



CONSTITUTION OF

**SEXUAL HEALTH INFORMATION NETWORKING AND
EDUCATION SOUTH AUSTRALIA LIMITED**

(ACN 631 010 627)

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of
SEXUAL HEALTH INFORMATION NETWORKING AND
EDUCATION SOUTH AUSTRALIA LIMITED

PART 1 - INTRODUCTION

1. PRELIMINARY

1.1 In this document:

"**Act**" means the *Corporations Act 2001* as it applies to the company.

"**board**" means the board of directors.

"**company**" means Sexual Health Information Networking and Education South Australia Limited.

"**director**" means a director of the company.

"**member**" has the same meaning as in section 231.

"**replaceable rule**" means any provision of those sections and sub-sections of the Act which are designated under section 141 as "replaceable rules" and so capable of being displaced or modified by a company's constitution.

"**secretary**" means a person appointed by the board to perform the duties of a secretary of the company.

"**SHINE SA**" means Sexual Health Information Networking and Education South Australia Incorporated (ABN 49 571 00 3454).

1.2 In this document: the singular includes the plural and vice versa and words importing a gender include other genders; words importing natural persons include corporations; reference to a section is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; headings are for ease of reference only and do not affect the construction of this document; subject to clause 1.1, words and expressions in this document have the same meaning as in a provision of the Act which deals with the same matter.

1.3 All the replaceable rules are displaced by this document.

1.4 Despite any other provision in this document:

1.4.1 if the Act prohibits a thing being done, the thing may not be done;

1.4.2 if the Act requires a thing to be done, authority is given for that thing;

1.4.3 if a provision of this document is or becomes inconsistent with the Act (other than a replaceable rule), that provision must be read down or failing that severed from this document to the extent of the inconsistency.

2. COMPANY

The company is a company limited by guarantee.

3. OBJECTS AND PURPOSE

3.1 The sole objects and purpose for which the company is established and must be operated are to lead a comprehensive approach to sexual, reproductive and relationship health and wellbeing by providing quality education, clinical, counselling and information services to the Australian and international community.

3.2 The company must:

3.2.1 be physically located in Australia; and

3.2.2 incur its expenditure and pursue its objects principally in Australia.

4. NOT FOR PROFIT

The assets and income of the company must be applied solely in furtherance of its objects and no portion may be distributed directly or indirectly to the members, except as *bona fide* compensation for services rendered, goods supplied or expenses incurred on behalf of the company.

5. TAX STATUS

The company may do all things necessary and consistent with its objects:

5.1 for the income of the company to be exempt from income tax (including under *Income Tax Assessment Act 1997* section 50-10); and/or

5.2 for the company to qualify for any concession under any other tax law of Australia or any State or Territory of Australia.

6. WINDING UP

6.1 If the company is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:

6.1.1 gifts of money or property for the principal purpose of the company;

6.1.2 contributions made in relation to an eligible fundraising event held for the principal purpose of the company; and

6.1.3 money received by the company because of such gifts and contributions.

6.2 In the event of the company being wound up, the amount which remains after such winding up and satisfaction of all debts and liabilities shall be handed over to an organisation which has similar objects and which is approved by the Commissioner of Taxation as a public benevolent institution for the purposes of any Commonwealth Taxation Act.

PART 2 – MEMBERS

7. LIABILITY OF MEMBERS

Every member agrees to contribute the sum of \$1.00 to the property of the company if the company is wound up while the member is a member, or within 12 months after the member ceases to be a member, for payment of the debts and liabilities of the company (contracted before the member ceases to be a member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves

8. MEMBERSHIP

8.1 Each person appointed as a director of the Company will be deemed to have provided their consent to:

8.1.1 become a member of the company; and

8.1.2 be bound by this document and any and all policies and procedures of the company adopted by the board from time to time.

8.2 The directors shall be the only members of the Company.

9. OUTGOING MEMBERS

9.1 A member may resign by notice in writing given to the company.

9.2 Without limiting any other provision of this document, a member shall be deemed to have ceased to be a member of the Company on and from the date they cease to be a director of the Company for any reason.

