

Constitution of Teachers Federation Health Limited



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1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Constitution unless the contrary intention appears:

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

ASIC means the Australian Securities and Investments Commission or any successor body.

Board means the board of Directors.

Company means Teachers Federation Health Limited.

Complying Health Insurance Product has the same meaning as in the *Private Health Insurance Act 2007* (Cth).

Constitution means this constitution.

Director means a person appointed as a director or alternate director of the Company.

Fund means a health benefits funds conducted by the Company under the *Private Health Insurance Act 2007* (Cth).

Independent means an independent director as described in Prudential Standard CPS 510. A person who has, or has had in the last 12 months, an association with the Australian Education Union New South Wales Teachers Federation Branch such as the Branch President, the Branch Deputy President, the Branch Snr Vice President, the General Secretary, a member of the Branch Executive, a Deputy Secretary or a Professional Officer will not be considered independent.

Insured Person means a person who is covered by a health insurance policy issued by the Company which is referable to a Fund.

Member means a member of the Company admitted under clause 7 of the Constitution.

Register means the register of Members kept by or for the Company under the Act.

Replaceable Rules has the same meaning as in the Act.

Seal means the common seal of the Company.

Secretary means any person appointed as company secretary of the Company.

Special Resolution has the same meaning as in the Act.

Subsidiary has the same meaning as in the Act.

TFH Fund means the Fund conducted at the time this constitution is adopted.

TFH Fund Rules means the fund rules governing the TFH Fund, from time to time.

1.2. General Interpretive Provisions

The following apply in the interpretation of this Constitution, unless the context requires otherwise.

- (a) A reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation, rule or other instrument issued under it.
- (b) A reference to the singular includes the plural number and vice versa.
- (c) A reference to a gender includes a reference to each gender.
- (d) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (e) A reference to a person includes that person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Constitution, their substitutes and assigns.
- (f) Includes means includes but without limitation.
- (g) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (h) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (i) A reference to a clause or schedule is a reference to a clause of or a schedule to this Constitution.
- (j) A heading is for reference only. It does not affect the meaning or interpretation of this Constitution.
- (k) Where a word or an expression is used which is defined in the Act it has the same meaning in this Constitution.

1.3. Replaceable Rules

The Replaceable Rules do not apply in respect of the Company except when they are expressly stated to apply.

2. PUBLIC COMPANY

The Company is a public company limited by guarantee and does not have share capital.

3. OBJECTS OF THE COMPANY

3.1. The objects for which the Company is established are:

- (a) to conduct health benefits funds (as contemplated by the *Private Health Insurance Act 2007* (Cth));
- (b) to conduct other health-related business as the Board may consider from time to time;
- (c) to provide health benefits, services and facilities for Insured Persons and those covered by the Fund, including but not limited to hospital, medical, dental, pharmaceutical, optical, physiotherapy and speech therapy benefits, services and facilities;

- (d) to provide benefits, services and facilities for the relief and maintenance of Insured Persons and their dependents in the case of birth, death, sickness, disability, accident, retirement, old age and unemployment;
- (e) to invest assets of a Fund in any manner of investment permitted by the Private Health Insurance (Prudential Supervision) Act 2015 (Cth) including shares or interests in any other private health insurer or loans to or other investments in any other health benefits fund; and
- (f) to promote and assist in the establishment of, and to manage and provide services to, other not-for-profit private health insurers and restricted access health benefits funds.

4. HEALTH BENEFITS FUNDS

4.1. Funds conducted by the Company are not-for-profit funds.

4.2. The TFH Fund will be conducted as a restricted access fund. The Complying Health Insurance Products issued by the TFH Fund will only be available to the restricted access group made up of the persons described in the TFH Fund Rules.

4.3. The Board must establish a body of rules (Fund Rules) that relates to the day-to-day operation of the Fund and such other related activities of the Company as the Board may determine, as varied from time to time.

5. COMMON SEAL

5.1. The Company may, but need not, have a Seal. If the Company does have a Seal, it must have set out on it:

- (a) if the Company has its ACN in its name - the Company's name; or
- (b) otherwise, the Company's name, the expression "Australian Company Number" or "ACN" and the Company's ACN.

5.2. If the Company has a Seal, the Directors must provide for the safe custody of the Seal, which may only be used on the authority of the Directors, of a committee of the Directors authorised by the Directors or in accordance with a procedure approved by the Directors or a committee of Directors.

