



**Aboriginal Health Council**  
of South Australia Ltd.

# Constitution of the Aboriginal Health Council of South Australia

ACN 616 917 090

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## PART A - INTRODUCTION

### 1. PREAMBLE

The Aboriginal Health Council of South Australia Limited (AHCSA or Company) is the peak body representing Aboriginal community controlled health services in South Australia. AHCSA is an affiliate of the National Aboriginal Community Controlled Health Organisation (NACCHO) and represents South Australia on the Board of that organisation.

AHCSA began its life in 1981 as an incorporated health unit under the South Australian Health Commission Act and was known as the Aboriginal Health Organisation at that time. In 1999, AHCSA commissioned a review that recommended it be re-incorporated as an Aboriginal community controlled organisation in its own right. AHCSA's goal is to promote the holistic and culturally appropriate provision of healthcare to Aboriginal people in a comprehensive primary context, as well as providing support, guidance and leadership to Aboriginal community controlled health services across the State.

AHCSA's purpose is to strengthen community participation and ownership of Aboriginal health in a way that values cultural diversity, community history and knowledge, and community strength. It is AHCSA's role to promote discussions and developments of Aboriginal health policy, to advocate on behalf of Aboriginal people and communities, to coordinate healthcare with governments, and to ensure that an Aboriginal voice is heard in the development of all health policy within the State. Its role is also to promote healthcare practices that are able to prevent the need for Aboriginal people to receive healthcare in hospital settings, preferring instead culturally appropriate health care settings.

AHCSA recognises that there are a broad range of service providers within the Aboriginal community controlled sector, however its role is focussed on the support, development, advocacy for and growth of providers of primary Aboriginal health services within Aboriginal community controlled organisations.

AHCSA fulfills its objectives through the work of its Directors, each of whom bring to the Company unique and specialised knowledge and skills in community, culture and language. AHCSA is committed to increasing and improving the skills and abilities of its Directors, and entrenching strong governance and integrity in everything it does.

### 2. DICTIONARY

In this Constitution:

**Aboriginal Person** means an individual who:

- (a) is of the Aboriginal race of Australia, or is a descendant of an indigenous inhabitant of the Torres Strait Islands; and
- (b) is recognised by the Aboriginal and / or Torres Strait Islander community from which he or she originated as an Aboriginal and / or Torres Strait Islander person; and
- (c) identifies as being of the Aboriginal race of Australia, or as being a descendant of an indigenous inhabitant of the Torres Strait Islands.

The terms Aboriginal People and Aboriginal community have corresponding meanings.

**Aboriginal Community Controlled Health Service** or **ACCHS** means an incorporated Aboriginal Organisation, initiated by a local Aboriginal community, based in a local Aboriginal community, governed by an Aboriginal body which is elected by the local Aboriginal community and delivering a holistic and

culturally appropriate, comprehensive, and primary Aboriginal Health service to the community that controls it.

**Aboriginal Health** (or related expression) encapsulates physical, emotional, spiritual and cultural health and wellbeing of Aboriginal persons and their community.

**Aboriginal Organisation** means an incorporated body that has a membership whereby only Aboriginal People are entitled to vote at Member Service Meetings, and whose board has a majority of Aboriginal People in office.

**Act** means the *Corporations Act 2001* as amended from time to time and as it applies to the Company, and reference to a **section** is to a section of that legislation and includes any section that substantially replaces that section and deals with the same matter.

**AGM** has its meaning in the Act.

**Annual Budget** means at any time a budget for a financial year of the Company in force under clause 82. A budget should specify in reasonable detail:

- (a) anticipated receipts (differentiating between sources of such receipts);
- (b) anticipated expenditures (differentiating between revenue expenditures of different kinds (such as repairs, maintenance and staff costs) and capital expenditures);
- (c) a cash flow projection, divided into months.

**Associate Member** means an organisation that, at the time of its application for Membership satisfied all the following requirements:

- (a) it must be an incorporated body (not a natural person) incorporated under a law of Australia;
- (b) it is an Aboriginal Organisation and it is taking active steps towards providing primary health care services to communities within South Australia or it is taking active steps toward becoming an Aboriginal Community Controlled Health Service;
- (c) it must have, or be working towards having, a governing board that is comprised a majority of Aboriginal people, the majority of which is elected by members of the local Aboriginal community;
- (d) it must agree to this Constitution;

and whose application for Associate Membership has been approved by the Board.

**Board** means the Directors meeting or making decisions as Directors.

**Business Day** means a day other than:

- (a) a Saturday, Sunday;
- (b) a day which is a public holiday or bank holiday in South Australia; or
- (c) a day that falls between any 22 December and the next following 3 January.

**Business Hours** means between 9am and 5pm in South Australia on a Business Day.

**Chairperson** means at any time the chairperson of the Company having assumed that office under clause 57 or appointed to that office by the Board under clause 58.

**Chief Executive Officer (CEO)** means at any time a person appointed by the Board as chief executive officer of the Company, and includes a person acting in that position.

**Company** means the Aboriginal Health Council of South Australia Limited ACN 616 917 090.

**Deputy Chairperson** means at any time the deputy chairperson of the Company having assumed that office under clause 57 or appointed to that office by the Board under clause 58.

**Director** means at any time a director of the Company.

**Directors** mean all or some of the Directors acting as such.

**Full Member** means an organisation that, at the time of its application for Membership, satisfies all the following requirements:

- (a) it is an incorporated body (not a natural person) incorporated under a law of Australia;
- (b) it is an Aboriginal Community Controlled Health Service;
- (c) it is providing comprehensive primary health care services to communities within South Australia;
- (d) it must agree to comply with this Constitution,

and whose application for membership has been approved by the Board. **Member** includes Full Members and Associate Members.

**Member CEO** means a person employed by a Member in the role of Chief Executive Officer, Managing Director, Executive Director or such other role title that describes the most senior person in that organisation responsible for the operational management of the Member.

**Member Service Meeting** means a general meeting of the Members of the Company and includes any AGM.

**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.

Acting as a **Peak Body** includes providing leadership, watchdog, advocacy and sector support to Members, and maintaining communication between Members and third parties, including Governments and non-government organisations;

**Secretary** means at any time a person appointed by the Board to perform the duties of a secretary of the Company.

Subject to the above, expressions in this Constitution have the same meaning as in a provision of the Act which deals with the same matter.<sup>1</sup>

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<sup>1</sup> Section 9 contains many, but not all, statutory definitions.



### 3. INTERPRETATION

In this Constitution: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; another grammatical form of a defined word has a corresponding meaning. If there is any doubt as to the interpretation of a provision of this Constitution, the provision most aligned with the Preamble and Guiding Principles shall apply.

### 4. GUIDING PRINCIPLES

The Company will be guided by the following principles:

- 4.1 the Company's work is guided and underpinned by a deep and abiding respect for the inalienable right of Aboriginal communities to determine and control the composition, operation and delivery of health services for the benefit of their community;
- 4.2 the Company will strive to govern, manage and deliver services in culturally appropriate ways whilst working within the laws applicable to it;
- 4.3 the Company is committed to governing with integrity and ensuring the stability and succession of the governance of the Company. It will support its Member organisations to achieve quality governance practices;
- 4.4 the Company will endeavour to support Aboriginal people and communities to exercise their rights to self-determination and participation in decisions impacting their health and the services that support them;
- 4.5 all Members and Directors will strive to treat each other, the Company's staff, the Company's partners and the Aboriginal community and wider community with courtesy and respect at all times; and
- 4.6 the Company, its Directors, officers and employees will at all times act in a way that is consistent with NACCHO's Good Governance Principles.

### 5. ABOUT<sup>2</sup>

This document is the Constitution of the Company.

### 6. REPLACEABLE RULES<sup>3</sup>

This Constitution displaces all the Replaceable Rules.

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<sup>2</sup> By section 140(1), the constitution takes effect as a contract between the company, its member(s) and director(s) and secretary. By section 136(2) the company may modify or repeal its constitution by special resolution.

<sup>3</sup> Section 134 is that a company's internal management may be governed by replaceable rules, by a constitution or by a combination of both. By section 135(2), a constitution can displace or modify a replaceable rule. Section 141 sets out a table of the replaceable rules.

**7. ACT<sup>4</sup>**

Despite any other provision in this Constitution:

- 7.1 if the Act prohibits a thing being done, the thing may not be done;
- 7.2 if the Act requires a thing to be done, authority is given for that thing;
- 7.3 if a provision of this Constitution is or becomes inconsistent with the Act (other than a Replaceable Rule), that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

**8. ACNC ACT<sup>5</sup>**

Where at the time the Company is registered under the *Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act)*:

- 8.1 if the ACNC Act prohibits a thing being done, the thing may not be done;
- 8.2 if the ACNC Act requires a thing to be done, authority is given for that thing;
- 8.3 if a provision of this Constitution is or becomes inconsistent with the ACNC Act, that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

**PART B - THE COMPANY**

**9. OBJECTS<sup>6</sup>**

The sole objects for which the Company is registered under the Act and must be operated are to operate as the Peak Body for Aboriginal Health in South Australia, including by:

- 9.1 being the peak organisation consulted by Governments and industry in relation to issues of Aboriginal Health and matters that may impact the social, emotional or physical wellbeing of Aboriginal communities in South Australia;
- 9.2 providing leadership in the development of policy affecting Aboriginal communities and the Aboriginal Health needs of those communities;
- 9.3 advocating on behalf of Members and those communities without representation, and supporting communities who wish to initiate an Aboriginal Community Controlled Health Service for their community;
- 9.4 providing support to Members to meet their corporate governance obligations;

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<sup>4</sup> The Act contains many mandatory rules regulating the affairs of companies. Those rules are not reproduced or, in the main, signposted in this document. The rules of the common law and principles of equity also apply and are not now reproduced or signposted.

