

Constitution of National Aboriginal and Torres Strait Islander Ageing and Aged Care Council Ltd

1st August 2022

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PRELIMINARY

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in this Constitution:

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

Admission Fee means the fee determined by the Board to be paid as specified in clause 10.1.

Ageing and Aged Care Services means disability services, ageing in place services, in home care, residential aged care and short term care for people eligible to receive Australian government assistance for such services.

Annual Fee means the annual fee determined by the Board to be paid as specified in clause 10.2.

Aboriginal and Torres Strait Islander Provider means a Community controlled provider of Ageing and Aged Care Services which:

- (a) has rules preventing the distribution of property to individual members of the organisation;
- (b) is governed by a majority Aboriginal and/or Torres Strait Islander board elected by the Community membership; and
- (c) has as its objective, promoting, advocating or providing Ageing and Aged Care Services for the benefit of Aboriginal and Torres Strait Islanders.

Associate Member means an organisation admitted as an “Associate Member” pursuant to clause 9.4.

Auditor means the auditor of the Company as appointed by the Board from time to time.

Board means the board of Directors of the Company as constituted from time to time and acting collectively under this Constitution.

CATSI Act means *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) and includes in the context of a Member incorporated under that Act, any exemption or modification to that Act applying to that Member corporation.

Chairperson means the person elected pursuant to clause 29.

Commissioner has the meaning given to that term in the TAA.

Community means the Aboriginal and Torres Strait Islander community within Australia or if the context otherwise requires a local Aboriginal and/or Torres Strait Islander community.

Company means the company named in clause 2.

Constitution means this constitution of the Company, as amended from time to time.

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

Delegate means a nominated representative of a Member appointed pursuant to clause 15.

Director means a person who is, for the time being, a Director of the Company appointed or elected to the office of Director of the Company in accordance with the Constitution.

Elder means an Aboriginal and Torres Strait Islander receiving Ageing and Aged Care Services.

Full Member means an organisation admitted as a “Full Member” pursuant to clause 9.3.

Independent Director means a person independent of the Members elected as a Director pursuant to clause 31.

ITAA means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) and includes any exemption or modification to that Act applying to the Company.

Jurisdiction means each of the Australian States and Territories.

Member means a member of the Company under clause 9.

Members’ Charter means the charter governing the conduct of the Members as issued by the Company (if any) and amended from time to time.

Nominations Committee means:

- (a) in the case of the selection of the Chairperson, the Company Secretary and each Director; and
- (b) in the case of each other Director, the Company Secretary, Chairperson and current Independent Directors.

Nominees means:

- (a) in the case of the selection of the Chairperson, those people determined by the Nominations Committee to be eligible for election to the position of Chairperson; and
- (b) in the case of the election of a Director, those people determined by the Nominations Committee to be eligible for the position of a Director.

Objects means the objects of the Company as set out in clause 6.

Police Check means a National Name Only Police Certificate based on a search of the person’s name against the criminal history records held by police services Australia-wide.

Register means the register of Members of the Company.

Responsible Person means a person who meets the “Responsible Persons” governance standards and guidelines issued by the Australian Charities and Not-for-profits Commission.

Secretary means, during the term of that appointment, a person appointed to perform the duties of a secretary of the Company in accordance with clause 51.

Special Resolution has the meaning given to that term in the Corporations Act.

State/Territory Director means a person elected by the Members from the Jurisdiction to be a Director from the Jurisdiction in accordance with clause 30.

TAA means the *Tax Administration Act 2001* (Qld) and includes any exemption or modification to that Act applying to the Company.

1.2 Interpretation of this Constitution

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (f) a reference to legislation (including subordinate legislation) or a provision of it is to that legislation or provision as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and
- (g) the meaning of general words is not limited by specific examples introduced by the words **including, for example** or similar expressions.

2. Name of the Company

The name of the Company is National Aboriginal and Torres Strait Islander Ageing and Aged Care Council Ltd.

3. Corporations Act and replaceable rules

- 3.1 To the extent that a clause in this Constitution is inconsistent with the Corporations Act (if, for example, the Corporations Act is amended after this Constitution comes into effect) then this Constitution is taken to be amended so that it is consistent with the Corporations Act.
- 3.2 The replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the clauses set out in this Constitution.

4. Public company

The Company is a public company limited by guarantee established to be a not for profit charitable institution.

5. Preamble – Our care. Our way. Our future

Aged care is one of the only areas where closing the gap targets have not been set. Now is a once-in-a-generation opportunity to close the gap for Aboriginal and Torres Strait Islanders elders.

Only when Aboriginal and Torres Strait Islanders are enabled to plan and run aged care for themselves will we give real substance to our oft-spoken respect for elders 'past, present, and emerging'. Aboriginal Community Control has demonstrated how this approach can successfully deliver transformative outcomes for Aboriginal and Torres Strait Islander people. It is about Our Care. Our Way. Our Future. This will realign the way in which aged care is delivered to Aboriginal and Torres Strait Islander elders, such that access, assessment and service delivery for Aboriginal and Torres Strait Islanders ageing and aged care can be placed in the hands of the Aboriginal and Torres Strait Islander community – to be Aboriginal and Torres Strait Islander controlled, designed, and delivered, every step of the way.

