unless:

10.1.1 that person is over the age of 18 years; and

10.1.2 that person is not prohibited or disqualified or otherwise prevented from acting as a director of Finley Regional Care under any applicable law.

### **10.2 Appointments and casual vacancies**

10.2.1 The Board of Management has the power at any time, and from time to time, to appoint a qualified person as a Director, either to fill a casual vacancy or as an addition to the existing Directors.

10.2.2 The Board of Management may continue to act notwithstanding a vacancy, but if the number of Directors falls below the minimum specified in Clause 9.1, the Board of Management must not, except in the case of emergencies, or for the purpose of filling up vacancies, or convening a general meeting of Finley Regional Care, act so long as the number is below the minimum.

### **10.3 Deemed to be admitted as a Member**

A person who is appointed as a Director will be deemed to have been approved or accepted by the Board of Management as a Member of Finley Regional Care. Membership automatically ceases at the end of the Director's term of office.

## 10.4 Removal of Directors

10.4.1 Without limiting the rights of the Members under the Corporations Act:

- (a) the Members may by a special resolution passed by at least 75% of the Members present and entitled to vote on the resolution, remove any Director before the expiration of his or her period of office; and
- (b) the Board of Management may give notice of an intention to remove a Director before the expiration of his or her period of office and call a general meeting for their removal, by resolution passed by a Specified Majority (excluding the Director who is the subject of the resolution).

10.4.2 On taking action:

- (a) the President must consult with the Director in question;
- (b) if the President determines that no mutually satisfactory resolution is possible and the Director wishes to continue on the Board of Management, the Director's response to the issue in question must be put to the Board of Management;
- (c) the Board of Management may investigate the conduct of the Director and the issue in question and any Director who is the subject of a notified review:
  - (1) must provide reasonable assistance to the Board of Management; and
  - (2) subject to the Corporations Act and any other determination of a Specified Majority of the Board (excluding the Director in question), is not entitled to vote as a Director for up to 60 days from the date a review is notified, pending communication of the Board of Management's review, and for that period the Director will not be counted for the purposes of determining whether a quorum is present at Board meetings;
- (d) the Director is entitled to speak to the meeting of the Board of Management at which the removal of the Director is considered;
- (e) if a Specified Majority of the Board of Management (excluding the Director who is the subject of the resolution) supports the removal of the Director before the expiration of his or her period of office, and the Director wishes to remain in office, the removal of the Director must be put to a general meeting, convened by the Board of Management;
- (f) if at the convened general meeting of the Members a resolution is passed rejecting the removal of the Director, the Director is entitled to continue in office, subject to the requirements of the Constitution, otherwise, the removal of the Director is taken to have been endorsed and takes immediate effect; and
- (g) a determination by the Members to allow the Director to continue in office does not limit the right of the Board to re-apply Clause 10.4.1.

## 10.5 Vacation of office

10.5.1 The office of a Director will become vacant if the Director:

- (a) dies;

- (b) ceases to be a Director or is disqualified from being a director pursuant to the Corporations Act or any other applicable law;
- (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) resigns his or her office by notice in writing to Finley Regional Care;
- (e) seeks to appoint an 'Alternate Director' in contravention of Clause 11;
- (f) for more than:
  - (1) two consecutive Board of Management meetings is absent without first notifying the President and/or Secretary of their absence; or
  - (2) three consecutive Board of Management meetings is absent without permission of the Board of Management;
- (g) has a material personal interest in a matter relating to the affairs of Finley Regional Care and fails to give the Board of Management notice of the interest;
- (h) becomes a bankrupt or makes any arrangement or composition with personal creditors generally;
- (i) holds any office of profit under Finley Regional Care, other than any other office where payment as an employee has been approved by resolution of the Board of Management;
- (j) in the opinion of a Specified Majority of the Board of Management (excluding the Director in question), brings Finley Regional Care into disrepute;
- (k) in the opinion of a Specified Majority of the Board of Management (excluding the Director in question), acts contrary to the Constitution, By-Laws or Manual; or
- (l) ceases to be a Member.