6. INCOME AND PROPERTY OF THE COMPANY

6.1. Income and property to be applied towards the objects

All income and property of the Company must be solely applied towards the promotion of the objects of the Company.

6.2. No payments to Members

Subject to clause 6.3, no part of the income or property of the Company may be paid by way of dividend, bonus or otherwise to the Members of the Company.

6.3. Payments in good faith

Nothing in this Constitution prevents the Company from making payment in good faith:

- (a) of reasonable and proper remuneration to any employees or to Directors (under clause 15.9) of the Company; or
- (b) to any Member of the Company in relation to any contract, right or claim in which that Member is interested or which arises other than by virtue of the Member's membership of the Company.

7. MEMBERSHIP

7.1. Entry as a Member

- (a) Any person shown on the register of the Company at the time of adoption of this Constitution will automatically be admitted as a Member.
- (b) Membership of the Company will be open to the members of the Branch Executive of the Australian Education Union New South Wales Teachers Federation (NSWTF) Branch.
- (c) The Directors or the Members in general meeting may from time to time stipulate other requirements for Membership.
- (d) Every applicant for Membership must sign an undertaking to be bound by the provisions of this Constitution.
- (e) Admission to Membership will only become effective upon the passing of a resolution of the Directors that the Member's name be entered into the Register. The Directors must not unreasonably delay consideration of such a resolution.
- (f) The rights and privileges of a Member are personal and non-transferable.

7.2. Register of Members

- (a) The Secretary will maintain the Register at the registered office.
- (b) The address of a Member in the Register will be the address used for the service of any notices to Members.

7.3. Expulsion of Members

- (a) If any Member wilfully refuses or neglects to comply with the provisions of this Constitution or has done anything which has brought discredit upon the Company, the Member may be expelled as a Member by an ordinary resolution passed by Members at a general meeting. In this event, the Directors must remove that Member's name from the Register.

- (b) A Member must be given at least 14 days notice of any Members meeting at which a resolution to expel the Member is to be considered and must be given an opportunity to:
 - (i) attend the meeting; and
 - (ii) give a written explanation or defence in relation to the proposed resolution.

7.4. Cessation of Membership

- (a) A Member will cease to be a Member upon:
 - (i) the Company Secretary receiving and accepting a written notice of resignation from a Member;
 - (ii) the death of the Member;
 - (iii) a Member ceasing to be a member of the Branch Executive of the Australian Education Union New South Wales Teachers Federation (NSWTF) Branch; or
 - (iv) the Member becoming bankrupt or of unsound mind or a person whose person or estate is liable to be dealt with under laws relating to mental health.
- (b) A Member whose membership is terminated will be liable for all money due by that Member to the Company plus any sum not exceeding \$10.00 for which the Member is liable under clause 26.1.
- (c) A Member whose membership is terminated has no right to any claim, monetary or otherwise, against the Company, its Funds or property except as an Insured Person for a benefit payable by the Fund or where the Member is a creditor of the Company.
- (d) Any person who ceases to be a Member must no longer represent themselves in any manner as being a Member.

7.5. Liability of Members

The liability of Members is limited as set out in clause 26.1.

8. CIRCULATING RESOLUTIONS OF MEMBERS

8.1. Circulating resolutions when more than 1 Member

- (a) Except in the case of a resolution under section 329 of the Act to remove an auditor, or any other resolution which the Act or this Constitution requires to be passed at a general meeting, the Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

- (c) The resolution is passed when the last Member signs the document.
- (d) This clause does not affect any rule of law relating to the assent of Members not given at a general meeting.

9. CALLING MEETINGS OF MEMBERS

9.1. Calling of meetings of Members by a Director

Two or more Directors may call a meeting of the Company's Members.

9.2. Calling of general meeting by Directors when requested by Members

- (a) The Directors of the Company must call and arrange to hold a general meeting on the request of:
 - (i) at least 5% of the Members in attendance in person or by proxy at the general meeting; or
 - (ii) as otherwise provided for in the Act.
- (b) The request must:
 - (i) be in writing;
 - (ii) state any resolution to be proposed at the meeting;
 - (iii) be signed by the Members making the request; and
 - (iv) be given to the Company.
- (c) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (d) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.

9.3. Failure of Directors to call a general meeting

- (a) More than 50% of all of the Members who make a request under clause 9.2 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called. The meeting must be held not later than 3 months after the request is given to the Company.
- (c) To call the meeting the Members requesting the meeting may ask the Company for a copy of the Register. The Company must give the Members the copy of the Register within 7 days after request without charge.