The Company is established to:

- (a) promote of the views and aspirations of older Aboriginal and Torres Strait Islander people in the development and implementation of government ageing and aged care policies and strategies;
- (b) inform government aged care reforms and associated program design and service delivery to ensure equitable access to aged care, which meets the needs of all older Aboriginal and Torres Strait Islander people; and
- (c) identify priorities and contribute to research to enhance the evidence base on Aboriginal and Torres Strait Islander people's ageing experiences, aged care needs and strategies which are effective in meeting those needs.

OBJECTS AND POWERS

6. Objects

The Company's objects are to:

- (a) develop culturally appropriate ageing and aged care policies and manage implementation of sustainable ageing aged care programs and processes which:
 - (i) respond effectively to the needs of Aboriginal and Torres Strait Islanders Elders in metropolitan, regional, rural and remote areas; and
 - (ii) facilitate access and participation in programs and support services at equitable rates for the Aboriginal and Torres Strait Islander Elder population;
- (b) advocate for improvements in the ageing and aged care sector which will benefit Aboriginal and Torres Strait Islander Providers and Aboriginal and Torres Strait Islanders;
- (c) be a leading council of excellence in the provision of Ageing and Aged Care Services to Aboriginal and Torres Strait Islanders by providing leadership, developing best practices and conducting research to improve life expectancy and quality of life of Aboriginal and Torres Strait Islanders;
- (d) provide education, training and other services to support and assist Aboriginal and Torres Strait Islander Providers and other organisations involved in providing Ageing and Aged Care Services to Aboriginal and Torres Strait Islanders;

- (e) develop constructive partnerships and relationships within the ageing and aged care sector to improve quality, availability and suitability of Ageing and Aged Care Services for Aboriginal and Torres Strait Islanders;
- (f) collect data and participating, collaborating and leading research that seeks to:
 - (i) create efficiencies and other benefits to the Aboriginal and Torres Strait Islander Providers for the benefit of the Community;
 - (ii) improve availability and suitability of Ageing and Aged Care Services for the Community; and
- (g) do all things necessary or incidental to achieving the above objects and activities.

7. Powers

The Company has the following powers, which may only be used to carry out its Objects:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

INCOME AND PROPERTY OF THE COMPANY

8. Income and property

- 8.1 Subject to clause 8.2, the assets and income of the Company must be applied solely in furtherance of its Objects and no portion of its income or assets may be paid or transferred, directly or indirectly, to any Member.
- 8.2 The Company may, with the approval of the Directors, make payment in good faith to a Member of the Company:
- (a) by way of reasonable and proper remuneration for any goods supplied or services rendered to the Company (including remuneration as an employee or consultant);
 - (b) by way of reasonable and proper rent for premises let by that Member to the Company; and
 - (c) for authorised out-of-pocket expenses reasonably and properly incurred by that Member in connection with the affairs of the Company.
- 8.3 Nothing in this clause 8 prevents a Member from benefiting from participating in the Company's activities or receiving services from the Company provided that such activities and services are not exclusive to membership.

MEMBERSHIP

9. Members

9.1 Membership

The number of Members with which the Company proposes to be registered is unlimited.

9.2 **Members**

The Members of the Company are:

- (a) the organisations which consented to become Members in the application for registration of the Company; and
- (b) any other corporations or organisations which the Directors admit to membership in accordance with this Constitution.

9.3 **Full Member**

An organisation is eligible to become a Full Member if the organisation:

- (a) is an Aboriginal and Torres Strait Islander Ageing and Aged Care Provider
- (b) pays the Admission Fee;
- (c) pays the Annual Fee; and
- (d) agrees to assume the liability to pay the Members' guarantee set out in clause 54.1.

9.4 **Associate Member**

An organisation is eligible to become an Associate Member if the organisation:

- (a) Has an interest in Ageing and Aged Care Services;
- (b) has an interest in the Objects;
- (c) pays the Admission Fee;
- (d) pays the Annual Fee; and
- (e) agrees to assume the liability to pay the Members' guarantee set out in clause 54.1.

9.5 **Applications for membership**

- (a) Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion and include:
 - (i) a copy of the current constitution or constituent document of the applicant for applications as a Full Member or Associate Member; and
 - (ii) a written commitment that at all times while a member of the Company the applicant will abide by:
 - (A) this Constitution; and
 - (B) the Members Charter.
- (b) The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
 - (i) accept or reject the application; or

- (ii) ask the applicant to give more details as to why the Directors should approve the application for membership or respond to queries the Directors may have to assist in consideration of the application.
- (c) If the Directors ask for more information under clause 9.5(b), their determination of the application for membership is deferred until the information is given.
- (d) The Directors do not have to give any reason for rejecting an application for membership.
- (e) As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance.

9.6 Rights and privileges

The rights and privileges of each Member are personal to that Member and are not transferable by the Member's own act or by operation of law.