## 11 NO ALTERNATE DIRECTORS

Subject to the Corporations Act, a Director cannot appoint a person to be an 'Alternate Director' in the Director's place.

## 12 POWERS AND DUTIES OF THE BOARD OF MANAGEMENT

### 12.1 General powers

The Board of Management:

- 12.1.1 may, subject to the Constitution and the Corporations Act, exercise all such powers and functions as may be exercised by Finley Regional Care other than those powers and functions that are required by the Constitution to be exercised by general meetings of the Members; and
- 12.1.2 subject to the Constitution and the Corporations Act, has power to perform all such acts and things as appear to the Board of Management to be essential for the proper management of the business and affairs of Finley Regional Care.

## **12.2 Delegation**

12.2.1 The Board of Management may delegate exclusively or non-exclusively any of its powers and/or functions (not being duties imposed on the Board of Management as the Directors of the Company by the Corporations Act or the general law) as the Board of Management thinks fit.

12.2.2 The Board of Management may at any time withdraw or vary any of the powers delegated pursuant to Clause 12.2.1.

## **12.3 Liability**

Subject to the Corporations Act, Board of Management members are not liable by reason only of their Directorship to contribute towards the payment of the debts and liabilities of Finley Regional Care or the costs, charges and expenses of the winding up of Finley Regional Care.

# **13 PROCEEDINGS OF THE BOARD OF MANAGEMENT**

## **13.1 Meetings**

The Board of Management may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, provided that it must meet at least three times each financial year. The Board of Management must convene at the request of the President or at least two Directors.

## **13.2 Notice of meetings**

13.2.1 Written notice of each Board of Management meeting must be given to each Director by delivering it, or by sending it by post, facsimile or e-mail or other electronic means to his or her usual or last known address 10 business days before the date of the meeting or if that is not practical, at least two business days before the date of the meeting.

13.2.2 In cases of urgency a meeting may be held without the notice required under Clause 13.2.1, provided that:

- (a) as much notice as practicable is given by whatever means will reach each Director as soon as possible; and
- (b) no resolution may be passed at the meeting except by a Specified Majority.

13.2.3 The business transacted at the Board of Management meeting will be only that listed on the notice, however the chair of the meeting may allow other business deemed urgent to be transacted.

## **13.3 Right of others to attend a Board of Management meeting**

Any other person who is not a Director but who is requested by the Board of Management to attend a Board of Management meeting is entitled to be present and, at the request of the chair, to speak at that meeting.

## **13.4 President to preside over Directors' meetings**

The President is entitled to preside at meetings of the Directors. If the President is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement):

13.4.1 the Vice President; and



13.4.2 a Director chosen by a majority of the Directors present.

### **13.5 Voting and casting vote**

13.5.1 Subject to the Constitution, questions arising at any meeting of the Board of Management must be decided by a majority of votes and a determination by a majority of the Directors present will for all purposes be deemed a determination of the Directors.

13.5.2 Where something is to be determined or voted on by the Board of Management each Director has one vote.

13.5.3 Questions arising at a meeting of the Board of Management will be determined on a show of hands or, if demanded by a Director, by a poll taken in such manner as the chair determines.

13.5.4 Unless otherwise expressly provided in the Constitution, there can be no voting by proxy or by post at Board of Management meetings.

13.5.5 In the case of an equality of votes the chair will have a second or casting vote.

### **13.6 Quorum**

The quorum necessary for the transaction of the business of the Board of Management is 50% of the Directors (rounded up if not a whole number).

### **13.7 Circulatory resolutions and utilising telecommunication services**

13.7.1 A resolution in writing signed or validly endorsed by a Specified Majority of the Directors for the time being entitled to receive notice of meetings of the Board of Management is as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held provided that the Directors signing or endorsing the resolution would constitute a quorum and would have power to pass such resolution at a meeting of the Board of Management. Any such resolution may consist of several documents in similar form each signed or endorsed by one or more Directors. Any such document sent by a Director by facsimile or email transmission, or other means of communication approved by the Directors, is deemed to have been signed or endorsed by such Director and to suffice for the purpose of this Clause.