<sup>5</sup> Part 1.6 of Chapter 1 of the *Corporations Act 2001* modifies the application of the *Corporations Act 2001* to a company registered under the ACNC Act. See also section 45B if a 'small company limited by guarantee'.

<sup>6</sup> Section 125(2) allows a constitution to set out a company's objects. However, an act of a company is not invalid merely because it is contrary to or beyond any such objects.

- 9.5 developing leadership within the South Australian Aboriginal community, including developing youth leaders;
- 9.6 providing support to Members to improve health outcomes for all Aboriginal People of South Australia, promoting and advancing the community's commitment to physical, social and emotional well-being and quality of life;
- 9.7 providing support to Members to build their capacity to create a strong and enduring Aboriginal Community Controlled health sector and contribute to improving the capacity of mainstream health services to respond appropriately to the health needs of the Aboriginal community within South Australia;
- 9.8 leading and supporting the development, evaluation and deployment of innovative services, measures and projects to improve Aboriginal Health together with its Members;
- 9.9 providing leadership and support for the conduct of ethical research into Aboriginal Health;
- 9.10 coordinating and supporting the delivery of chronic disease care services and programs;
- 9.11 contributing to the development of a well-qualified and trained Aboriginal health sector work force;
- 9.12 doing any thing, or taking any action, in furtherance of the above objects and the support of the Company's Members, provided that doing so is consistent with the obligations of the Company and its status as a charitable organisation; and
- 9.13 forming and entering key strategic partnerships to support its objectives and to benefit its members.

**10. POWERS<sup>7</sup>**

The Company may exercise any power granted pursuant to s124 of the Act and must exercise its powers only in furtherance of its objects.

**11. CORPORATE STATUS**

The Company is a company limited by guarantee.

**12. NOT-FOR-PROFIT STATUS**

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.

**13. TAXATION STATUS**

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

- 13.1 for the income and gains of the Company to be exempt from income tax;
- 13.2 to be endorsed as a deductible gift recipient under the *Income Tax Assessment Act 1997*;

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<sup>7</sup> Section 124 grants broad powers to a company.

- 13.3 for the Company to qualify for any concession under any tax law of Australia or of any State or Territory of Australia.

## **PART C - MEMBERS**

### **14. REGISTER OF MEMBERS**

- 14.1 In addition to the information section 169(1) requires, the register of members kept by the Company under sections 168 and 169 must contain the following information about each Member:
- 14.1.1 whether a Full Member or Associate Member;
- 14.1.2 the date and summary reason/s why the Member's class of membership was changed;
- 14.1.3 the date and summary reason/s why the Member's membership was cancelled (if applicable);
- 14.1.4 the date the Member resigned (if applicable).
- 14.2 The register of members may also state an electronic address to which notices from the Company may be sent to the Member.
- 14.3 From time to time, as the Board sees fit, the register of members must be audited to ensure the accuracy of the information recorded, and the continued eligibility of recorded individuals for membership.

### **15. MEMBER'S RIGHTS**

- 15.1 A Member has right to receive notice of, and to appoint a representative to attend and speak at all Member Service Meetings.
- 15.2 Only a Full Member has right to vote (personally, by attorney or proxy) at any Member Service Meeting.

### **16. MEMBERSHIP IS NOT TRANSFERRABLE**

Membership of the Company is personal to the Member and incapable of transfer.

### **17. INITIAL MEMBERS**

- 17.1 The initial Members are those organisations that were Members of the Company at the time this is adopted.<sup>8</sup>

### **18. ADDITIONAL MEMBERS**

- 18.1 Any organisation may become a Member if:
- 18.1.1 it meets the eligibility criteria for the class of membership applied for;
- 18.1.2 they make an application for membership (as either a Full Member or Associate Member) in such form and with supporting evidence acceptable to the Directors acting reasonably; and

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<sup>8</sup> Section 120(1) is to that effect.

- 18.1.3 the Board in its discretion approves the application for membership, however, the Board need not give any reason for rejecting an application; and
- 18.1.4 the Board records the approval in minutes of Board meetings; and
- 18.1.5 the Board notifies the approval to the applicant.
- 18.2 An applicant for membership dissatisfied with a decision of the Board under this clause may appeal the decision to a Member Service Meeting under clause 23.
- 18.3 An application received after a Member Service Meeting has been called may only be approved by the Board after that Member Service Meeting has been held.
- 18.4 A Member having resigned as Member or whose class of membership was converted to Associate Member, may nevertheless make a fresh application for membership of a particular class in the usual way.

**19. CHANGE OF MEMBERSHIP CLASS**

- 19.1 The Board may convert a Full Member to Associate Member by so notifying the Member if in the opinion of a majority of the Directors, events or circumstances have occurred such that the Member would not be entitled to be a Full Member if they were to make an application to be a Full Member.
- 19.2 An Associate Member may become a Full Member if:
  - 19.2.1 they make application to become a Full Member; and
  - 19.2.2 the Board is satisfied the applicant is entitled to be a Full Member– however, the Board need not give any reason for rejecting an application; and
  - 19.2.3 the Board notifies the decision to the Member.
- 19.3 A Member dissatisfied with a decision of the Board in relation to themselves under this clause may appeal the decision to a Member Service Meeting under clause 23.

**20. HONORARY LIFE MEMBERS**

- 20.1 The Members may, by resolution at a meeting of Members, bestow Honorary Life Membership on an individual.
- 20.2 Honorary Life Members are:
  - 20.2.1 not entitled to vote on any matter by virtue of their Honorary Life Membership;
  - 20.2.2 entitled to attend and speak at meetings of Members; and
  - 20.2.3 shall be invited to attend any NAIDOC week celebrations held by the Company.

**21. SUSPENSION OF MEMBERSHIP**

- 21.1 A Member will be suspended with immediate effect if the Board, by a simple majority, pass a resolution confirming that the Member in question:

- 21.1.1 cease to be under Aboriginal Community Control;
  - 21.1.2 is placed under administration in accordance with any Act;
  - 21.1.3 becomes insolvent or commence proceedings to be wound up;
  - 21.1.4 fails to send, or refuses to allow, a Director to attend three consecutive meetings or four meetings in any 12 month period of the Board, Executive or relevant sub-committees to which they are nominated, without reasonable excuse;
  - 21.1.5 failed to endorse a person to be a Director in any 12 month period without informing AHCSA that this is an intentional decision, such notice to be updated every 12 months; or
  - 21.1.6 is the subject of a resolution to suspend the Member passed by a majority of at least 75% of the vote cast by the Board for any other reason.
- 21.2 Suspension of a Member shall continue until the later of:
- 21.2.1 a resolution is passed by the Board ending the suspension;
  - 21.2.2 the suspended Member's membership of the Company being terminated; or
  - 21.2.3 a period of 6 months from the date of the suspension, noting that a new period of suspension may then commence on the terms required by clause 21.1.
- 21.3 A suspended Member is not entitled to attend meetings of Members without written invitation by the Board.
- 21.4 A suspended Member is not entitled to vote at meetings of Members and shall not be included in any calculation for the quorum for such a meeting.
- 21.5 The endorsed Director of a Member who has been suspended is not entitled to attend or vote at meetings of the Board.

## **22. CANCELLATION OF MEMBERSHIP**

- 22.1 The Board may, but is not required to, cancel the membership of a Member by so notifying the Member if the Member becomes a bankrupt or otherwise an insolvent under administration.
- 22.2 The Board may, but is not required to, cancel the membership of a Member by so notifying the Member if in the opinion of a majority of the Directors, the Member:
  - 22.2.1 is suspected, on reasonable grounds that the Member has acted in breach of the Constitution;
  - 22.2.2 does something that harms the Company's reputation; or
  - 22.2.3 is guilty of a wilful, material, breach of this Constitution or a policy in force under clause 85; or
  - 22.2.4 after at least 2 attempts 3 months apart cannot be located and / or contacted by the Company at its residential or electronic address as last recorded on the register of members;
  - 22.2.5 does not appoint a Director, or allow their endorsed Director, to attend three consecutive meetings that the Director is scheduled to attend, and has not indicated to the Company in writing within the preceding 12 months of their express decision not to appoint a Director;

- 22.2.6 was suspended as a Member in accordance with this Constitution and have been recommended for expulsion by the Board;
- 22.2.7 without having given apology, does not have a representative attend (personally, by attorney or proxy) at 3 consecutive AGMs; or
- 22.2.8 does not meet the requirements to be a Full Member or Associate member,  
provided that:
- 22.2.9 at least 10 Business Days before the Board meets to decide the matter the Company gives the Member notice of written particulars of the alleged reasons for cessation and an opportunity to be heard or to make a written submission to the Board;
- 22.2.10 after considering any submission by the Member, the Board notifies the Member of the decision to expel the Member.
- 22.3 A Member dissatisfied with a decision of the Board in relation to it under this clause may appeal the decision to a Member Service Meeting under clause 23.
- 22.4 A Member whose membership is cancelled under clause 22.2 may not make application for membership, nor have its membership application considered or approved by the Board for 24 months even if it is otherwise eligible for membership under this Constitution.

