

CORPORATIONS ACT

CONSTITUTION

Adopted on 6 December 2022

CATHOLIC HEALTHCARE LIMITED

ACN 064 946 318

Corporations Act
A Company Limited by Guarantee
CONSTITUTION
of
CATHOLIC HEALTHCARE LIMITED
ACN 064 946 318

NATURE OF THIS COMPANY

1. This company is a public company limited by guarantee.
2. The name of the Company is Catholic Healthcare Limited.
3. All of the replaceable rules set out in the Corporations Act which the company is entitled to displace, are displaced by the rules set out in this Constitution and do not apply to the Company.

DEFINITIONS

4. In this Constitution the following definitions apply unless the context otherwise requires:

"**ACNC Act**" means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

"**Acts**" means the Corporations Act and the ACNC Act as each applies to the Company for the time being.

"**Approved Fees**" for a non-executive Director means fees, salary, fringe benefits and superannuation contributions provided by the Company, but does not include an insurance premium paid by the Company or indemnity under Rules 46 to 49.

"**Board**" means the Directors from time to time of the Company.

"**Catholic Healthcare**" means Catholic Healthcare, a public juridic person established by the Bishops of the Province of Sydney.

"**Company**" means Catholic Healthcare Limited ACN 064 946 318.

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

"**Health Care**" means any endeavour which is directed to the service and care of the sick, the aged, the vulnerable, as well as the promotion of the well-being of the human person and research into the promotion of health and the causes and healing of illness in any of its forms.

"**Member**" has the meaning as defined in Rule 14.

"Objects of the Company" means the principal objects of the Company set out under Rule 5 and the further and ancillary objects of the Company set out under Rule 6.

"Officer" has the same meaning given to that expression in Section 9 of the Corporations Act.

"RCCCL Act" means the *Roman Catholic Church Communities' Lands Act 1942* (NSW).

"Secretary" means any person appointed to perform the duties of the Secretary of the Company.

"Stable Patrimony" means the real property owned by Catholic Healthcare and its civil entities, formally identified as stable patrimony by the Trustees from time to time.

"Trustees" means Trustees of Catholic Healthcare, a body corporate pursuant to the provisions of the RCCCL Act.

In the construction of this Constitution:

- (a) headings are disregarded;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) except for the definitions in the preceding clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

OBJECTS OF THE COMPANY

5. The principal objects for which the Company is established are:
 - (a) to promote the wellbeing of the human person through the service and care of those requiring Health Care by providing direct relief of sickness, suffering and distress of those persons by acquiring, owning, operating and developing aged care, retirement living and community and related care or support services and other Health Care facilities;
 - (b) to provide relief to those requiring Health Care without discrimination; and
 - (c) to be pursued principally within Australia and in compliance with all applicable laws.

6. The further objects for which the Company is established, without limiting Rule 5 or Rule 7, are:
- (a) to carry on, in conformity with the beliefs, teachings, traditions, ethical guidelines and legislation of the Catholic Church, the ministry of Catholic Healthcare as an integral element of the mission of the Catholic Church;
 - (b) to carry on or assist in the carrying on and promotion of the charitable and apostolic activities of the Member of the Company in accordance with its mission;
 - (c) to provide for the formation, for participation in the mission of the Member of the Company, of all those who are involved in any capacity with the Company;
 - (d) to provide direct financial and other support to any other Catholic Health Care facility or service which is a body which, in its own right, may receive tax deductible gifts or contributions under Subdivision 30-B of the Income Tax Assessment Act 1997 as amended from time to time or under any legislative provision enacted in substitution for that provision; and
 - (e) to do all such other things as are incidental or conducive to the attainment of the Objects of the Company.