13.7.2 Meetings of the Board of Management may be held at more than one place provided that the technology that is used enables each Director present at all places the meeting is held to clearly and simultaneously communicate with the other Directors taking part in the meeting.

13.7.3 Without limiting Clause 13.7.2, for the purposes of the Constitution the contemporaneous linking together by a telecommunication service of a number of the Directors not less than a quorum is deemed to constitute a meeting of the Directors and all the provisions thereof as to meetings of the Board of Management apply to such meetings, so long as the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of a meeting of the Directors are entitled to notice of a meeting by the utilised service and to be linked by the service for the purposes of such meeting;
- (b) each of the Directors taking part in the meeting by the selected service must be able to hear each of the other Directors taking part in the meeting; and
- (c) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board of

Management of Finley Regional Care to all the other Directors taking part.

- 13.7.4 A Board of Management meeting held using a form of technology in accordance with Clause 13.7.3 is deemed to have been held at the place determined by the chair, provided that at least one of the Directors who took part in the meeting was at that place for the duration of the meeting.

**13.8 Acts of Board of Management or committees valid notwithstanding defective appointment etc.**

All acts done at any Board of Management meeting or any meeting of a committee of Directors or by any person acting as a Director will notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or person acting as Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

**13.9 Conflicts**

Any Director who is in any way, directly or indirectly, interested in any contract or arrangement or proposed contract or arrangement with Finley Regional Care must declare the nature of such interest prior to the consideration of such matter and must not:

- 13.9.1 be present while the matter is being considered; or  
13.9.2 vote on the matter.

**14 COMMITTEES**

**14.1 Committees**

The Board of Management may establish one or more committees consisting of such Members, Directors and/or other persons (at least one of whom must be a Director) as the Board of Management thinks fit. Any committee so formed:

- 14.1.1 must report to the Board of Management; and  
14.1.2 must conform to any By-Laws, Terms of Reference and Manual that may from time to time be made or given by the Board of Management in relation to such committee, and subject thereto all Members of such committees will have one vote.

**14.2 Regulation of committees**

- 14.2.1 Subject to the provisions of the Constitution and any applicable By-Laws and/or Terms of Reference and/or Manual, every committee may meet and adjourn as it thinks proper.  
14.2.2 Questions arising at any meeting must be determined by a majority of votes of the committee members present, and in the case of an equality of votes the chair of the committee has a second or casting vote.

**15 MINUTES OF PROCEEDINGS**

- 15.1 The Board of Management must cause minutes of the resolutions and proceedings of each general meeting, and Board of Management meeting and each committee meeting to be kept in books provided for that purpose. The minutes must be approved or endorsed by the chair of the meeting at which the proceedings took place, or the chair of the next succeeding meeting.  
15.2 Where minutes have been properly created, unless the contrary is proved:

- 15.2.1 the meeting will be deemed to have been duly convened and held;
- 15.2.2 all proceedings that are recorded in the minutes as having taken place at the meeting are deemed to have duly taken place; and
- 15.2.3 all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting are deemed to have been validly made.

## **16 OFFICERS' INDEMNITY, INSURANCE AND ACCESS TO RECORDS**

### **16.1 Indemnity**

- 16.1.1 To the Relevant Extent and subject to the Corporations Act, Finley Regional Care must indemnify every person who is or has been an Officer against any Liability incurred in the discharge of the Duties of the Officer.
- 16.1.2 Without limiting Clause 16.1.1, Finley Regional Care may, to the extent to which Finley Regional Care is not precluded by law from doing so, execute and deliver any deed, agreement or other document in favour of any Officer or former Officer to whom this Clause applies, confirming the indemnities contained in this Clause, in relation to that person. This Clause applies whether or not any such deed, agreement or other document is given.