### **23. APPEALS TO A MEMBER SERVICE MEETING**

- 23.1 An applicant or Member dissatisfied with a decision of the Board under any of clauses 19, 21 or 22 may appeal the decision to the next Member Service Meeting to be called by the Company (which may be its Annual General Meeting) by giving notice of appeal to the Company within 10 Business Days of being notified of the Board's decision.<sup>9</sup>
- 23.2 If a Member gives notice under clause 23.1:
- 23.2.1 a decision of the Board under either clause 19, 21 or 22 in relation to that Member is of no effect pending that next Member Service Meeting;
- 23.2.2 the Board's decision being appealed from under any of clauses 19, 21 or 22 must be referred to on the notice calling the next Member Service Meeting; and
- 23.2.3 the Board's decision being appealed from must be confirmed or overturned at the next Member Service Meeting, and if a motion to overturn the decision is put and fails at the Member Service Meeting the decision is taken to be confirmed and takes immediate effect.
- 23.3 If an applicant or Member so appeals a decision, the Board may reverse its original decision at any time before the appeal is put to a vote at a Member Service Meeting.

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<sup>9</sup> If a **Member Service** Meeting has been called (in that notice has been sent out to Members) before an appeal is received, the appeal will only be heard at the following **Member Service** Meeting, not the one that was already called.

**24. RESIGNATION BY A MEMBER**

Any Member may resign membership by notice given to the Company.<sup>10</sup>

**25. CONTACT DETAILS OF MEMBERS**

25.1 Every Member promptly must notify any change in his or her mailing or electronic address to the Company, and any such change must be promptly entered on the register of members.<sup>11</sup>

25.2 The latest mailing or electronic address in the register of members is taken to be the Member's registered address for all purposes.

**PART D - MEMBER SERVICE MEETINGS**

**26. AGM/S**

Under section 250N, an AGM must be held within 5 months after the end of the financial year of the Company or such longer period as ASIC may allow under section 250P.<sup>12</sup>

**27. CALLING OF A MEMBER SERVICE MEETING<sup>13</sup>**

27.1 The Board, by ordinary resolution, may call a Member Service Meeting.

27.2 The Board must call a Member Service Meeting on request of Members if section 249D so requires.

27.3 Full Members may call a Member Service Meeting if section 249E or section 249F so allows.

**28. NOTICE OF A MEMBER SERVICE MEETING**

28.1 Notice of a Member Service meeting must:

28.1.1 be in writing;

28.1.2 set out the information section 249L(1) requires;

28.1.3 if the meeting is to be held through the use of technology in multiple locations, set out the fact that this will occur and the form of technology that will be used to facilitate this;

28.1.4 be given individually to each Member entitled to vote at the meeting, and to each Director and to the auditor as section 249J(1) and section 249K(1) respectively require;

28.1.5 be given in a manner section 249J(3) allows; and

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<sup>10</sup> Section 109X explains who can receive a notice on behalf of the Company, but ideally the Company Secretary should be the recipient.

<sup>11</sup> Section 168(1) requires the Company maintain a register of members. Section 169(1) requires members' names and addresses be entered on that register.

<sup>12</sup> Section 323D(1) has a special rule for the first financial year of a company.

<sup>13</sup> Members might also requisition a particular resolution at a Member Service Meeting under section 249N. A meeting must be held for a proper purpose (section 249Q) and at a reasonable time and place (section 249R). Section 249S might allow a meeting by telephone or video conference.



- 28.1.6 be given such number of days before the meeting as section 249H requires.<sup>14</sup>
- 28.2 A notice of a Member Service Meeting sent by post is taken to be given 5 calendar days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.
- 28.3 When a Member Service Meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 20 Business Days or more.

**29. POSTPONEMENT OR CANCELLATION OF A MEMBER SERVICE MEETING**

- 29.1 A Member Service Meeting may be postponed or cancelled at any time before the day of the meeting:
  - 29.1.1 if called by the Board on the request of Full Members under section 249D, by those Full Members so notifying the Company;
  - 29.1.2 if called by Full Members under section 249E or section 249F, by those Full Members so notifying the Company;
  - 29.1.3 if called by the Board of its own volition, by the Board as it may determine.
- 29.2 The Company must give notice of the postponement or cancellation to all persons entitled to receive notice of that Member Service Meeting.
- 29.3 Full Members postponing or cancelling a Member Service Meeting must pay the expenses of the postponement or cancellation unless the Board otherwise determines.

**30. QUORUM OF A MEMBER SERVICE MEETING**

- 30.1 Subject to clause 30.4, the quorum for a Member Service Meeting is five Full Members or 20% of Full Members, whichever is the fewer.
- 30.2 The quorum must be present at all times during the Member Service Meeting (in person or via technology approved by the Board).
- 30.3 In determining whether a quorum is present, if a Member has an attorney and proxy both in attendance, count only one of them. If an individual attends in two or more capacities, count them only once.
- 30.4 A Member Service Meeting that does not have a quorum present within 15 minutes after the time for the meeting set out in the notice of meeting:
  - 30.4.1 is dissolved if the meeting was called on the request of Full Members under section 249D or by Full Members under section 249E or section 249F; otherwise
  - 30.4.2 is adjourned to the date, time and place the Board specifies. 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

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<sup>14</sup> Twenty one days is the rule.

(c) if the place is not specified — the same place.

30.5 If no quorum is present at the resumed Member Service Meeting within 15 minutes after the time for the meeting, the Member Service Meeting is dissolved.

**31. CHAIR OF A MEMBER SERVICE MEETING**

31.1 The chair of a Member Service Meeting shall be, in descending order of priority:

31.1.1 the Chairperson if present and willing to chair the Member Service Meeting; or

31.1.2 the Deputy Chairperson if present and willing to chair the Member Service Meeting; or

31.1.3 a person elected by the Directors present at the Member Service Meeting; or

31.1.4 a person elected by the Full Members present at the Member Service Meeting.

31.2 If during a Member Service Meeting the chair is unwilling to chair any part of the proceedings, the chair may withdraw during that part of the proceedings and may nominate any Member present to act as chair during that part of the proceedings. At the conclusion of the relevant part of the proceedings, the acting chair must withdraw and the initial chair resume the chair of the Member Service Meeting.

**32. OUTSIDERS AT A MEMBER SERVICE MEETING**

A person not a Member requested by the Board to attend a Member Service Meeting is entitled to be present at the Member Service Meeting and, at the request of the chair of the Member Service Meeting, to speak at that Member Service Meeting unless the Members by a resolution supported by 75% of the votes cast at the meeting vote to exclude or not hear from that person.

**33. GENERAL CONDUCT OF A MEMBER SERVICE MEETING**

33.1 Member Service Meetings may be held in multiple locations utilising technology, provided that the technology enables those participating to hear and meaningfully contribute to the meeting, and for voting to take place.

33.2 The chair of a Member Service Meeting has general conduct of the Member Service Meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.

33.3 The chair of a Member Service Meeting may determine immediately before or during the Member Service Meeting that persons attending the Member Service Meeting should:

33.3.1 be only the Directors, the Secretary, the auditor, the Members and persons attending as an attorney or proxy of a Member;

33.3.2 comply with any identification or security measures, including personal searches, as the chair considers appropriate;

33.3.3 not possess a mobile phone, camera, recording or broadcasting device except as permitted by the chair;

33.3.4 not possess any placard, banner or other article the chair considers may be dangerous, offensive or liable to cause disruption.

- 33.4 The chair may refuse a person admission to, or require a person to leave and not return to, a Member Service Meeting if the person fails to comply with a determination of the chair authorised by this clause.
- 33.5 Subject to the above, a Director, the Secretary, the auditor, any Member and any person attending as an attorney or proxy of a Member is each entitled to attend and be heard at any Member Service Meeting.
- 33.6 The chair's determination on a procedural matter is final.

**34. ADJOURNMENT OF A MEMBER SERVICE MEETING**

- 34.1 The chair must adjourn a Member Service Meeting if Full Members present with a majority of votes at the Member Service Meeting agree or direct that the chair must do so. The chair may adjourn a Member Service Meeting with the meeting's consent on a show of hands.
- 34.2 A poll cannot be demanded on a resolution concerning the adjournment of a Member Service Meeting except by the chair.<sup>15</sup>
- 34.3 Only unfinished business is to be transacted at a Member Service Meeting resumed after an adjournment.

**35. BUSINESS OF A MEMBER SERVICE MEETING**

A Member **Service** Meeting is not competent to deliberate upon or vote upon a motion for a resolution not set out in the notice of meeting, except:

- 35.1 a motion for a procedural resolution, for example to appoint a chair, demand a vote by poll, or to adjourn; or
- 35.2 as the Act (in particular section 250R) may allow or require; or
- 35.3 as the chair of the Member Service Meeting may allow as being within the general nature of the meeting's business as set out in the notice of meeting.