10. NO TRANSFER OF MEMBERSHIP

Membership of the company is personal to the member and is not transferable.

PART 3 – MEETINGS OF MEMBERS

11. ANNUAL GENERAL MEETING

An annual general meeting (“**AGM**”) of members shall be held each year at such time and at such place as the board may direct, to transact any or all of the following business:

11.1 to consider and if thought fit to receive and adopt the annual report of the board;

11.2 to consider and if thought fit to receive and adopt the financial statement and balance sheet of the company; and

11.3 to appoint an auditor.

12. CALLING OF MEETINGS OF MEMBERS BY A DIRECTOR

A director may call a meeting of the company’s members.

13. NOTICE OF MEETINGS OF MEMBERS

13.1 A notice of meeting of the company’s members sent by post is taken to be given three (3) days after it is posted. A notice of meeting sent by email, fax, or other electronic means, is taken to be given on the business day after it is sent.

- 13.2 When a meeting of the company's members is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

14. **POSTPONEMENT OR CANCELLATION**

- 14.1 A meeting of the company's members may be postponed or cancelled at any time before the day of the meeting:
- 14.1.1 if called by the board on the request of a member or members under section 249D, by that member or those members so notifying the company;
 - 14.1.2 if called by a member or members under section 249E, by that member or those members so notifying the company;
 - 14.1.3 if called by a member or members under section 249F, by that member or those members so notifying the company; or
 - 14.1.4 if called by the board of their own volition, by the board as they may determine.

15. **QUORUM OF MEETINGS OF MEMBERS**

- 15.1 The quorum for a meeting of the company's members is a majority of the members of the Company and the quorum must be present at all times during the meeting.
- 15.2 In determining whether a quorum is present, only individuals attending the meeting (physically or by technology) can be counted.
- 15.3 A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting:
- 15.3.1 is dissolved if the meeting was called:
 - (a) on the request of members under section 249D;
 - (b) by members under section 249E; or
 - (c) by members under section 249F; otherwise
 - 15.3.2 is adjourned to the date, time and place the board specify. If the board does not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified—the same day in the next week; and
 - (b) if the time is not specified—the same time; and
 - (c) if the place is not specified—the same place.
- 15.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

16. **CHAIRING MEETINGS OF MEMBERS**

- 16.1 The chair (or deputy chair, if the chair is not available or declines to act) appointed under clause 31 of this document shall chair meetings of the company's members.

- 16.2 If both the chair and deputy chair are not available or decline to act, the members at a meeting of the company's members must by majority elect a member present to chair the meeting (for that meeting only).

17. GENERAL CONDUCT

The chair of a meeting of members has general conduct of the meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.

18. ADJOURNMENT

- 18.1 The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so. The chair may adjourn a meeting with the meeting's consent on a show of hands.
- 18.2 A poll cannot be demanded on a resolution concerning the adjournment of a meeting except by the chair.
- 18.3 Only unfinished business is to be transacted at a meeting of members resumed after an adjournment.

19. VOTING

- 19.1 Unless expressly provided otherwise, a resolution of the members must be passed by a majority of the votes cast by members entitled to vote on the resolution.
- 19.2 At a meeting of members of the company, each member has one (1) vote, both on a show of hands and on a poll.
- 19.3 The chair at a meeting of the company's members has a casting vote if necessary in addition to any vote they have in their capacity as a member.
- 19.4 A challenge to a right to vote at a meeting of the company's members:
- 19.4.1 may only be made at the meeting; and
 - 19.4.2 must be determined by the chair, whose decision is final.
- 19.5 A resolution put to the vote at a meeting of the company's members must be decided on a show of hands unless a poll is demanded by two (2) members.
- 19.6 On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 19.7 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.
- 19.8 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

20. PROXY VOTING AT A MEETING OF MEMBERS

A member who is entitled to attend and cast a vote at a meeting of the company's members is not entitled to appoint a person as the member's proxy to attend and vote for the member at the meeting.