### **16.2 Insurance**

To the extent permitted by law, Finley Regional Care may (but is not obliged to) pay, or agree to:

- 16.2.1 make payments of amounts by way of premium in respect of any contract effecting insurance on behalf, or in respect of, an Officer against any Liability incurred by the Officer in, or arising out of, the conduct of the business of Finley Regional Care, or in or arising out of, the discharge of the Duties of the Officer; and
- 16.2.2 bind itself in any deed (in such terms as the Board of Management consider appropriate) with any Officer to make the payments.

### **16.3 Access to records**

- 16.3.1 Where the Board of Management considers it appropriate, Finley Regional Care may:
  - (a) give a Director or former Director access to various Board of Management papers and other papers referred to in those documents; and
  - (b) bind itself in a deed (in such terms as the Board of Management considers appropriate) with a Director or former Director to give that access.
- 16.3.2 Nothing contained in Clause 16.3.1, or in any deed entered into between Finley Regional Care and any Director or former Director pursuant to that Clause will in any way exclude, limit or restrict the right of access to Finley Regional Care's books conferred on such persons by the Corporations Act.

## **17 POWER TO MAKE BY-LAWS**

- 17.1 The Board of Management has the power from time to time to make, amend and repeal all such By-Laws as it deems necessary or desirable for the proper conduct and management of Finley Regional Care, the regulation of its affairs, and the furtherance of its Objects.

- 17.2 Without in any way limiting the power of the Board of Management under Clauses 5 and 17.1, the Board of Management may make, amend and repeal By-Laws which:
- 17.2.1 define the rights and benefits, duties, obligations and status of Members and classes of Members;
  - 17.2.2 regulate all matters relating to applications for, and admission to, Membership of Finley Regional Care not otherwise provided for in the Constitution;
  - 17.2.3 prescribe the standard of conduct expected of Members and/or Directors; and/or
  - 17.2.4 define and regulate the procedure and order of business of general meetings of Members and meetings of the Board of Management, to the extent to which this is not provided for in the Constitution.
- 17.3 No By-Law may be inconsistent with, nor will it affect a repeal or modification of anything contained in the Constitution.
- 17.4 Any By-Law made by the Board of Management may be set aside by a special resolution of a general meeting of Members.
- 17.5 Save as provided in the Constitution, all By-Laws so long as they remain in force will be binding upon all Members.
- 17.6 A book containing the By-Laws will be kept in such place as the Board of Management appoints for that purpose.

## **18 ACCOUNTS AND AUDIT**

- 18.1 The Board of Management must, in accordance with the requirements of the Commissioner and/or Corporations Act:
- 18.1.1 cause proper accounting and other records to be kept, and
  - 18.1.2 cause to be made out and laid before each annual general meeting the accounting records prescribed by the Commissioner and/or the Corporations Act.
- 18.2 Subject to the Corporations Act and the requirements of the Commissioner, the Board of Management may determine whether and to what extent, and at what times and places, and under what conditions, the accounting records and other documents of Finley Regional Care or any of them will be open to inspection by Members (other than Directors).
- 18.3 A Member (other than a Director) does not have the right to inspect any document of Finley Regional Care, except as provided by law or authorised by the Board of Management or by Finley Regional Care in a general meeting.
- 18.4 A properly qualified auditor or auditors must be appointed and his or their duties regulated in accordance with the requirements of the Commissioner and/or the Corporations Act.

## **19 EXCESS PROPERTY ON WINDING UP**

If, upon the winding up or dissolution of Finley Regional Care, there remains after satisfaction of all its debts and liabilities any property whatsoever, the same must not be paid to or distributed amongst the Members but must be given or transferred to some other organisation or organisations:

- 19.1 having objects similar to the Objects of Finley Regional Care;
- 19.2 which prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on Finley Regional Care under or by virtue of Clause 4;

- 19.3 which is exempt from income tax (if Finley Regional Care has been notified by the Commissioner that its income is exempt from income tax, such notification not having been subsequently withdrawn); and
- 19.4 to which income tax deductible gifts can be made (if Finley Regional Care has been notified by the Commissioner that gifts and contributions to Finley Regional Care are an allowable deduction, such notification not having been subsequently withdrawn),

such organisation or organisations to be determined by the Members at or before the time of dissolution, or if there is no determination by the Members, as determined by the Board of Management.