To avoid doubt, this provision does not prevent a motion to amend a resolution set out in the notice of meeting.

**36. BUSINESS OF AN ANNUAL GENERAL MEETING**

- 36.1 The Annual General Meeting of the Company shall consider all matters required by section 250R of the Act, as well as:
  - 36.1.1 the election of the Chairperson (if required);
  - 36.1.2 appointment of the Auditor (if required);
  - 36.1.3 confirmation of the Public Officer; and
  - 36.1.4 the appointment of representatives to the NACCHO Board (if required).

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<sup>15</sup> Section 250K(2) allows the constitution to exclude a poll on an adjournment.

**37. VOTING AT A MEMBER SERVICE MEETING**

- 37.1 At a Member Service Meeting, each Full Member has one vote, both on a show of hands and a poll. Associate Members do not have a vote.
- 37.2 The chair of a Member Service Meeting has a casting vote, but no other vote unless also the nominated representative of a Member.
- 37.3 A vote the Act requires the Company to disregard must not be counted.
- 37.4 A challenge to a right to vote at a Member Service Meeting:
  - 37.4.1 may only be made at the Member Service Meeting; and
  - 37.4.2 must be determined by the chair, whose decision is final.
- 37.5 A resolution put to the vote at a Member Service Meeting must be decided on a show of hands unless a poll is demanded.<sup>16</sup>
- 37.6 Before a vote is taken the chair must inform the Member Service Meeting whether any proxy votes have been received, and how the proxy votes are to be cast.
- 37.7 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 and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 37.8 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.
- 37.9 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 37.10 The validity of a resolution is not affected by the failure of an attorney or proxy of a Full Member to vote in accordance with the instructions of the Member.

**38. VOTING BY ATTORNEY**

Subject to the other provisions of this Constitution and the terms of the appointment, an attorney of a Member may attend and speak for the Member at a Member Service Meeting, and if acting for a Full Member vote for that Full Member.

**39. APPOINTMENT OF MEMBER REPRESENTATIVES**

- 39.1 A Member must, no later than five days before a Member Service Meeting, identify the person who will act as their representative entitled to speak and, in the case of a Full Member vote, on their behalf.
- 39.2 Confirmation must be on the Member's letterhead and include a copy of the resolution appointing that individual as a representative and be provided to the Secretary.

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<sup>16</sup> Section 250L sets out who can demand a poll, and when it may be demanded.

39.3 If a Member has previously nominated a representative, but does not provide a new confirmation prior to a Member Service Meeting, or removal of their previously nominated representative, in absence of any evidence to the contrary the person last nominated will be considered to be that Member's representative.

#### **40. VOTING BY PROXY**

40.1 A Member may appoint a person as its proxy to attend and speak, and in the case of a Full Member, vote for the Full Member at a Member Service Meeting.<sup>17</sup>

40.2 The Board or the chair of a Member Service Meeting may in any particular case allow an appointment of a proxy as valid even if it contains only some of the information required by section 250A(1).<sup>18</sup>

40.3 An appointment that does not contain the proxy's name or the name of the office held by the proxy is valid and taken to be in favour of the chair of the Member Service Meeting.

40.4 An appointment of a proxy is not effective if the documents section 250B requires are not received by the Company at least 48 hours before the Member Service Meeting or resumption of the Member Service Meeting as applicable.

40.5 A proxy present and entitled to vote must vote in any way specified in the appointment.<sup>19</sup>

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

40.6.1 the Member revokes the proxy's appointment; or

40.6.2 the Member revokes the authority under which the proxy was appointed by an attorney of the Member.

40.7 Subject to section 249Y(1)(b), section 250BB and any contrary express terms of an appointment, a proxy of a Full Member may vote:

40.7.1 on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and

40.7.2 on any procedural motion put to the meeting.

### **PART E - APPOINTMENT & REMOVAL OF DIRECTORS**

#### **41. QUALIFICATIONS TO BE A DIRECTOR**

41.1 A Member Director must be a person who is:

41.1.1 an Aboriginal Person;

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<sup>17</sup> Section 249X gives a member of a public company a statutory right to appoint a proxy. A later appointment may revoke an earlier one, under section 250A(7). By section 250B, the appointment (and any relevant power of attorney) must be received by the company at least 48 hours before the meeting, or adjourned meeting. A fax to the company may be sufficient, under section 250B(3).

<sup>18</sup> See section 250A(2). By section 250A(7) the appointment need not be witnessed.

<sup>19</sup> See also section 249Y(1) as to the rights of a proxy, subject to section 250BB.

- 41.1.2 a person nominated by the Full Member who is a member and director (or equivalent) of a Full Member;
- 41.1.3 nominated and endorsed by that Full Member;
- 41.1.4 not an employee of the Company (AHCSA), or an immediate family member of the CEO or other senior management employee of the Company, where immediate family member includes spouse (married or de facto), sibling (including adoptive siblings), parent, child (including an adopted child);
- 41.1.5 not a person whose employment with the Company (AHCSA) ended in the 12 month period prior to their proposed appointment to the Board due to either:
  - (a) termination for serious and wilful misconduct;
  - (b) termination for poor performance; or
  - (c) their resignation during a period of formal performance management or an investigation into allegations of their misconduct; and
- 41.1.6 fully compliant with all regulatory and legal requirements to become a Director.
- 41.2 A Director must not be a person disqualified from managing a corporation under Part 2D.6 of the Act or other law.
- 41.3 In line with providing a safe workspace a person must not, for a period of five years, be nominated as a Director of the Company if that person:
  - 41.3.1 has been removed from the Board due to a finding that they have breached a relevant behavioural standard or code of conduct, or have acted in a manner which threatened the safety of any person; or
  - 41.3.2 they resign during an investigation into their conduct.
- 41.4 A person must not be appointed or elected as a Director within 120 months of the later of:
  - 41.4.1 being found guilty by a Court or Tribunal (whether or not convicted) of an offence of:
    - (a) assault (including sexual assault); or
    - (b) domestic violence; or
    - (c) dishonesty offences (including fraud); or
    - (d) trafficking in a commercial quantity of illicit drugs;
  - 41.4.2 the conclusion of any term of custodial sentence related to any of the offences listed in clause 41.4.1.
- 41.5 At all times, a Director must have a national police clearance not more than 24 months old. A candidate for appointment as a Director need not have such clearance, but must have submitted an application to obtain a clearance within 20 Business Days after taking office, failing which he or she vacates office.
- 41.6 A Director must have completed a corporate governance training course of a kind at the time last by the Board. A candidate for appointment as a Director need not have completed such course, but must complete such course within 180 Business Days after taking office, failing which he or she vacates office.

- 41.7 Directors must complete a corporate governance training course of a kind approved by the Board, or else provide evidence to the Board's reasonable satisfaction of having completed, delivered, or otherwise received education in contemporary corporate governance at least once every 24 months.
- 41.8 Any person elected as a Director must, within 30 days of being elected or appointed to office, and there after once every 12 months on request by the CEO or the Board, provide evidence of having received all vaccinations recommended or required by the Australian Technical Advisory Group on Immunisations (**ATAGI**) for persons of their age and demographic or as required under the SA Public Health Act (2011) (**Vaccine Status**).
- 41.9 If a Director fails to comply with the requirements referred to in clauses 41.4 to 41.8, or if the Board believes that a Director has failed to comply with those requirements, the Director shall be given written notice of that fact. If the Director does not rectify their non-compliance within 10 Business Days and provide evidence of that compliance to the Board in a reasonably acceptable form, they shall immediately vacate office. In the case of failing to provide a police clearance, provision of credible evidence of having applied for a clearance within that 10 Business Day period will be sufficient.

## **42. NUMBER OF DIRECTORS**

- 42.1 To comply with section 201A(2), the Company must have at least 3 Directors.
- 42.2 The Board shall be comprised of up to one Director nominated by each Full Member (**Member Directors**), plus a Chairperson who shall be elected at the AGM.
- 42.3 Where a Chairperson is elected, the Member Service from which they were nominated is entitled to appoint an eligible person to be an ordinary director.
- 42.4 The Board may also have no more than 3 Independent Non-Member Specialist (**INMS**) Directors who are appointed by the Board but do not have a right to vote.

## **43. APPOINTMENT OF MEMBER DIRECTORS<sup>20</sup>**

- 43.1 An individual shall be appointed as a Member Director if:
- 43.1.1 written endorsement is provided by the Full Member nominating the Member Director, on the Member's letterhead, attaching the resolution endorsing that person;
- 43.1.2 the Member Director provides a written consent to become a Director, a statutory declaration attesting to their residence, and any other credential (such as a Director Identification Number) as may be required by law from time to time, and warranting that they meet all requirements to be a Member Director; and
- 43.1.3 the person is assessed by the Secretary, acting reasonably, to meet the requirements to be a Member Director.
- 43.2 A Member may change their nominated representative at any time by giving written notice on letterhead to the Company attaching the resolution changing their representative, which shall have the effect of immediately removing the preceding nominated Member Director from office.

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<sup>20</sup> A director must be an individual at least 18 years of age (section 201B(1)) and consent in writing to act (section 201D(1)). By section 205B a person appointed as a director, or ceasing to be a director, must be notified to ASIC. Under section 201M an act done by a director may be effective even if their appointment is invalid.