POWERS OF THE COMPANY

7. The Company has all the powers given to it by the Corporations Act including all powers necessary to enable the Company to carry out the Objects of the Company.
8. All of the income and property of the Company must be applied solely towards the promotion of the Objects of the Company and no portion shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to the Member of the Company provided that this restriction does not prevent payment:
- (a) of remuneration to any Officers or employees of the Company;
 - (b) to the Member of the Company or any other person in return for goods or services (or both) actually supplied or rendered to the Company (including payment of Approved Fees to any non-executive Directors) incurred in the usual and ordinary course of business by the Member or any other person;
 - (c) of reasonable out-of-pocket expenses (including travelling and accommodation) incurred on reasonable commercial terms by any Officers in carrying out their duties to the Company;
 - (d) of interest on money lent to the Company by the Member of the Company at a rate not exceeding the rate for the time being charged by the Company's bankers for overdrawn accounts;

- (e) of reasonable and proper rent, remuneration or return for any premises of the Member of the Company leased to, and occupied by, the Company, provided that the payment is reasonable and proper and does not exceed fair market rental rates for similar premises;
- (f) of insurance premiums for insurance covering liabilities of the Officers of the Company incurred in respect of the performance of their roles pursuant to this Constitution; or
- (g) of money or other support to any body associated with the provision of Health Care provided that body is a body which may receive tax deductible gifts or contributions under Subdivision 30-B of the Income Tax Assessment Act 1997 as amended from time to time or under any legislative provision enacted in substitution for that provision.

9. In relation to any gifts received by the Company:

- (a) If the Company obtains deductible gift recipient status from the Australian Taxation Office, it will only receive gifts of money or property for the furtherance of the Objects of the Company.
- (b) At the first occurrence of either:
 - (i) the winding up of the Company; or
 - (ii) the revocation of the Company's deductible gift recipient endorsement under Sub-division 30-BA of the Income Tax Assessment Act 1997,

the Company shall transfer to another fund, authority or institution in Australia (gifts to which can be deducted under Division 30 of the Income Tax Assessment Act 1997), as nominated by the Member of the Company in accordance with Rule 11, any surplus: gifts of money or property for the Objects of the Company; and

 - (iii) contributions described in item 7 or 8 of the table in section 30-15 of the Income Tax Assessment Act 1997 in relation to a fund-raising event (as defined in that Act) held for that purpose; and
 - (iv) money received by the Company because of such gifts or contributions.
- (c) Any other provisions which from time to time are required in order to maintain the status of the Company as a company to which gifts can be deducted under the Income Tax Assessment Act 1997 are deemed to form part of this Constitution.

10. Subject to Rule 9, if the Company is wound up or dissolved (other than for the purposes of reconstruction or amalgamation) and there is property remaining after the satisfaction of the debts and liabilities of the Company (**Surplus**), the Surplus must not be paid or distributed to the Member of the Company but will be given or transferred to any organisation nominated by the Member of the Company (**Transferee Entity**), which:

- (a) has similar objects to the Objects of the Company and which may receive tax deductible gifts or contributions under Division 30 of the Income Tax Assessment Act 1997; and
 - (b) is registered as a charity under the ACNC Act; and
 - (c) also prohibits the distribution of any surplus assets to its members to at least the same extent as is imposed on the Company.
11. The Transferee Entity must be nominated by the Member of the Company by passing a Member's resolution as at the commencement of the winding up or as soon as possible after the revocation of the Company's deductible gift recipient endorsement under Subdivision 30-BA of the Income Tax Assessment Act 1997. If the Member fails to nominate the Transferee Entity, the Board may apply to the Supreme Court of New South Wales for a determination of the identity of the Transferee Entity.

MEMBERSHIP OF THE COMPANY

12. The liability of the Member of the Company is limited.
13. The Member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while it is the Member of the Company or within one (1) year after it ceases to be the Member of the Company, for:
- (a) the payment of the debts and liabilities of the Company (contracted before it ceases to be the Member of the Company); and
 - (b) the costs, charges and expenses of winding up the Company and for the adjustment of the rights of the contributories among themselves,
- such amount as may be required not exceeding \$100.00.
14. The Trustees shall be the only Member of the Company, unless the Trustees resign as the Member of the Company and nominate a new Member of the Company in its place.
15. All resolutions and decisions required by the Corporations Act or by this Constitution to be made by the Member of the Company, shall be passed and made by the Trustees recording the resolution or decision and signing the record, without holding any annual general meeting or other general meetings.