## **20 REGULATION OF DEDUCTIBLE GIFTS**

### **20.1 Establishment of Gift Fund**

20.1.1 If Finley Regional Care has been notified by the Commissioner that gifts and contributions to Finley Regional Care are an allowable deduction:

- (a) the Board of Management must maintain and apply donated funds for the principal purpose of Finley Regional Care; and
- (b) if required by the Commissioner, a separate fund must be established for the purpose of receiving gifts of money or property of Finley Regional Care:
  - (1) to which gifts of money or property for that purpose are to be made;
  - (2) to which any money received by Finley Regional Care because of such gifts is to be credited; and
  - (3) that does not receive any other money or property.

20.1.2 Any Gift Fund will, unless the Board of Management determines otherwise, be governed by the Constitution.

### **20.2 Winding up of Gift Fund**

20.2.1 If the Gift Fund is wound up, or if the endorsement of Finley Regional Care as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it MUST be transferred to a fund, authority or organisation:

- (a) that has similar Objects to Finley Regional Care;
- (b) that also prohibits the distribution of profit, income and assets to its members to at least as great an extent as provided in the Constitution; and
- (c) to which income tax deductible gifts can be made.

20.2.2 Without limiting Clause 20.2.1, any funds given to Finley Regional Care which are expressed by the donor to be for a specific purpose must only be used for that purpose in such manner as the Board of Management determines.

## **21 EXECUTION OF DOCUMENTS**

### **21.1 Custody and use of common seal**

21.1.1 The Board of Management will determine whether or not Finley Regional Care is to have a common seal and, if so, will provide for the safe custody of such seal.

- 21.1.2 The common seal, if any, of Finley Regional Care must not be affixed to any instrument except by the authority of the Board of Management and the affixing of the common seal must be attested by the signatures of those authorised to attest to the affixing of the common seal from time to time.

## **21.2 Authorised signatories**

If a document is not executed under seal, it may be executed by Finley Regional Care by way of:

- 21.2.1 being signed by two Directors;
- 21.2.2 being signed by a Director and the Secretary of Finley Regional Care for the purposes of the Corporations Act; or
- 21.2.3 such other means as the Board of Management approves or ratifies in writing, from time to time.

## **21.3 Attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of Finley Regional Care for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as the Board of Management thinks fit.

## **22 NOTICES**

- 22.1 A notice may be given by Finley Regional Care to any Member personally, by post to the Member's address as set out in the register, or to such facsimile number or e-mail or other electronic address as the Member may have supplied Finley Regional Care for the giving of notices. The fact that a Member has supplied a fax number or e-mail or other electronic address for the giving of notices does not require Finley Regional Care to give any notice to that Member by that electronic means.
- 22.2 A notice or other document given by Finley Regional Care will be deemed to have been served on a Member:
- 22.2.1 in the case of a notice sent by post, at the expiration of twenty four hours after the envelope or wrapper containing the same is posted; and
- 22.2.2 in the case of a notice sent by fax, e-mail or other electronic means, on the next business day following the day on which it is sent.

In proving such service it is sufficient that the Secretary certify that notice was given.

- 22.3 Notice of every general meeting of Finley Regional Care must be given in the manner set out in this Clause 22 to:
- 22.3.1 every Member except those Members who (having no registered address within the Commonwealth of Australia) have not provided to Finley Regional Care an address outside Australia for the giving of notices; and
- 22.3.2 if applicable, the auditor for the time being of Finley Regional Care.

## **23 AMENDMENT**

### **23.1 Process**

No modification or repeal of the Constitution or any provision of the Constitution will be effective unless it is passed as a special resolution in accordance with the Corporations Act.

**23.2 Notice of amendments**

Finley Regional Care must promptly notify the Commissioner of all amendments to the Constitution (if required by law).