43.3 An endorsement or change of endorsement that has been received less than 2 Business Days before a meeting will not be effective to appoint or replace a Member Director until after that meeting is to be held.

**44. APPOINTMENT OF INMS DIRECTORS**

44.1 An individual shall be appointed as an INMS Director if:

44.1.1 the Member Directors pass a resolution endorsing the appointment;

44.1.2 the INMS Director provides a written consent to become an INMS Director, and any other credential (such as a Director Identification Number) as may be required by law from time to time and proof of any relevant qualifications or experience as required by the Board acting reasonably; and

44.1.3 the person is assessed by the Board, acting reasonably, to meet the requirements to be a Director under clauses 41.1.4 to 41.8 (inclusive) of this Constitution.

44.2 In appointing INMS Directors preference shall be given to Aboriginal people but if no Aboriginal person with the required skills can be found the Board may consider appointing non-Aboriginal people as INMS Directors.

**45. TERM LIMIT OF DIRECTORS**

45.1 A Director is to hold office until they resign, are removed by a provision of this Constitution or the Act, or they are removed or replaced by the Full Member that nominated them.

**46. SUSPENSION OF DIRECTORS**

46.1 The Board may suspend a Director (including any member of the Executive) from their position as a Director on the following basis:

46.1.1 A Director will be suspended if:

(a) The Full Member that endorsed them has its membership suspended;

(b) They are found by an ordinary resolution of the Board to have breached a policy or code of conduct approved by the Board;

(c) The Board by ordinary resolution finds that they have taken an action that would damage the reputation, objects or purposes of the Company; or

(d) an investigation is commenced into their conduct by the Company, or the Secretary receives written notification that a Governmental department or police force is commencing an investigation into their conduct.

46.1.2 Any suspension must be for a specified period of time that shall not exceed three months at which point the Director must be unsuspended, or referred to a Member Service Meeting held no later than four months from the date of their suspension, at which their position as a Director is to be considered.

46.2 A suspended Director is not entitled to attend, speak at, or vote at any meeting of the Board during their suspension and are not counted for the purposes of quorum, however they must be provided with copies of such of the Board papers as are reasonably required to enable them to fulfill their Directors duties, and the Board must read and consider any statement they wish to have read at a meeting of the



Board provided that it does not breach any confidence or contain defamatory contents and is in line with any Code of Conduct promulgated by the Board.

#### **47. REMOVAL OF DIRECTORS**

47.1 Under section 203D, the Company has statutory power to remove any Director. In addition, the Company may by resolution remove any Director from office, provided that the Director is afforded natural justice in relation to such removal.

47.2 The Board may not remove a Director.<sup>21</sup>

#### **48. RESIGNATION OF A DIRECTOR**

A Director may resign as a Director by notice given to the Company unless such resignation would result in the Company contravening section 201A(2).<sup>22</sup>

#### **49. VACATING THE OFFICE OF DIRECTOR**

49.1 A person ceases to be a Director:

49.1.1 if and when the Act requires;<sup>23</sup>

49.1.2 if they resign by notice in writing delivered to the Secretary;

49.1.3 if and when they cease to be endorsed by the Full Member who nominated them;

49.1.4 if and when any provision of this Constitution requires;

49.1.5 if they are shown to not meet the requirements to be a Director;

49.1.6 if they die;

49.1.7 if they wilfully or recklessly fails to give the other Directors notice of his or her material personal interest in a contract or prospective contract of a value of at least \$5,000.00 (before GST) made or to be made by the Company in circumstances section 191 requires such notice be given; or

49.1.8 if absent from scheduled Board meetings for 2 consecutive meetings or for 3 scheduled Board meetings in any 12 months without leave of absence from the Board.

49.2 Subject to the Act and the other provisions of this Constitution, a person removed pursuant to clause 47.1 that person is eligible for reappointment as a Director.

49.3 If the Board believe that a Director is suffering from a physical or mental incapacity that is likely to prevent them from performing their duties as a Director for more than 90 days, the Board may require, and each Director must within a reasonable period of time submit to, an assessment by a medical practitioner of the Company's choosing, at the cost of the Company, to assess their capacity. Directors will be taken to

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<sup>21</sup> Section 203E.

<sup>22</sup> Section 201A(2) requires the company to have at least 3 directors. A person who retires or resigns as a director, secretary or alternate director may themselves notify ASIC directly under section 205A.

<sup>23</sup> See section 203B as to disqualification by force of the Act.

have consented to a copy of this report being provided to the Member that nominated them to their position with a recommendation from the Board as to whether or not that Director should be removed.

## **50. ALTERNATE DIRECTORS**

- 50.1 A Full Member may appoint an Alternate Director, who will have all powers of their usual nominee Director who they are the alternate for, provided that the Alternate Director:
- 50.1.1 Meets all requirements to be a Director under this Constitution;
  - 50.1.2 has provided confirmation in writing on the letterhead of the Member that appointed the nominee Director who they are the alternate for, together with a resolution evidencing that appointment; and
  - 50.1.3 provides a clear timeframe during which the Alternate Director may act.
- 50.2 Notwithstanding clause 50.1, the Chairperson may not appoint an Alternate Director.

## **51. EXPENSES OF DIRECTORS**

The Company may pay a Director's travelling and other expenses that he or she properly incurs with prior approval of the Board:

- 51.1 in attending any Board meetings, meetings of committees, or Member Service Meetings; and
- 51.2 in connection with the Company's business.

## **52. PROPERTY**

The income, property and funds of the Company shall be used and applied solely towards the promotion of the objects of the Company, and no part thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, ex gratia payment or otherwise by way of providing pecuniary benefit to Members, providing that nothing herein contained shall prevent payment in good faith of remuneration or other benefits to or reimbursements or expenses incurred by any Director, officer or employee of the Company or any Member of the Company in return for services or goods actually rendered to the Company and as authorized by the Board or otherwise provided for in this Constitution.

## **53. REMUNERATION OF DIRECTORS**

- 53.1 The Directors are to be paid the remuneration (if any) the Board determines by resolution,<sup>24</sup> but only in circumstances where:
- 53.1.1 a Director is required to take unpaid leave from their employer in order to attend a meeting or event in their capacity as a Director;
  - 53.1.2 the Director attends no less than 85% of the relevant meeting or event and actively participates, with attendance and participation to be assessed by the CEO or Chairperson of AHCSA acting reasonably;

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<sup>24</sup> Under general law, a Director has no right to demand remuneration. In this context, remuneration means Directors' fees, not wages or salaries paid to employees who happen to also be Directors. The fixing of wages and salaries is usually a matter solely for the Directors. The Members may be entitled to require disclosure of the Directors' remuneration under section 202B.

- 53.1.3 the Director provides a sworn statement confirming that they are, in fact, taking unpaid leave; and
- 53.1.4 the Director grants the Secretary permission to confirm this fact from their employer.
- 53.2 The Board may request that a Director provide evidence of the fact that they are required to take unpaid leave in relation to any meeting or meetings, including after that meeting has been held. If a Director is unable to provide evidence within 21 days to the reasonable satisfaction of the Board, the Board may require the Director repay the relevant remuneration.
- 53.3 Remuneration will never be paid for meetings that do not proceed due to lack of quorum (though travel expenses may be reimbursed).
- 53.4 The Board must disclose to Members at each AGM the remuneration paid to each Director, and the number of meetings each relevant Director was eligible to attend, and how many of those they did attend at least 85% of.
- 53.5 The Members may (but are not required to), at a Member Service Meeting, set a maximum amount that may be paid to Directors in aggregate, which shall apply as a limit until varied or revoked by the Members, but will increase on 1 July each year in accordance with any annual rise in the Australian All Groups Consumer Price Index published by the Australian Bureau of Statistics.
- 53.6 Notwithstanding any other provision of this Constitution:
- 53.6.1 the Chairperson shall be paid an honorarium of an amount approved by the Board, which shall be disclosed to the Members at each AGM;
- 53.6.2 remuneration to any Director (including the Chair) is contingent upon the Company having sufficient funds (that are not subject to any relevant restriction) to make such payments without materially prejudicing its overall financial position and solvency; and
- 53.6.3 the Company shall, no less frequently than once in any three year period, conduct or obtain information to allow for Members to benchmark the amount of remuneration paid to Directors compared to the Directors of comparable organisations.
- 53.7 For the avoidance of doubt, a person employed by, or remunerated by, a Member will not be entitled to the above remuneration.

#### **54. D&O INSURANCE**

Subject to section 199B, the Company may pay a premium for a contract insuring a person who is or has been a Director against a liability incurred as a Director.

#### **55. INDEMNITY<sup>25</sup>**

- 55.1 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:

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<sup>25</sup> Section 199A limits the indemnity a company may afford an officer. Section 199B limits the company's paying insurance premiums for an officer.

- 55.1.1 as an officer of the Company; and
- 55.1.2 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:
  - 55.1.3 involves a lack of good faith;
  - 55.1.4 involves a wilful breach of the law or dishonesty; or
  - 55.1.5 is contrary to the Company's express instructions.
- 55.2 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:
  - 55.2.1 in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - 55.2.2 in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act.
- 55.3 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.
- 55.4 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.
- 55.5 In this clause, **officer** means:
  - 55.5.1 a Director, a Secretary;
  - 55.5.2 a senior manager (as defined in the Act); and
  - 55.5.3 any employees of the Company as determined by the Board.