PART 4 – DIRECTORS

21. NUMBER

The company will have no more than nine (9) directors.

22. APPOINTMENT

22.1 Subject to clauses 22.2, 23, 24 and 25, the board may from time to time appoint directors for a fixed term of three (3) years.

22.2 No person may be appointed or elected a director unless that person:

22.2.1 is at least 18 years old;

22.2.2 has given written consent to their appointment as a director and their agreement to be bound by this document; and

22.2.3 is not disqualified from managing a corporation under the Act.

23. RETIREMENT

23.1 Subject to clause 25.2, a director must retire on (or as soon as practicable after) the earlier of:

23.1.1 the last day of that director's three (3) year term in office; and

23.1.2 the day that director has been in office as a director of the company for a continuous period of nine (9) years.

23.2 Subject to clause 25.2, a director who must retire under clause 23.1.1 is eligible for reappointment unless that director has been in office as a director of the company for a continuous period of nine (9) years.

23.3 A director who must retire under clause 23.1.2 is not eligible for reappointment.

23.4 Without limiting any other provision of this document, a director shall be deemed to have retired from the office of director on and from the date they cease to be a member of the company for any reason.

24. REMOVAL

24.1 The directors are subject to removal by written notice given by all of the other directors.

24.2 A notice under clause 24.1 operates with effect when received at the registered office of the company or at such later time as is specified in that notice.

25. TRANSITIONAL PROVISIONS

25.1 Subject to compliance with clause 22.2, each board member of SHINE SA shall be the initial directors and members of the company for a fixed term of three (3) years (each an **Initial Director**).

25.2 The continuous period an Initial Director served as a board member of SHINE SA immediately prior to their appointment as a director of the company must be added to the continuous period that Initial Director is in office as a director of the company when determining whether an Initial Director:

- 25.2.1 must retire under clause 23.1.2; or
- 25.2.2 is eligible for reappointment under clause 23.2.

26. VACANCIES

- 26.1 The office of a director shall become vacant if a director:
 - 26.1.1 resigns from office by notice in writing or otherwise by application of this document;
 - 26.1.2 is absent without apology for more than three consecutive meetings of the board, or more than five meetings of the board in any one calendar year;
 - 26.1.3 becomes disqualified from managing a corporation under the Act; or
 - 26.1.4 is permanently incapacitated by ill health or dies.
- 26.2 Without limiting any other provision of this document including clause 22.1, the board may:
 - 26.2.1 establish a nominations committee for the purposes of identifying potential candidates for any vacancy in a director position and making recommendations to the board;
 - 26.2.2 fill any vacancy in a director position from time to time and may accept or reject any recommendations made the a nominations committee established under clause 26.2.1 in its absolute discretion.

27. REMUNERATION AND EXPENSES OF DIRECTORS

- 27.1 The directors are not entitled to remuneration. The company may nevertheless (but subject to section 199B) pay a premium for a contract insuring a person who is or has been a director against a liability incurred as a director.
- 27.2 The company must pay the directors' reasonable travelling and other expenses that they properly incur:
 - 27.2.1 in attending directors' meetings or any meetings of committees of directors; and
 - 27.2.2 in attending any general meetings of the company; and
 - 27.2.3 in connection with the company's business.

28. INSURANCE

- 28.1 The company must, to the extent permitted by law, take out and maintain at all times directors and officers liability insurance cover for the benefit of all directors on terms (including that the relevant director is named as beneficiary) and with an insurer approved by the board acting reasonably.
- 28.2 To the extent permitted by law, the company will indemnify each director against all claims, demands, costs, losses, damages and liabilities (of whatsoever nature) in any way incurred by a director:
 - 28.2.1 in the director's capacity as a director; and/or

- 28.2.2 in connection with the lawful exercise of all or any of the director's powers and authorities conferred upon them.

29. MEETINGS OF DIRECTORS

- 29.1 Subject to the Act and this document, the directors may meet together, adjourn and regulate their meetings as they think fit.
- 29.2 A director may call a directors' meeting. The secretary must at the request in writing of a director, call a directors' meeting.