- (d) The Company must pay the reasonable expenses the Members incurred because the Directors failed to call and arrange the meeting.
- (e) The Company may recover the amount of the expenses from the Directors. However, a Director is not liable for the amount if the Director proves that the Director took all reasonable steps to cause the Directors to comply with clause 9.2. The Directors who are liable are jointly and individually liable for the amount. If a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

9.4. Calling of general meeting by Members

- (a) At least 5% of the Members in attendance in person or by proxy at a general meeting of the Company may call, and arrange to hold, a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called.

9.5. Amount of notice of meetings

- (a) Subject to clause 14.1(b), at least 21 days notice must be given of a meeting of the Company's Members.
- (b) The Company may call on shorter notice:
 - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) A Company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 14.1(d).
- (d) At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to:
 - (i) remove an auditor under section 329 of the Act; or
 - (ii) remove a Director under clause 15.4 or appoint a Director in place of a Director removed under that clause.

9.6. Notice of meetings of Members to Members and Directors

- (a) Written notice of a meeting of the Company's Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) The Company may give the notice of a meeting to a Member:

- (i) personally;
 - (ii) by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member; or
 - (iii) by sending it to the facsimile number or electronic address (if any) nominated by the Member.
- (c) A notice of meeting sent by post is taken to be given 2 days after it is posted. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

9.7. Auditor entitled to notice and other communications

The Directors must give the Company's auditor, if any:

- (a) notice of a general meeting in the same way that a Member of the Company is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member of the Company is entitled to receive.

9.8. Contents of notice of meetings of Members

A notice of a meeting of the Company's Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (i) that the Member has a right to appoint a proxy;
 - (ii) whether or not the proxy needs to be a Member of the Company; and
 - (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

9.9. Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

9.10. Omission or non-receipt of notice

The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court (on the application of the person concerned, a person entitled to attend the meeting or ASIC) declares proceedings at the meeting to be void.

10. MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS

10.1. Members' resolutions

- (a) The following Members may give the Company notice of a resolution that they propose to move at a general meeting:
 - (i) at least 5% of the Members in attendance in person or by proxy; or
 - (ii) as otherwise provided for in the Act.
- (b) The notice must:
 - (i) be in writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Members proposing to move the resolution.
- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

10.2. Company giving notice of members' resolutions

- (a) If a company has been given notice of a resolution under clause 10.1, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
- (b) The Company must give all of its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Directors do not receive the Members notice in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.
- (e) The Company need not give notice of the resolution if:
 - (i) it is more than 1,000 words long or defamatory; or

- (ii) the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

11. MEMBERS' STATEMENTS TO BE DISTRIBUTED

11.1. Grounds for statement

Members may request the Company to give to all of its Members a statement provided by the Members making the request about:

- (a) a resolution that is proposed to be moved at a general meeting; or
- (b) any other matter that may be properly considered at a general meeting.

11.2. Who may request

The request must be made by:

- (a) at least 5% of the Members in attendance in person or by proxy; or
- (b) as otherwise provided for in the Act.

11.3. How request to be made

The request must be:

- (a) in writing;
- (b) signed by the Members making the request; and
- (c) given to the Company.

11.4. Copies for signing

Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

11.5. Distribution of statement

After receiving the request, the Company must distribute to all of the Company's Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

11.6. When Company bears cost

The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

11.7. When Members bear cost

The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

11.8. When Company need not comply with request

The Company need not comply with the request if:

- (a) the statement is more than 1,000 words long or defamatory; or
- (b) the Members making the request are responsible for the expenses of the distribution, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

12. HOLDING MEETINGS OF MEMBERS

12.1. Purpose

A meeting of Members must be held for a proper purpose.

12.2. Time and place for meetings of members

A meeting of Members must be held at a reasonable time and place.

12.3. Technology

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

12.4. Quorum

- (a) No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by 8 Members.

For the purposes of this clause and clause 14.1(b) "Member" includes a person attending as a proxy or a body corporate representative. If a person has appointed more than 1 proxy or representative, only 1 of those proxies or representatives is to be counted in determining whether a quorum is constituted.

- (b) If a quorum is not present within 15 minutes from the time appointed for the meeting:
 - (i) where the meeting was convened upon the request of Members, the meeting will be dissolved; or

- (ii) in any other case, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine and, if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the meeting will be dissolved.