BOARD OF DIRECTORS ("BOARD")

16. The management of the Company shall be vested in the Board which shall consist of not less than four (4) and not more than ten (10) persons who, subject to this Constitution, shall be appointed by the Member of the Company in the manner provided in Rule 17. Upon appointment each such person shall be a Director.

17. Directors shall:
 - (a) be appointed for a term not exceeding 3 years;
 - (b) subject to the Corporations Act and the maximum continuous term of office set out in Rule **Error! Reference source not found.**, be eligible for re-appointment for further terms
 - (c) be required to retire after holding office for nine (9) consecutive years unless that Director:
 - (i) is an executive Director of the Company; or
 - (ii) is, for special circumstances, reappointed annually.
18. In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act, the office of a Director becomes vacant if the Director:
 - (a) is absent without the consent of the Board from three successive meetings of the Board;
 - (b) resigns by notice in writing to the Board and the Member of the Company;
 - (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) dies;
 - (e) is declared bankrupt;
 - (f) is directly or indirectly interested materially in any contract or proposed contract with the Company and fails to declare the interest as required by this Constitution and the Acts;
 - (g) is removed from office by notice in writing by the Member of the Company to the Director and to the Board; or
 - (h) is disqualified from being a director under either of the Acts.
19.
 - (a) Notice of Appointments and re-appointments by the Member of the Company to the Board and removal therefrom shall be by notice in writing addressed to the Board from the Member of the Company.
 - (b) The Member of the Company shall appoint one of the Directors as the Chairperson of the Board and shall nominate the term of office as Chairperson. The Board shall appoint one of their number to be Deputy Chairperson and shall nominate the term of office.

APPROVAL OF THE MEMBER OF THE COMPANY

20. (a) The approval of the Member of the Company shall be required as a pre-requisite to any decision of the Board becoming effective where the decision:
- (i) involves expenditure by the Company in excess of the limit from time to time determined by the Member of the Company;
 - (ii) will result in interest bearing debt commitments exceeding the limit determined from time to time by the Member of the Company;
 - (iii) involves a grant of security by the Company where the value of the security exceeds the limit determined from time to time by the Member of the Company;
 - (iv) involves divestment of Stable Patrimony;
 - (v) involves a joint venture, merger or significant alliance association with the Company
 - (vi) involves the closure and/or divestment of a service, residential age care facility or retirement village;
 - (vii) concerns long term strategic plans involving or requiring substantial changes in the nature of the services provided by the Company or changes in the Objects of the Company;
 - (viii) involves changes to the Company's Mission Statement, values or brand; or
 - (ix) involves the appointment or removal of the chief executive officer of the Company.
- (b) Where a decision of the Board is one which requires the approval of the Member of the Company pursuant to this Rule, the Board shall prepare a written statement of the issue and the reasons in support of the Board's decision and forward it to the Member of the Company.

POWERS AND DUTIES OF THE BOARD

21. Subject to the Acts and this Constitution:
- (a) The Board shall oversee the management of the Company and exercise all powers of the Company not required by the Acts or by this Constitution to be exercised by the Member of the Company.
 - (b) Without limiting the generality of paragraph (a) of this Rule, the Board may exercise all the powers of the Company to borrow money, buy and sell property, to charge

any property or business of the Company or give any other security for a debt, liability or obligation of the Company or of any person.

- (c) The Board may by power of attorney appoint any person or persons to be the attorney or attorneys of the Company for such purposes with such powers authorities and discretions (being powers authorities and discretions vested in or exercisable by the Board) for such period and subject to such conditions as the Board thinks fit.
 - (d) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers authorities and discretions vested in the attorney.
22. The Board may from time to time determine the policy regarding how the Company is to conduct its banking, payments and receipts such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