30. NOTICE OF MEETINGS OF DIRECTORS

- 30.1 Unless all directors entitled to vote at the meeting agree otherwise, a person calling a directors' meeting must give to each director individually a notice of meeting that:
- 30.1.1 sets out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this);
- 30.1.2 states the general nature of the meeting's business and particularly any proposal to make a special decision; and
- 30.1.3 is accompanied by relevant information so far as reasonably available (if not already given to the director); and
- 30.1.4 is given at least two (2) clear days before the meeting (or such other period as all the directors in office may as a matter of general policy determine otherwise).

31. CHAIRING MEETINGS OF DIRECTORS

- 31.1 The directors must elect:
- 31.1.1 a director to the role of chair for a fixed term of three (3) years (subject to clause 23), to chair their meetings; and
- 31.1.2 another director to the role of deputy chair for a fixed term of three (3) years (subject to clause 23), to chair their meetings if the chair is unable or unwilling to act.
- 31.2 If both the chair and deputy chair are unable or unwilling to act, the directors at a meeting of the company's directors must by majority elect a director present to chair the meeting (for that meeting only).

32. GENERAL CONDUCT

The chair of a meeting of directors has general conduct of the meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.

33. QUORUM OF MEETING OF DIRECTORS

- 33.1 The quorum for a directors' meeting is a majority of appointed directors. The quorum must be present at all times during the meeting. A director who has a material personal interest in a matter that relates to the affairs of the company (including a contract, arrangement or transaction with the company) may be counted towards a quorum of a meeting of directors that is to consider that matter. Where a quorum cannot be

established for a meeting of directors (or consideration of a particular matter), a director may convene a meeting of members to consider the matter in question.

- 33.2 Section 195 applies (subject to section 196) if a director has a material personal interest in a matter that is being considered at a directors' meeting.

34. **VOTING**

- 34.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 34.2 The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

35. **ALTERNATE DIRECTORS**

There will be no alternative directors.

36. **DIRECTOR'S INTERESTS**

Subject to the Act (including section 208), a director and an entity in which a director has a personal interest may in any capacity:

- 36.1 enter into any contract or arrangement with the company;
- 36.2 be appointed to and hold any office or place of profit under the company, other than the office of auditor; and
- 36.3 act in a professional capacity, other than as auditor, for the company,

and may receive and retain for their own benefit any remuneration, profits or benefits as if they were not a director.

37. **CIRCULATING RESOLUTIONS**

- 37.1 The directors may pass a resolution without a directors' meeting being held if a majority of the directors entitled to vote on the resolution (and being not less than the number required for a quorum at a meeting of directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 37.2 The resolution is passed when the last director required to make up a majority signs.
- 37.3 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.
- 37.4 A document referred to in this clause must be sent to every director who is entitled to vote on the resolution (whether or not the director signs the document).
- 37.5 A document includes an email from the directors recorded email address.

38. **MANAGEMENT RESPONSIBILITY**

- 38.1 The board will appoint a chief executive officer (**CEO**) to manage the day to day operations of the company. The CEO will be responsible for any duties and responsibilities set out in any relevant contract of employment including:
- 38.1.1 making recommendations to the board;

38.1.2 implementing plans and policies adopted by the board from time to time; and

38.1.3 monitoring and reporting to the board on implementation of and progress against the adopted plans and policies; and

38.1.4 the CEO may in discharging their responsibilities exercise those powers and authorities set out in any relevant contract of employment.

38.2 The CEO may be removed by the board subject to the terms of any relevant contract of employment.

39. **DIRECTORS' POWERS**

39.1 The business of the company is to be overseen by or under the direction of the board.

39.2 The board may exercise all the powers of the company except any powers that the Act or this document requires the company to exercise in general meeting.

40. **COMMITTEES AND DELEGATION**

40.1 The board may establish such committees as it thinks fit.

40.2 Such committees may include persons who are not members of the board.

40.3 The board may delegate such powers as it thinks fit to any committee established by the board or to any board member or employee of the company.