12.5. Chairing meetings of members

- (a) The Chair of the Board, or in his or her absence the Deputy Chair of the Board, is to be the chair at every general meeting of the Company.
- (b) If the Chair or Deputy Chair cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting, the Directors present may elect one of their number to be the chair of the meeting but, if they do not do so, the Members present must elect the chair of the meeting.
- (c) The chair must adjourn a meeting of the Members if the Members present with a majority of votes at the meeting agree or direct that the chair must do so.

12.6. Auditor's right to be heard at general meetings

- (a) The Company's auditor (if any) is entitled to attend any general meeting of the Company.
- (b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The auditor is entitled to be heard even if:
 - (i) the auditor retires at the meeting; or
 - (ii) the meeting passes a resolution to remove the auditor from office.
- (d) The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any general meeting.

12.7. Adjourned meetings

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

12.8. Annual general meetings

(a) Holding of annual general meetings

The Company must hold an annual general meeting at least once every calendar year and within the period of 5 months after the end of the financial year at such time and place to be determined by the Directors.

(b) **Business of annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting;

- (i) the consideration of the annual financial report, Directors' report and auditor's report;
- (ii) the election of Directors;
- (iii) the appointment of the auditor;
- (iv) the fixing of the auditor's remuneration.

(c) **Questions at annual general meetings**

- (i) The chair of an annual general meeting must allow a reasonable opportunity for Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- (ii) If the Company's auditor or their representative is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct the audit and the preparation and content of the auditor's report.

13. VOTING AT A MEMBERS' MEETING

13.1. How many votes a Member has

- (a) Each Member has 1 vote.
- (b) Where there is equality of votes, the chair will have a casting vote in addition to any vote the chair has as a Member.

13.2. Objections to right to vote at a meeting of the Company's Members

A challenge to a right to vote at a Members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

13.3. How voting is carried out

- (a) A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

- (c) Subject to this Constitution and the Act, resolutions of Members are to be decided by simple majority of votes cast in respect of the relevant resolution.

13.4. Matters on which a poll may be demanded

- (a) A poll may be demanded on any resolution proposed at a Members' meeting.
- (b) Without limiting clause 14.1(a), a poll can be demanded on any resolution concerning:
 - (i) the election of the chair of a meeting; or
 - (ii) the adjournment of a meeting.
- (c) A demand for a poll may be withdrawn.

13.5. When a poll is effectively demanded

- (a) At a Members' meeting a poll may be demanded by:
 - (i) the chair; or
 - (ii) any Members who between them hold 10% of the voting rights of all those who have a right to vote at the meeting.
- (b) The poll may be demanded:
 - (i) before a vote is taken on the proposed resolution;
 - (ii) before the voting results on a show of hands on the proposed resolution are declared; or
 - (iii) immediately after the voting results on a show of hands on the proposed resolution are declared.

13.6. When and how polls must be taken

- (a) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

14. PROXIES

14.1. Who can appoint a proxy

Each Member of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

14.2. Rights of proxies

A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting, except while the Member is present;
- (b) to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

14.3. Company sending appointment forms or lists of proxies must send to all Members

If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list, the Company must send the form or list to all Members who ask for it; or
- (b) otherwise, the Company must send the form or list to all Members.

14.4. Appointing a proxy

- (a) An appointment of a proxy must be in writing and is valid if it is signed by the Member making the appointment and contains the following information:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

- (b) The chair of the Board may determine in the chair's absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 14.1(a).
- (c) An undated appointment is taken to have been dated on the day it is given to the Company.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (ii) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
 - (iii) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) A person, except the chair, can only hold one appointment. The chair can hold unlimited appointments.
 - (f) If a proxy is also a Member, this clause does not affect the way that the person can cast the person's vote as a Member.
 - (g) An appointment does not have to be witnessed.
 - (h) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

14.5. Proxy documents

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) The Company receives an appointment or an authority when it is received at any of the following:
 - (i) the Company's registered office;
 - (ii) a fax number at the Company's registered office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.

14.6. Validity of proxy vote

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;

- (c) the Member revokes the proxy's appointment; or
- (d) the Member revokes the authority under which the proxy was appointed by a third party.

15. DIRECTORS

15.1. Number of Directors

The number of Directors must not be less than the five (5), nor more than the number determined by the Directors from time to time, which until otherwise determined by the Directors is ten (10).