PROCEEDINGS OF THE BOARD

23. (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as the Board thinks fit.
- (b) The Chairperson or any two Directors may at any time, and the Secretary shall on the requisition of two Directors, convene a meeting of the Board.
- (c) A Board meeting may be held virtually or in person at one place or at more than one place using any technology that gives all of the Directors a reasonable opportunity to participate, including to hear and to be heard.
- (d) In the absence of the Chairperson, the Deputy Chairperson shall chair the meetings. In the absence of both the Chairperson and Deputy Chairperson, the Directors present shall elect one of their number to chair the meeting.
24. Subject to this Constitution, questions arising at a meeting of the Board shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Board. In the case of an equality of votes the Chairperson of the meeting shall not have a second or casting vote.
25. Subject to Rule 8, a Director who:
- (a) is in any way interested in a contract or proposed contract with the Company; or
 - (b) holds office or possesses any property as a result of which duties or interests might be created that are directly or indirectly in conflict with that Director's duties or interests as a Director,

must declare the nature and extent of the interest or conflict at the first meeting of the Board held after the relevant facts come to the Director's knowledge.

26. Subject to Rule 27, in respect of any contract or proposed contract with the Company in which a Director is in any way whether directly or indirectly interested (or in respect of any matter arising out of such a contract or proposed contract) (**Director Conflict**), the Director is not entitled to:
- (a) be present or heard in discussions on the Director Conflict;
 - (b) vote in respect of any such Director Conflict; and
 - (c) be present when the Board votes in respect of such a matter and if they are present and vote in contravention of this Rule, their vote shall not be counted,
- other than with the permission of the other Directors in accordance with Rule 27.
27. Where there is a Director Conflict, the Board may pass a resolution that the interest should not disqualify the Director from considering or voting on the matter and which resolution (**Director Conflict Resolution**):
- (a) specifies the Director, the interest and the Director Conflict; and
 - (b) states that the Directors voting for the Director Conflict Resolution are satisfied that the interest should not disqualify the Director with the interest from considering or voting on the Director Conflict, provided the specified Director is not present for and does not vote in respect of the Director Conflict Resolution.
28. At a meeting of the Board at least one half of the Directors shall constitute a quorum. No business shall be transacted at any such meeting unless a quorum is present at the time the meeting proceeds to business.
29. In the event of a vacancy or vacancies in the office of a Director or offices of Directors the remaining Directors may act but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, the Member of the Company shall appoint forthwith a further Director or Directors.
30. If all of the Directors entitled to vote have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document a resolution in those terms shall be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Director or if the Directors signed the document on different days on the day on which and at the time at which the document was last signed by a Director. Each Director may sign and deliver the document electronically, including by way of scanned copies of 'wet ink' signatures. A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Director (whether signed electronically or otherwise) will be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.
31. The Chairperson or a majority of the Directors may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration.

32. Subject to this Constitution the procedure to be followed at a meeting of the Board shall be as the Board shall decide.

CHIEF EXECUTIVE OFFICER

33. The Board shall appoint a person as the chief executive officer of the Company. Any appointment or removal of the chief executive officer shall be approved in writing by the Member of the Company.
34. The Board may entrust to and confer upon the chief executive officer any of the powers exercisable by it upon such terms and conditions and with such restrictions as it may think fit and either collaterally with or to the exclusion of its own powers and may from time-to-time revoke, withdraw, alter or vary all or any of those powers.
35. The chief executive officer may, subject to any directions of the Board, appoint, engage and remove such employees, staff, agents, consultants and advisers as the chief executive officer deems necessary or desirable for the purposes of the Company. Those personnel shall at all times carry out their duties under the supervision and control of the chief executive officer.

ESTABLISHMENT OF COMMITTEES

36. The Board may at any time appoint a Committee or Committees from amongst the Directors or persons co-opted by the Board and may prescribe the functions of any Committee and the constitution of each such Committee shall be as approved by the Board.
37. The Board may delegate any of its powers to a Committee or Committees consisting of such of its number as the Board thinks fit and may prescribe the functions and procedure of such Committee or Committees.