40.4 Such a delegation shall not derogate from the right of the board to exercise powers delegated, and delegations may be modified or revoked by the board.

41. **MINUTES**

Minutes shall be kept of all proceedings of the board or committees of the board.

PART 5 – OTHER MATTERS

42. **SECRETARY**

A secretary holds office on the terms and conditions (including as to remuneration) that the board determines.

43. **INDEMNITY**

43.1 To the extent permitted by law and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the company), the company indemnifies every person who is or has been an officer of the company against any liability incurred by that person:

43.1.1 as an officer of the company; and

43.1.2 to a person other than the company or a related body corporate of the company;

unless the liability arises out of conduct on the part of the officer which:

43.1.3 involves a lack of good faith; or

43.1.4 is contrary to the company's express instructions.

43.2 To the extent permitted by law and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the company), the company indemnifies every officer of the company against any liability for costs and expenses incurred by the person as an officer of the company:

43.2.1 in defending any proceedings, whether civil or criminal, in which judgment is given favour of the person or in which the person is acquitted; or

43.2.2 in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act.

43.3 Unless the board otherwise determines, this clause ceases to apply in favour of a person who does not to the satisfaction of the board cooperate with the company in investigating, defending or resolving the matter to which this clause would otherwise apply.

43.4 The company may execute a documentary indemnity (not inconsistent with applicable law or this clause) in any form in favour of a person who is or has been an officer of the company.

43.5 In this clause, "**officer**" includes:

43.5.1 a director and a secretary;

43.5.2 a senior manager; and

43.5.3 full-time employees of the company as determined by the board.

44. **NEGOTIABLE INSTRUMENTS AND COMMON SEAL**

44.1 Any two (2) directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

44.2 Unless the directors resolve otherwise, the Company shall not have a common seal.

45. **NOTICES**

45.1 The company may give to a member or former member a notice required under this document or the Act:

45.1.1 personally; or

45.1.2 by sending it by post to the address for the person in the register of members or an alternative address (if any) nominated by the person; or

45.1.3 by sending it to the fax number or electronic address (if any) nominated by the person; or

45.1.4 by any other means the Act permits.

45.2 A notice sent by post is taken to be given 3 days after it is posted. A notice sent by email, fax, or other electronic means, is taken to be given on the business day after it is sent.

- 45.3 A certificate in writing signed by a director or secretary that a notice or its envelope or wrapper was addressed and stamped and was posted is sufficient evidence of posting.

46. **FINANCE**

- 46.1 Full and proper accounts shall be kept of the receipts and expenditure of the company. The funds and accounts of the company shall be audited at least once in each year by the auditor.
- 46.2 The financial year of the company shall extend from the first day of July to the last day of June in each year.
- 46.3 All subscriptions and donations to the general funds of the company shall be administered by the board for the objects of the company provided that any donation whether in money or otherwise which shall be made for any special object shall be used and applied in accordance with the expressed wish of the donor as far as may in the opinion of the board be practicable and in so far as such use and application shall not be inconsistent with the objects of the company.
- 46.4 The company shall cause to be kept proper books of account in which shall be entered full, true and complete records of the affairs and transactions of the company.
- 46.5 All moneys received by the company shall be banked in the name of the company in a bank approved by the board.
- 46.6 At least once in every year the board shall direct the CEO to prepare a statement of receipts and expenditure and fund balances for examination by any auditor appointed at an AGM who will report thereon to the board.

47. **ALTERATIONS TO CONSTITUTION**

This document may be altered or amended at any meeting of the members called for that purpose provided that particulars of the proposed alteration or amendment shall be available to members for perusal at such place or places as stated in the notice convening any such meeting.

48. **PUBLIC OFFICER**

The company shall have a public officer who shall be approved by the board from time to time.

49. **GOVERNING LAW**

- 49.1 The laws in South Australia govern this document and the courts of South Australia or the Federal Court of Australia (Adelaide Registry) have exclusive jurisdiction in connection with this document.
- 49.2 The parties submit to the jurisdiction of those courts and any courts that have jurisdiction to hear appeals from those courts.