15.2. Composition of the Board of Directors

- (a) The Board of Directors will be comprised of:
 - (i) the Branch President or Branch Deputy President of the Australian Education Union New South Wales Teachers Federation (NSWTF) Branch, but subject to clause 15.3(a);
 - (ii) the General Secretary of the Australian Education Union New South Wales Teachers Federation (NSWTF) Branch, but subject to clause 15.3(a);
 - (iii) two Independent Specialist Directors appointed by the Board in accordance with clause 15.3(b);
 - (iv) one Independent Specialist Director appointed by the Board in accordance with clause 15.3(b), who shall be appointed chair;
 - (v) two Insured Persons elected in accordance with clause 15.3(c);
 - (vi) two Independent Specialist Directors (education) appointed in accordance with clause 15.3 (b); and
 - (vii) one Independent Specialist Director (health) appointed in accordance with clause 15.3(b).

15.3. Appointment of Directors

- (a) Directors under clauses 15.2(a)(i) and (ii) are nominated by the Australian Education Union New South Wales Teachers Federation (NSWTF) Branch. The Board will appoint the persons nominated as Directors, at the next Directors' meeting following the nomination after it has confirmed the relevant details of the persons nominated. Any person so appointed will take office from the end of such Directors' meeting and must be confirmed in office at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the annual general meeting.
- (b) In relation to Directors under clause 15.2(a)(iii), (iv), (vi) and (vii), the Board will determine the criteria for each of the specialist Directors and will appoint persons in accordance with those criteria. Any person so appointed must be confirmed in office at the Company's next

annual general meeting. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the annual general meeting.

- (c) The Directors under clause 15.2(a)(v) will be elected in the following manner:
- (i) any Member can nominate any Insured Person to serve as a Director;
 - (ii) the nomination, which must be in writing and signed by the proposed Director and the proposer, must be lodged with the Secretary at least seven days before the general meeting at which the election is to take place;
 - (iii) a list of the candidates' names in alphabetical order, with the proposers' names, must be given to each Member and must be posted in a conspicuous place in the registered office of the Company for at least five days immediately preceding the general meeting;
 - (iv) balloting lists must be prepared (if necessary) containing the names of the candidates only, in alphabetical order. Each Member present at the general meeting will be entitled to vote for any number of such candidates not exceeding the number of vacancies; and
 - (v) in case there is not a sufficient number of candidates nominated, the Board can call for further nominations.

15.4. Casual Vacancy

- (a) If a casual vacancy occurs in relation to Directors appointed under clause 15.2(a)(v), (vi) or (vii) the Directors may appoint another person as a Director who meets the criteria for election set out in clause 15.2(a)(v), (vi) or (vii).
- (b) Notwithstanding that there may be insufficient persons appointed as Directors to form a quorum for a meeting of Directors, the remaining Directors may appoint a person as a Director in order to make up a quorum for a Directors' meeting.

15.5. Length of Office

- (a) Directors who are appointed under clauses 15.2(a)(i) and (ii) are entitled to hold office for as long as they remain the Branch President, Deputy Branch President, or General Secretary of the Australian Education Union New South Wales Teachers Federation (NSWTF) Branch, as applicable.
- (b) Directors who are appointed under clause 15.2(a)(iii), (iv), (vi) and (vii) are entitled to hold office for up to three years.
- (c) Directors who are appointed under clause 15.2(a)(v) are entitled to hold office for up to two years.
- (d) Directors who are appointed under clause 15.4 are entitled to hold office until the person whose position he or she has filled would have ordinarily retired.

15.6. Retirement of Directors

- (a) A person ceases immediately to be a Director if the person ceases to meet the criterion pursuant to which they were appointed to be a Director under clause 15.2(a).
- (b) A Director elected under clause 15.3(c) must not hold office without re-election:
 - (i) past the second annual general meeting following the Director's appointment or last election; or
 - (ii) for more than two years, whichever is longer; or
 - (iii) for such shorter period as the Directors recommend.
- (c) A director elected under clause 15.2(a)(v) must retire after holding office for two years.
- (d) All retiring Directors who retire under this clause 15.6 are eligible for re-election.

15.7. Interests of Directors

(a) Director may hold certain offices

- (i) A Director may not hold any office or position of profit (other than that of being an employee of the Company in the case of a Director appointed under clause 15.2(a)(v)) under the Company or under any company promoted by the Company or in which the Company is a shareholder or otherwise interested.
- (ii) A Director can be a director of any subsidiaries of the Company.