## **PART F - THE EXECUTIVE**

### **56. THE EXECUTIVE**

- 56.1 The Company shall have an Executive Board consisting of a Chairperson, Deputy Chairperson, Treasurer, and two non-office bearing executive members.
- 56.2 Other than the Chairperson and Deputy Chairperson, the Executive shall be appointed by the Board at the first Board meeting following an Annual General Meeting.
- 56.3 The Chairperson shall be elected by the Members at a Member Service Meeting of the Company.
- 56.4 Each member of the Executive shall serve for a term until the conclusion of the second Annual General Meeting held after their election or appointment, and is eligible to stand for re-election/re-appointment

(unless removed from office earlier under clause 60.2, or if their term as a Director expires and they are not re-appointed or re-elected).

**57. CHAIRPERSON**

There must be a Chairperson, unless the Company is in the process of seeking a new Chairperson. In the event the office of the Chairperson is vacant, the Deputy Chairperson shall assume the role of acting Chairperson until the position is filled.

**58. ELECTION OF CHAIRPERSON AND DEPUTY CHAIRPERSON**

58.1 The Chairperson and Deputy Chairperson shall be elected by the Members from amongst the Directors in office at the Member Services Meeting during which an election is held.

58.2 Directors wishing to nominate for the position of Chairperson or Deputy Chairperson must provide a signed nomination form to the Secretary no less than one Business Day before the relevant Member Services meeting.

58.3 At the relevant Member Service Meeting, each Candidate for Chairperson and Deputy Chairperson shall be given three minutes to speak as to why they should be elected, following which voting will occur by secret ballot utilising optional preferential voting.

**59. APPOINTMENT OF THE EXECUTIVE**

59.1 Each other member of the Executive is to be appointed by the Board from amongst the Directors at the first Board meeting following an Annual General Meeting (if any vacancies arise). If more than one person nominates for an Executive office, the Directors may:

59.1.1 request the nominees speak on behalf of themselves as to their suitability for the office;

59.1.2 decide the appointment by secret ballot of the Directors.

59.2 If a resolution to appoint a member of the executive results in a tied vote, those with the highest equal vote/s may decide the matter by the drawing of lots between themselves or by withdrawing their own candidacy or, with approval of the Board, come to some *ad hoc* arrangement as regards the office being contested.

59.3 A member of the Executive remains liable to vacate the office of Director as would any other Director.

59.4 If at any time a casual vacancy exists in the office of any member of the Executive (including Chairperson or Deputy Chairperson), the Board must appoint promptly as is reasonably practicable a Director to the office vacated.

59.5 If at any time no Director is willing to hold office of a member of the Executive, the functions of the office are assumed by the Board.

**60. VACATING OFFICE BY A MEMBER OF THE EXECUTIVE**

A member of the Executive ceases to hold office if:

60.1 they give written notice of resignation of the office to the Company; or

- 60.2 they (other than the Chairperson) are removed by resolution of the Board after being afforded natural justice;<sup>26</sup>
- 60.3 they (in the case of the Chairperson) are removed by a Special Resolution of the Members in Member Service meeting after being afforded natural justice; or
- 60.4 they cease to be a Director (disregarding a retirement as a Director and reappointment as a Director at the same Member Service Meeting).

A member of the Executive vacating office does not cease to be a Director for that reason.

**61. APPEAL AGAINST REMOVAL OF A MEMBER OF THE EXECUTIVE**

- 61.1 A member of the Executive removed from that office by the Board may appeal the removal to a Member Service Meeting under clause 23, with necessary changes, provided that the appeal is supported by the signatures of at least 4 Members.
- 61.2 At such a Member Service Meeting, the Company may overturn the removal.

**62. FUNCTIONS OF THE EXECUTIVE MEMBERS**

- 62.1 A Chairperson has the following separate functions:
  - 62.1.1 to chair Board meetings, Member Service Meetings and, if on a committee (or sub-committee) chair their meetings;
  - 62.1.2 to act as a conduit between the Board and the CEO;
  - 62.1.3 to act as spokesperson for the Company in dealings with government or the media, together with the CEO.
- 62.2 A Deputy Chairperson is to assist or stand in for the Chairperson in the Chairperson's separate functions:
  - 62.2.1 if, as, and to the extent the Chairperson requests or is unable to act in those functions; or
  - 62.2.2 if and so long as the office of Chairperson is vacant.
- 62.3 The Treasurer is to chair meetings of AHCSA's finance committee, unless the Board otherwise vote for a different person to do so.

**63. POWERS OF THE EXECUTIVE**

- 63.1 The Executive shall exercise all powers of the Board other than:
  - 63.1.1 Determining the strategic direction of the Company;
  - 63.1.2 Determining the governance policies of the Company and endorsing key management policies;
  - 63.1.3 Electing members of the Executive;

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<sup>26</sup> Section 195 would usually prevent the person voting as a director on that resolution.

- 63.1.4 Determining any remuneration paid to Directors or members of the Executive;
- 63.1.5 Setting Membership fees;
- 63.1.6 Approving membership of new Members;
- 63.1.7 disciplining or reprimanding (including suspending or expelling) a Member or Director;
- 63.1.8 management of the CEO including the approval of performance reviews, discipline or hiring of the CEO;
- 63.1.9 approving annual budgets or accepting audited reports;
- 63.1.10 approving the sale or purchase of any asset of an amount greater than any limit set by the Board in the Company's financial policies and delegations; or
- 63.1.11 determining plans for the amalgamation or winding up of the Company.

#### **64. EXECUTIVE MEETINGS**

- 64.1 Unless otherwise agreed by the Board, the Executive shall meet no less frequently than twice in any calendar year.

### **PART G - BOARD MEETINGS**

#### **65. BOARD MEETINGS**

- 65.1 Subject to the Act and this Constitution, the Directors may meet together, adjourn and regulate their meetings as they think fit, but no less frequently than three times in a calendar year, at such time and place as the Secretary shall determine, or the Board may direct.<sup>27</sup>
- 65.2 The Secretary must at the request in writing of:
  - 65.2.1 any three Directors, or 25% of Directors then in office rounded down to the nearest whole number, whichever is less; or
  - 65.2.2 the Chairperson,  
  
call a Board meeting within a reasonable period of time of receiving that request (and in any event no later than 14 days from receipt of the request). Where reasonably practicable, the time and date requested by those calling for the meeting should be accommodated but is not required to be if it would cause unnecessary burden on the AHCSA Secretariat, or if there is other good reason not to accommodate that request.

#### **66. NOTICE OF A BOARD MEETING**

Unless all Directors entitled to vote at the Board meeting agree otherwise, a person calling a Board meeting must give to each Director individually a notice of meeting that:

- 66.1 sets out the place, date and time for the Board meeting (and, if the Board meeting is to be held in 2 or more places, the technology that will be used to facilitate this) - it being presumed that a Board meeting

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<sup>27</sup> Section 248D may allow a meeting by telephone, or by video conference.

would be held in-person, at the Company's principal business office, and at a time convenient to most Directors; and

- 66.2 states the general nature of the Board meeting's business; and
- 66.3 is accompanied by relevant information so far as reasonably available (if not already given to the Director); and
- 66.4 is given at least 5 Business Days before the Board meeting (or such other period as all the Directors in office may as a matter of general policy otherwise determine).
- 66.5 Attendance by a Director at a Board meeting waives any objection such Director might have for a failure to give notice of that Board meeting.

**67. CHAIR OF A BOARD MEETING**

- 67.1 The chair of a Board Meeting must be, in descending order of priority:
  - 67.1.1 the Chairperson if present and willing to chair the Board Meeting; or
  - 67.1.2 the Deputy Chairperson if present and willing to chair the Board Meeting; or
  - 67.1.3 a Director elected by the Directors present at the Board.
- 67.2 If during a Board Meeting the chair is unwilling to chair any part of the proceedings, the chair may withdraw during that part of the proceedings and may nominate any Director present to act as chair during that part of the proceedings. At the conclusion of the relevant part of the proceedings, the acting chair must withdraw and the initial chair resume the chair of the Board Meeting.

**68. QUORUM OF A BOARD MEETING**

- 68.1 Unless the Board otherwise determines, the quorum for a Board or Executive meeting is a majority in number of Directors then in office (excluding any Director granted a leave of absence by resolution of the Board) on the Board or Executive as the case may be.
- 68.2 A quorum must be present at all times during the Board meeting.
- 68.3 Except as section 195(1A) may allow, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be counted in a quorum while such matter is being considered.
- 68.4 A Board Meeting or Executive Meeting that does not have a quorum present within 15 minutes after the time for the meeting set out in the notice of meeting:
  - (a) may, in the case of a Board Meeting, proceed if there are at minimum 40% Directors then in office (rounded down to the nearest whole number) in attendance;
  - (b) shall be dissolved if quorum is not met within 1 hour of the time for the meeting set out in the notice of meeting.