NOTICES BY COMPANY

38. Unless otherwise required by law and subject to Rule 39, a notice that is given by the Company, the Member or a Director under this constitution or under the Acts in connection with the Company is properly given if it is:
- (a) in writing signed on behalf of the Company, the Member or the Director (as the case may be) by original or printed signature;
 - (b) addressed to the person to whom it is to be given;
 - (c) either:
 - (i) delivered personally;

- (ii) sent by priority pre-paid post, registered post or express post (or by corresponding airmail if the addressee is overseas) to that person's last known address;
- (iii) sent by fax to the fax number (if any) nominated by that person, or;
- (iv) sent by electronic mail to the email address (if any) nominated by that person.

EFFECTIVE DATE OF NOTICES

39. A notice that is given by the Company, the Member or a Director under this constitution or under the Acts in connection with the Company is deemed as delivered:
- (a) if delivered personally, upon delivery;
 - (b) if sent by fax or electronic mail:
 - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day, or
 - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
 - (c) if posted within Australia to an Australian address:
 - (i) using registered post, six (6) business days after posting;
 - (ii) using priority prepaid post or priority registered post, four (4) business days after posting; or
 - (iii) using express, two (2) business days after posting; or
 - (iv) using regular post within Australia, four (4) business days after posting; or
 - (d) if posted from a place to an address outside Australia - ten (10) business days after posting.

BY LAWS

40. The Board shall have power to make, vary and repeal by-laws from time to time for the proper conduct and management of the Company.

SECRETARY

41. The Board shall appoint at least one Secretary of the Company who will hold office on such terms and conditions as the Board determines.

COMMON SEAL

42. The Board may adopt a common seal of the Company which shall be used only by the authority of the Board and every document to which the seal is affixed shall be signed by a Director and countersigned by a Director or Secretary or such other person appointed by the Board for that purpose.

ACCOUNTS AND RECORDS

43. (a) The Board shall ensure that there are kept proper accounts and records of the transactions and affairs of the Company and such other records as sufficiently explain its financial operations and financial position.
- (b) The Board shall do all things reasonably open to it to:
- (i) ensure that all money payable to the Company is properly collected;
 - (ii) ensure that all money expended by the Company is properly expended and properly authorised;
 - (iii) ensure that adequate control is maintained over assets owned by or in the custody of the Company;
 - (iv) ensure that all liabilities incurred by the Company are properly authorised;
 - (v) ensure efficiency and economy of operations and avoidance of waste and extravagance;
 - (vi) develop and maintain an adequate budgeting and accounting system;
 - (vii) develop and maintain an adequate internal audit system.

ANNUAL REPORT

44. The Board will in respect of each financial year prepare an Annual Report for the Member of the Company. The Board will meet with the Member of the Company to review the operations of the Company in the period covered by the Annual Report and to discuss with the Member of the Company the Company's progress in fulfilling its objects.

AUDIT

45. The Board shall ensure compliance with all statutory audit requirements.

INDEMNITY

46. Every Officer of the Company will be indemnified out of the property of the Company against any liability incurred by that person in their capacity as an Officer (other than a liability to the Company or a related body corporate) to the fullest extent permitted by law.
47. A liability in Rule 46 includes, but is not limited to, any loss, cost or expense suffered or incurred by the Officer in that capacity:
- (a) in defending or participating in legal proceedings (whether civil or criminal) or administrative proceedings, in which judgment is in favour of that person or in which that person is acquitted; or
 - (b) in connection with an application in relation to proceedings under Rule 47(c), in which the Court grants relief to that person under the Acts; or
 - (c) in connection with an investigation or inquiry by any regulatory authority or external administrator including any Royal Commission established by the government.
48. The indemnity in favour of Officers under Rule 46 is a continuing indemnity. It applies in respect of all acts done by a person while an Officer of the Company even though the person may not be an Officer of the Company at the time the claim is made.
49. The Company may pay the premiums, directly or indirectly, on any policy of insurance insuring a person who is or has been an Officer of the Company in relation to any liability incurred by that person as an Officer of the Company, to the fullest extent permitted by law.

AMENDMENT OF CONSTITUTION

50. This Constitution may be amended from time to time in accordance with the Corporations Act.

This Constitution was adopted in accordance with Rule 15 by resolution of the Member of the Company on 6 December 2022.