(b) Director may enter into certain contracts

Notwithstanding any rule of law or equity to the contrary, a Director may:

- (i) contract, transact or enter into an arrangement with the Company; or
- (ii) have an interest in a contract, transaction or arrangement entered into by or on behalf of the Company,

and no such contract, transaction or arrangement with or entered into by or on behalf of the Company is avoided or rendered voidable because the Director is a director of the Company provided the contract, transaction or arrangement is not one that is material to the affairs of the Company and the Director's interest is disclosed to and approved by the Board.

(c) Director not to vote on contract in which the Director has a material personal interest

Subject to the Act, neither a Director nor the Director's alternate may vote at any Board meeting about any contract or arrangement in which the Director has, whether directly or

indirectly, a material personal interest. However, that Director may execute or otherwise act in respect of that contract or arrangement.

(d) Directors to declare interest

- (i) Any Director who has a material personal interest in a matter that relates to the Company's affairs must give the other Directors notice of that interest, unless the interest is of a type referred to in section 191(2)(a) of the Act, or all of the conditions referred to in section 191(2)(c) of the Act are satisfied.
- (ii) The Director must declare the nature and extent of the Director's interest and the relation of the interest of the Company's affairs at a Directors' meeting as soon as possible after the Director becomes aware of his or her interest in the matter.
- (iii) A Director who has an interest in a matter may give a standing notice to the other Directors of the nature and extent of that Director's interest in the matter in accordance with section 192 of the Act.

(e) Directors to declare potential conflicts

Any Director who holds any office or possesses any property whereby the holding or possession might (whether directly or indirectly) create conflicting duties or interests with those as a company director must declare the fact of holding that office or possessing that property, and the nature and extent of any conflict, at the first Directors' meeting held after he or she becomes a Director or (if already a Director) at the first Director's meeting held after he or she becomes aware of the relevant facts.

(f) Secretary to record declarations of Directors

The Secretary must record in the minutes of the meeting any declarations made or notices given by a Director under this Constitution.

15.8. Remuneration of Directors

- (a) The Directors are to be paid, in the aggregate, the remuneration determined by resolution at a meeting of Members divided between them in such proportions as the Directors may determine under the Directors Remuneration Policy which is determined by the Board from time to time, or, failing agreement, equally.
- (b) The Company may also pay the Directors' travelling and other expenses that the Directors properly incur:
 - (i) in attending Director's meetings or any meetings of committees of Directors;
 - (ii) in attending any meeting of Members; and
 - (iii) in connection with the Company's business.

15.9. Vacation of office

- (a) The office of a Director will be automatically vacated if the Director:
 - (i) is declared bankrupt;
 - (ii) becomes of unsound mind or a person whose person or estate is liable to be dealt with under laws relating to mental health;
 - (iii) is prohibited from being a Director in accordance with any of the provisions of the Act or any order made under the Act or the Director's office is vacated;
 - (iv) resigns as a Director by giving a written notice of resignation to the Company at its registered office; and
 - (v) ceases to be a fit and proper person to be a Director or fails to comply with the Private Health Insurance Code of Conduct.
- (b) A Director whose office is vacated under paragraphs (i), (ii) or (iii) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.

16. POWERS AND DISCRETIONS OF DIRECTORS

16.1. Business of the Company

The business of the Company must be managed by or under the direction of the Directors who may exercise all the powers of the Company except any powers that the Act or this Constitution require to be exercised by the Company in general meeting. No resolution made by the Company in general meeting invalidates any prior act of the Directors which would have been valid if the resolution had not been made.

16.2. Appointment of attorneys

The Directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors), for the period and subject to such conditions as the Directors think fit.

16.3. Directors may execute security over the assets of the Company

If the Directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of such liability.

16.4. Negotiable instruments

All cheques, bills of exchange, promissory notes and other negotiable instruments and all receipts for money paid to the Company will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time determine.

16.5. Directors discretion

Unless otherwise provided, if the Directors are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

16.6. Meetings of committees

The meetings and proceedings of a committee of Directors must be carried out in accordance with the provisions in this Constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.

17. DIRECTORS' RESOLUTIONS AND MEETINGS

17.1. Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

17.2. Calling Directors' meetings

- (a) A Director may at any time, and the Secretary on the request of a Director must, convene a meeting of Directors. Reasonable notice of such meeting must be given individually to every Director (other than the Director convening the Board meeting).
- (b) The Board must meet at least once in each quarter ending March, June, September and December.