**69. DECLARATION OF MATERIAL PERSONAL INTEREST**

- 69.1 A Director's material personal interest in a matter that relates to the affairs of the Company must be notified to the other Directors if section 191 so requires.<sup>28</sup>
- 69.2 The Secretary must maintain a register of standing conflicts of interest, and have that register available at each Board meeting.<sup>29</sup>

**70. VOTING AT A BOARD MEETING**

- 70.1 Except as section 195(1A)<sup>30</sup> may allow, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not vote on the matter.
- 70.2 Subject to clause 70.1:
  - 70.2.1 each Member Director has one vote;
  - 70.2.2 a resolution of the Directors must be passed by a majority of the votes cast by Member Directors on the resolution;
  - 70.2.3 the chair of a Board meeting has a casting vote if necessary in addition to the vote he or she has as a Member Director.

**71. DIRECTOR'S INTERESTS**

Subject to section 208 and clause 84, a Director and an entity in which a Director has a personal interest may in any capacity:

- 71.1 enter into any contract or arrangement with the Company;
  - 71.2 be appointed to and hold any office or place of profit under the Company, other than the office of auditor; and
  - 71.3 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 he or she were not a Director.

Note: The making of a contract may however, result in the Director ceasing to meet requirements of a Member and so vacating the office of Director.

**72. CIRCULATING RESOLUTIONS OF DIRECTORS**

- 72.1 The Directors may pass a resolution without a Board meeting being held if a majority of the Member Directors entitled to vote on the resolution (and being not less than the number required for a quorum at a Board meeting) either:

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<sup>28</sup> Section 191(1) provides for mandatory disclosure of interests, subject to exceptions in section 191(2).

<sup>29</sup> Section 192 allows a director to give to the other directors a standing notice of personal interest.

<sup>30</sup> Section 195(1A) allows a Director to remain and vote if the other Directors who do not have a conflict permit them to.

- 72.1.1 sign a document containing a statement that they are in favour of the resolution set out in the document; and / or
- 72.1.2 if the proposed resolution is stated in, or attached to, an email sent to the Member Director, the Member Director sends a reply email to the sender agreeing to that resolution, which reply email states or has attached the text of the resolution.
- 72.2 The resolution must be provided to the Member Directors by the Chairperson.
- 72.3 All member Directors must ensure that each other Member Director is included in all correspondence relating to the resolution.
- 72.4 The resolution is passed when the last Member Director required to make up a majority signs, or sends the reply email, unless clause 72.5 applies.
- 72.5 If three Member Directors request in writing (including by email) that the resolution that is being proposed be passed at a meeting prior to the resolution being passed by a majority of Member Directors, it must only be passed at a meeting of Directors (held in person or by the use of technology).
- 72.6 Separate copies of a document may be used for signing by Member Directors if the wording of the resolution and statement is identical in each copy. Separate emails may be sent for agreement of Member Directors if the wording of the resolution is identical in each email.
- 72.7 A document or email referred to in this clause must be sent to every Member Director who is entitled to vote on the resolution.

## **PART H - BOARD'S POWERS**

### **73. EXECUTIVE POWER<sup>31</sup>**

- 73.1 Subject to clause 74, the business of the Company is to be managed by or under the direction of the Board.
- 73.2 Subject to clause 74, the Board may exercise all the powers of the Company except any powers the Act or this Constitution requires the Company to exercise in Member Service Meeting.

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<sup>31</sup> By section 127(a) a contract or other document need not be executed under common seal. Outsiders dealing with the company may be entitled under section 128 to assume certain matters internal to the company.

In exercising any of their powers, each director must have regard to their fiduciary duty to the company, their common law duties to the company and their statutory duties to the company. The most significant statutory duties are in section 180 (care and diligence), section 181 (good faith), section 182 (use of position), section 183 (use of information) and section 588G (prevention of insolvent trading).

This provision means that generally the directors, and not the members, have the decision how and when the company should exercise its various powers, such as to engage or dismiss staff, acquire premises, borrow money and grant security. Only if there are no directors capable of acting, or the Act specifically requires approval of the members, would the members have the decision, absent other rule in the constitution.

Some statutory powers are vested solely in the directors, such as to appoint an administrator under section 436A.

The directors cannot exercise their powers while the company is under administration (section 437C) or being wound up in insolvency or by the Court (section 471A).

73.3 If less than a quorum of Directors is then in office, the Director/s remaining may exercise all the powers and duties of the Board pending the appointment of additional Directors.

**74. DELEGATION OF POWERS<sup>32</sup>**

74.1 As section 198D allows, the Board may delegate any of its powers to one or more Directors, a Board sub-committee (including a fluctuating body of persons) or employees of the Company.

74.2 A delegation of powers by the Board:

74.2.1 may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;

74.2.2 may be concurrent with, or to the exclusion of, the exercise by the Board of those powers.

74.3 A delegate must exercise the powers delegated in accordance with any directions given by the Board.<sup>33</sup> Such directions may include that a decision, or kind/s of decision, of the delegate is not effective unless approved by a resolution of the Board.

74.4 At any time, the Board may modify or revoke a delegation.

74.5 A committee may be comprised of such persons from within or outside the Company as the Board may think appropriate.

74.6 The Board should appoint the members of any committees annually, or as desired to fill any casual vacancy.

74.7 The Board may remove any person from a committee for just cause.

**75. DIRECTOR PORTFOLIOS**

Without limiting clause 74, the Board may vest in a particular Director or Directors an area of responsibility, such as, for example, community engagement or liaison with other health-related organisations.

**PART I - OTHER OFFICERS**

**76. CHIEF EXECUTIVE OFFICER**

76.1 The Board may appoint an individual to the office of Chief Executive Officer (CEO) of the Company for the period, and on the terms (including as to remuneration), as the Board sees fit.

76.2 The Company's CEO must not be a Director of the Company. If the Company's CEO is appointed as a Director of the Company, the CEO vacates the office of CEO.

76.3 The Board may revoke or vary an appointment of the Company's CEO, subject to any agreement made between the CEO and the Company.

76.4 The Board may delegate to the Company's CEO any of the powers the Board can exercise.

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<sup>32</sup> Section 190 may make directors liable for the exercise of a power by their delegate.

<sup>33</sup> Section 198D(2).

76.5 The Board may modify or revoke a delegation of powers on the Company's CEO, subject to any agreement made between the CEO and the Company.

76.6 The Company's CEO may attend and speak at Board meetings only at the Board's invitation.

**77. SECRETARY<sup>34</sup>**

77.1 At all times, the Company must have at least one Secretary.<sup>35</sup>

77.2 The initial Secretary is that person specified in the application for registration of the Company as the proposed Secretary.<sup>36</sup>

77.3 A Secretary (other than the initial Secretary) is appointed by the Board.<sup>37</sup>

77.4 Absent other appointment, the CEO would also be the Secretary.

77.5 An individual may not be appointed as a Secretary except after giving the Company a signed consent to act as a secretary.<sup>38</sup>

77.6 A Secretary holds office on the terms and conditions (including as to remuneration) that the Board determines. Otherwise, a Secretary is subject to removal by the Board at any time.

77.7 A Secretary must ensure the Company does not contravene any provisions of the Act specified in section 188(1).

77.8 A Secretary also has the following functions (subject to such directions as the Board may give to the Secretary) in so far as at the time not vested by the Board in the CEO or other person in the employ of the Company:

77.8.1 have custody and safekeeping of the common seal (if any);

77.8.2 keep in safe custody all documents and records belonging to the Company;

77.8.3 issue notices calling Board meetings or Member Service Meetings;

77.8.4 cause correct minutes to be kept of all Board meetings, committee meetings and Member Service Meetings;

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<sup>34</sup> A secretary is subject to many of the same statutory duties as apply to directors and, in addition, has particular administrative duties under section 188(1). A secretary must be an individual of at least 18 years of age (section 204B(1)). By section 204E an act done by a secretary may be valid even if their appointment is invalid. A person being appointed or ceasing to act as a secretary must be notified to ASIC under section 205B.

<sup>35</sup> Section 204A(2).

<sup>36</sup> Section 120(1) is to that effect. For any other appointment, under section 204D a secretary is to be appointed by the directors.

<sup>37</sup> Section 204D.

<sup>38</sup> Section 204C.

- 77.8.5 (in so far as not required by law to be provided by a person appointed under clause 78) preparing such statements, reports, returns or other written information as the Act or any law requires the Company lodge with government.
- 77.8.6 receive and answer correspondence and notices to the Company;
- 77.8.7 supervise the handling of money by or for the Company, and the keeping of financial records;
- 77.8.8 issue receipts for moneys received, and keep a correct account of all receipts and expenditure;
- 77.8.9 report on the apparent financial position of the Company at or to each scheduled Board meeting;
- 77.8.10 prepare draft financial year financial statements;
- 77.8.11 liaise with the auditor of the Company;
- 77.8.12 such other functions (if any) as the Board may at the time vest in the Secretary.

77.9 A Secretary (as such) may attend and speak at Board meetings only at the Board's invitation.

## **78. PUBLIC OFFICER**

- 78.1 A public officer or similar corporate representative a law requires of the Company must be appointed by, and is subject to removal by, the Board. Absent other appointment, the Secretary has that role.
- 78.2 A public officer or similar corporate representative has those functions and powers required by the law for which they were appointed by the Board.