17.3. Use of technology

- (a) A Directors' meeting may be called or held by telephone, facsimile, electronic email, any audio visual device or any other technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

- (b) A Director may not leave a meeting by disconnecting the instantaneous communication device without expressly notifying the chair.

17.4. Chairing Directors' meetings

The Director appointed pursuant to clause 15.2(a)(iv) will be appointed to chair Board meetings. If no such chair is appointed, or if at any meeting of Directors, the chair is not present within 15 minutes after the time appointed for holding the meeting, the Directors may elect one of their number present to chair the meeting.

17.5. Voting at Directors' meetings

- (a) Every Director, except the chair, has one vote on each question. Where the vote is even, the chair will have a casting vote.
- (b) All resolutions of the Board must be by a majority decision of the Directors present and voting.

17.6. Quorum at Directors' meetings

- (a) A quorum for a meeting of Directors is constituted by four Directors or such other number determined by the Board.
- (b) The quorum must be present at all times during the meeting.

18. SECRETARY

18.1. Appointment of secretary

The Company must have at least the number of Secretaries required by the Act.

18.2. Terms and conditions of office of Secretary

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.
- (b) The Directors may vary, terminate or suspend any appointment of a person as a Secretary.

19. PUBLIC OFFICER

NOT USED

20. MINUTES

20.1. Company must keep minute books

The Company must keep minute books in which it records within 1 month of the relevant event occurring:

- (a) proceedings and resolutions of meetings of the Members;

- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

20.2. Minutes to be signed

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

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

20.3. Resolution without meeting

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

20.4. Location of minute books

The Company must keep the minute books of the Company at:

- (a) the Company's registered office;
- (b) the Company's principal place of business in Australia; or
- (c) another place approved by the ASIC.

20.5. Inspection by members

The Company must ensure that the minute books for the meetings of Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

20.6. Requests by members

- (a) A Member may ask the Company in writing for a copy of:
 - (i) any minutes of a meeting of the Company's Members or an extract of the minutes; or
 - (ii) any minutes of a resolution passed by Members without a meeting.
- (b) If the Company does not require the Member to pay for the copy, the Company must send it:
 - (i) within 14 days after the Member asks for it; or

- (ii) any longer period that the ASIC approves.
- (c) If the Company requires payment for the copy, the Company must send it:
 - (i) within 14 days after the Company receives the payment; or
 - (ii) within any longer period that the ASIC approves.

(This reflects section 251B of the Act.)

21. INSPECTION OF BOOKS

- 21.1.** The Directors may, but are not required to, authorise a Member to inspect the books of the Company on giving to the Board one week's notice in writing of the intention to do so.
- 21.2.** The Member's inspection of the books of the Company will take place at the registered office of the Company during its normal business hours.

22. INSPECTION OF FINANCIAL RECORDS

The Directors may determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounting and other records of the Company, or any of them are to be open for inspection by Members (not being Directors), and no Member (not being a Director) has any right to inspect any account or book or paper of the Company, except as conferred by statute or authorised by the Directors.

23. AUDITOR

- 23.1.** A registered company auditor must be appointed.
- 23.2.** The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the law.

24. NOTICES

24.1. Notice by Members of address for service

Each Member must notify the Company (and provide updates) in writing of as many as possible of the following:

- (a) postal address;
- (b) electronic (email) address; and
- (c) fax number,

for service of notice.

These addresses must be recorded in the Register. Subject to this Constitution and the Act, if the Member fails to do so, the Member is not entitled to any notice to be given by the Company.

24.2. How notices are given

Subject to the Act and this Constitution, the Company may give notice and a person may give notice to the Company:

- (a) personally;
- (b) by post, to the last known address of the recipient;
- (c) by facsimile number or electronic address (if any) nominated by the recipient; or
- (d) by any other means consented to by the sender and the recipient.

24.3. When notices are taken to be given

A notice if:

- (a) sent by post, is taken to be given 2 Business Days after it is posted;
- (b) sent by facsimile, is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission; or
- (c) sent by email, is taken to be given when the email is sent, unless the sender has been notified by a system or person involved in the delivery of email to the addressee, that the email has not been successfully delivered,

but if delivery or receipt occurs on a day on which business is not generally carried on in the place to which the notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in that place.

24.4. Notice to Member's attorney

A Member may, by written notice to the Company, request that all notices to be given by the Company or the Directors to the Member be served on the Member's attorney at an address specified in the notice.

25. DISSOLUTION OF THE COMPANY

- 25.1.** If the Board resolves that the Company is no longer necessary or that it is no longer possible to carry on the Company, the Company will apply to the Australian Federal Court for winding up of the Company.
- 25.2.** The Members may by special resolution, being at least 75% of the votes cast, resolve that the Company be dissolved.

26. WINDING UP OF THE COMPANY

- 26.1.** If the Company is wound up, each Member who was a Member within the year before the Company was wound up undertakes to contribute to the assets of the Company for payment of:

- (a) debts and liabilities of the Company contracted before the Member's membership ceases;
 - (b) costs, charges and expenses of the winding up of the Company; and
 - (c) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required but not exceeding \$10.00.

- 26.2.** If upon the winding up or dissolution of the Company, there remains after the satisfaction of all its debts and liabilities any property, other than property forming part of a Fund, that property must not be paid or distributed among the Members of the Company. Fund property must be dealt with in accordance with the rules of the Fund.
- 26.3.** All remaining property of the Company under clause 26.2 must be paid by the Company to an entity or organisation which has rules prohibiting the distribution of its assets and income to its Members.
- 26.4.** The Directors must before or at the time of dissolution or winding up of the Company select the institution or institutions to which property will be transferred under clause 26.3.
- 26.5.** If after the dissolution or winding up of the Company the Directors of the Company have not made a selection under clause 26.4, the selection will be determined by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may have jurisdiction in the matter.
- 26.6.** If effect cannot be given to clauses 26.3 to 26.5 the property under clause 26.2 must be given to a charitable purpose.

27. INDEMNITY

27.1. Indemnity for liability (other than for legal costs)

Subject to clause 27.5, every person who is or has been an officer of the Company or of any of its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability incurred by the person as such an officer to another person other than:

- (a) a liability owed to the Company or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H or 1317HA of the Act; or
- (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith.

27.2. Indemnity for legal costs

Subject to clause 27.5, every person who is or has been an officer of the Company or of any of its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the

property of the Company against any legal costs incurred in defending an action for liability incurred as such an officer if the costs are incurred, other than:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which there is no indemnity under clause 27.1;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Clause 27.2(c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

27.3. Insuring Directors and officers of the Company

To the extent permitted by law, the Company or its related bodies corporate may pay a premium for a contract insuring a person who is or has been an officer of the Company against:

- (a) any liability incurred by that person which results from facts or circumstances relating to the person being or having been an officer of the Company unless such liability arises out of:
 - (i) conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of section 182 or 183 of the Act; and
- (b) any liability for legal costs incurred by that person which results from facts or circumstances relating to the person being or having been an officer of the Company including in relation to a liability arising out of:
 - (i) conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of section 182 or 183 of the Act.

27.4. Company may make separate contracts and bring separate actions

- (a) The Company may enter into an agreement or other document under which the Company may give any or all of the indemnities contemplated in this clause 27. The terms of such agreement or other document may apply to acts or omissions prior to or after the time of entering into the indemnity.
- (b) Any indemnities given by the Company in connection with this clause 27 do not affect the right of the Company to bring any demand or action against any officer of the Company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

27.5. Directors may resolve to not indemnify

The Directors may resolve that the indemnities in clause 27:

- (a) are not to apply to a specified person or class of persons; and
- (b) will not apply unless the Company has confirmed the indemnity under clause 27.4(a) by a contract which is in force.

27.6. Interpretation

- (a) Nothing in clause 27.1 to 27.4 is to be taken to limit the power of the Company, is to be taken to limit the power of the Company, as permitted by the Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the Company or its related bodies corporate.
- (b) Subject to the Act, the benefit of any indemnity given under this clause 27 continues even after the terms of this clause 27 are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

27.7. Payments not remuneration

Any payment made by the Company under clauses 27.1 to 27.4 does not constitute remuneration for the purposes of this Constitution.

28. AMENDING THIS CONSTITUTION

28.1. Subject to legislation

Clauses 28.1 and 28.2 take effect subject to the Act and the *Private Health Insurance Act 2007* (Cth).

28.2. By special resolution

The Company may modify or repeal this Constitution or a provision of this Constitution, by Special Resolution.

28.3. Date effective

A Special Resolution modifying or repealing this Constitution takes effect:

- (a) if no later date is specified in the resolution, the date on which the resolution is passed; or
- (b) on a later date specified in or determined in accordance with the resolution.