## **79. AUDITOR**

- 79.1 At all times after 1 month after the Company's registration under the Act, the Company must have an auditor unless exempted under section 301(3).<sup>39</sup>
- 79.2 An auditor may be removed by a resolution of members in a Member Services Meeting, but only in accordance with section 329 of the Act, which requires appropriate notice to first have been given to the auditor.

## **PART J - COMMERCIAL TRANSACTIONS**

### **80. FINANCIAL YEAR**

The Company's financial year ends on 30 June.

### **81. BANK ACCOUNT OPERATION**

A debiting of the Company's bank account (disregarding customary charges imposed by the bank) must be authorised by a direction (in hard copy or over the internet) signed or otherwise authorised by at least:

- 81.1 1 of the Chairperson, Deputy Chairperson, Treasurer, Secretary or CEO; plus

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<sup>39</sup> Division 6 of Part 2M.4 of the Act.

81.2 1 other of the above persons, or 1 other person appointed by the Board for that purpose.

**82. ANNUAL BUDGETS**

82.1 At all times, the Company must have an Annual Budget approved by the Board as recorded in minutes of Board meetings.

82.2 The Board may modify an Annual Budget at any time. Anything approved by the Board outside an Annual Budget modifies the Annual Budget to that extent.

82.3 In or about May of each year, the CEO (or if none is in office, the Secretary) must give to the Board a draft Annual Budget for the next financial year.

82.4 The Board should aim to approve a final Annual Budget for a next financial year no later than July of that financial year.

82.5 If on 1 July of any year the Board have not approved an Annual Budget for that financial year, the last Annual Budget carries over to that financial year until the Board approves a replacement Annual Budget.

**83. MANAGEMENT REPORTS**

Before every Board meeting, the CEO must give to each Director individually a report of the Company's operations in the preceding period and that addresses or includes:

83.1 any matter that the Board has previously directed be included;

83.2 a statement of financial performance (including cash flows) of that preceding month and of the financial year up to the end of that preceding month showing the actual, budget and variance amounts;

83.3 an update on significant key stakeholder matters during the period

83.4 an update on staffing matters during the period

**84. RELATED PARTY TRANSACTIONS**

The Company may not make a contract with a Member, or an entity a Member controls (within the meaning of section 50AA) for any goods or services to be provided to the Company:

84.1 for expenditure by the Company of more than \$5,000.00 (before GST) (counting any series of related contracts as one); or

84.2 if the contract lasts or may be extended to more than total 12 months,  
except with prior consent of the Board.

**PART K - POLICIES**

**85. POLICIES**

85.1 To the extent not inconsistent with this Constitution or the Act, the Board by a special majority resolution of all Directors in office may adopt and have implemented policies as to:

85.1.1 the functioning of the Board;

- 85.1.2 the conduct of a Director (as such);
  - 85.1.3 travel entitlements;
  - 85.1.4 the roles and conduct of other officers;
  - 85.1.5 the roles and functioning of any committees; and / or
  - 85.1.6 business rules of the Company.
- 85.2 Each Director, Secretary and Member must conform to a policy so adopted and published by the Board, in so far as applicable to their respective powers and duties.
- 85.3 Any policy in force may be modified or repealed:
- 85.3.1 by a special majority resolution of all Directors in office; or
  - 85.3.2 by resolution of a Member Service Meeting.

## **PART L - RECORDS**

### **86. MINUTES**

The Company must keep minute books of Member Service Meetings, Board meetings, resolutions passed by the Directors without a meeting as section 251A requires.

### **87. RECORDS TO BE KEPT**

The Company must keep financial and other records as section 286 or other law requires and for the period of time section 286 or other law requires.

### **88. DIRECTOR'S RIGHT OF ACCESS**

- 88.1 A Director may inspect and take copies:
- 88.1.1 of the financial records of the Company as section 290(1) allows; and
  - 88.1.2 of the books of the Company (other than financial records) as section 198F(1) allows.
- 88.2 A person who ceased to be a Director may inspect and take copies of the books (including financial records) of the Company:
- 88.2.1 as section 198F(2) allows; and / or
  - 88.2.2 as a contract made between the person and the Company may allow; and / or
  - 88.2.3 as a resolution of the Board may in any particular case allow.

**89. MEMBER'S RIGHT OF ACCESS<sup>40</sup>**

A Member has no right to inspect books of the Company except as may be authorised by:

- 89.1 a resolution of the Board; or
- 89.2 a resolution passed at a Member Service Meeting; or
- 89.3 the Act, other law, or by a court having jurisdiction to do so.

**PART M - OTHER MATTERS**

**90. CIRCUMSTANCES NOT PROVIDED FOR**

In any circumstances in which this Constitution is silent, incapable of taking effect or being implemented according to its strict provisions, the Board may determine what action may be taken to ensure the effective administration and objects of the Company.

**91. REGISTERED OFFICE**

The registered office of the Company must be at the principal business office of the Secretary.

**92. THE SEAL**

If the Company has a common seal:<sup>41</sup>

- 92.1 the seal must be kept in the custody of the Secretary or other person approved by the Board;
- 92.2 the signatures of the 2 persons approved by the Board for that purpose shall attest the fixing of the seal to a document. Unless the Board otherwise determines, 1 of those persons must be the Chairperson or Deputy Chairperson.

**93. MAKING AND EXECUTION OF CONTRACTS**

The Company may execute a document under the common seal (if any) or in any other way section 126 or 127 of the Act or any other law may permit.

**94. ANNUAL FINANCIAL REPORTS**

The Company must prepare and give to the Members such financial reports as the Act requires.

**95. DISPUTE RESOLUTION**

- 95.1 This clause applies to disputes between the Company, any Members (as such) or any Directors (as such) or any combination of them.

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<sup>40</sup> Section 247A allows a member to apply to the Court for an order to inspect the books. By section 173(1), but subject to section 177, any person has a right to inspect the register of members, and register of debenture holders. By section 251B a member has a right to inspect the minutes of meetings of members.

<sup>41</sup> Under section 123(1) a company may, but need not, have a common seal.



95.2 The parties to the dispute must meet promptly in-person at a place agreed by the Company and discuss the matter in dispute, and, if possible, resolve the dispute within 10 Business Days after the dispute comes to the attention of all of the parties.

95.3 If the parties to the dispute are unable to resolve the dispute at the meeting, those parties may choose to meet and discuss the dispute before an independent third person agreed to by those parties, or if the parties cannot agree, a person nominated by the President of the Law Society of South Australia who shall act as a mediator.

95.4 The rules of natural justice must be observed in any dispute between the Company and any Member, Director, Secretary, CEO or employee of the Company.

## 96. **NOTICES**<sup>42</sup>

96.1 The Company may give to a Member or former Member a notice required under this Constitution or the Act:

96.1.1 by email to electronic address (if any) nominated by the person;

96.1.2 by hand delivery to that person;

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

96.1.4 by any other means the Act permits.

96.2 A notice sent by post is taken to be given five calendar days after it is posted. A notice sent by electronic means, is taken to be given on the day it was sent.

96.3 Notwithstanding any other provision of this Constitution, in the event a notice would be deemed to have been received on a day that is not a Business Day, or is received outside of Business Hours, it shall be deemed to have been received on the following Business Day.

96.4 A certificate in writing signed by a Director or Secretary that a notice or its envelope or wrapper was addressed, stamped and was posted is sufficient evidence of posting.

## 97. **GUARANTEE BY A MEMBER ON A LIQUIDATION**

Every Member agrees to contribute up to \$10.00 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.

## 98. **WINDING UP**

98.1 If at any time the Company was registered under the *Australian Charities and Not-for-profits Commission Act 2012* and the Company is wound up:

98.1.1 any surplus assets must not be distributed to a Member or a former Member;

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<sup>42</sup> Section 109X sets out the ways a person may give notice to the company.

- 98.1.2 subject to the Act and any other applicable legislation, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose/s in clause 9, and
  - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company;
- 98.1.3 the decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.
- 98.2 If clause 98.1 does not apply and the Company is wound up, the liquidator may with the sanction of a special resolution of the Members:
- 98.2.1 divide among the Members in kind all or any of the surplus assets and for that purpose determine how the liquidator will carry out the division between the Members, but may not require a Member to accept anything in respect of which there is any liability; and / or
  - 98.2.2 vest all or any of the surplus assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.
- 98.3 In this clause, **surplus assets** mean any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

**99. AMENDMENT OF THIS CONSTITUTION**

- 99.1 This Constitution may be amended by special resolution of the Members in Member Service Meeting.

The undersigned (being each person specified in the application for the Company's registration under the Act as a person who consents to become a Member) agree to the above as the terms of the constitution of the Company.

**DATED**

2024

**Members of AHCSA as at November 2024**

Pika Wiya Health Service Aboriginal Corporation

Moorundi Aboriginal Community Controlled Health Service Ltd

Nganampa Health Council Incorporated

Port Lincoln Aboriginal Health Service Ltd

Nunkuwarnin Yunti of South Australia Incorporated

Nunyara Aboriginal Health Service Incorporated

Tullawon Health Services Incorporated

Umoona Tjutagku Health Service Aboriginal Corporation

Aboriginal Sobriety Group Indigenous Corporation

Oak Valley (Maralinga) Aboriginal Corporation

Pangula Mannamurna Aboriginal Corporation

Yadu Health Aboriginal Corporation