10. Fees

10.1 Admission Fee

On admission as a Member, the Member must pay to the Company the Admission Fee determined by the Board.

10.2 Annual Fee

- (a) The Board will determine the Annual Fee payable by each Member.
- (b) The Annual Fee period will commence on 1 July of each year, and the Annual Fee will be due in advance within 30 days of this date.
- (c) The first Annual Fee payable by Members as at the date of the adoption of this Constitution will be payable within 30 days of the date from which Annual Fees are determined by the Board to be paid.
- (d) The Board may determine that any Member admitted to membership between 1 January and 30 June will pay only one-half of the Annual Fee until that Member's next Annual Fee falls due.

11. Register of Members

- 11.1 Upon admission of an organisation as a Member, the organisation will be entered into the Register.
- 11.2 The Secretary must maintain the Register which must include:
 - (a) the name and address of each Member;
 - (b) the type of membership of each Member and the date of any change of membership type;
 - (c) the name and address of each Member's Delegates;
 - (d) the date on which each Member was admitted as a member of the Company;
 - (e) the date (where applicable) when each Member resigns or ceases to be a Member of the Company;

- (f) where a Member is readmitted after previously resigning or having their membership terminated, this will be recorded in conjunction with the dates of their original admission, termination or resignation and readmission; and
 - (g) a current copy of each Full Member and Associate Member's constitution or constituent document.
- 11.3 The Register must be kept at the Company's registered office where it will be made available for inspection by any Member for perusal at a time and date convenient to the Secretary and the Member concerned.
- 11.4 Members must notify the Secretary of any change of any of its details that are recorded in the Register, including providing an updated constitution:
- (a) as soon as reasonably practicable; and
 - (b) within one month of the change.

12. Rights of Members

12.1 Full Members

Subject to clause 13.9, Full Members are entitled to:

- (a) appoint two Delegates under clause 15.1;
- (b) receive notices of general meetings of the Company; and
- (c) speak and vote at general meetings of the Company through its Delegate.

12.2 Associate Members

Subject to clause 13.9, Associate Members are:

- (a) entitled to appoint one Delegate under clause 15.2;
- (b) entitled to receive notices of general meetings of the Company;
- (c) entitled to speak at general meetings of the Company through its Delegate; and
- (d) not entitled to vote at general meetings of the Company.

12.3 No right to use Company name

No Member may use the name of the Company in support of any political campaign, or in support of any candidate for public office, other than with written consent of the Board.

12.4 Cessation of rights and privileges

The rights and privileges of every Member cease on cessation of the Member's membership.

13. Suspension or expulsion of a Member

- 13.1 Without limiting any other rights or remedies of the Company, the Board may resolve to suspend a Member's membership for a period of time and may require certain conditions to

be met for the suspension to be lifted, or expel the Member and cancel the Member's membership, if the Member:

- (a) does not comply with this Constitution;
- (b) fails to pay any Admission Fees or Annual Fees due and owing by the Member to the Company;
- (c) in the opinion of the Board, is no longer eligible to be a Member in accordance with the Full Member criteria or Associate Member criteria;
- (d) has committed any act or omission that will, in the opinion of the Board, be injurious to the reputation, interests or activities of the Company;
- (e) violates any of the Company's policies and procedures that apply to the Member, including the Members' Charter;
- (f) makes false representations to the Company;
- (g) steals from the Company;
- (h) makes any unauthorised comment to the media in relation to the Company;
- (i) destroys property or removes property belonging to the Company;
- (j) has not replaced a suspended or expelled Delegate; or
- (k) has an administrator appointed to administer the Member's financial, legal and business affairs.

13.2 If the Board resolves to suspend the Member, the Board may:

- (a) suspend the Member's membership for the period of time the Board thinks fit; and
- (b) require certain conditions are met before the Member's membership is reinstated.

13.3 A decision to suspend or expel a Member will take effect immediately.

13.4 The Secretary must give prompt written notice of the suspension or expulsion to the Member.

13.5 A suspended or expelled Member may appeal its suspension or expulsion by giving notice to the Secretary within 14 days of receiving the notice of suspension or expulsion.

13.6 The Member may give a statement of the grounds which the Member intends to rely upon for the purposes of the appeal.

13.7 At the next general meeting of the Company held after the Member gives notice:

- (a) the Member appealing its suspension or expulsion will be given an opportunity at the general meeting to present the Member's case fully, either through its Delegate or through another Member's Delegate nominated for the purpose and a representative of the Board may present the Board's case in response; and
- (b) the Members at the general meeting may:
 - (i) in the case of a suspended Member, vote to lift or affirm the suspension; or

- (ii) in the case of an expelled Member, vote by Special Resolution to reinstate the expelled Member's membership, and the decision of the Members at that general meeting is final.

13.8 A Member will remain suspended until the earlier of:

- (a) the date the Members resolve to lift the suspension of the Member's membership;
- (b) if conditions must be satisfied to lift the suspension, the date that the conditions are satisfied; or
- (c) when the Member ceases to be a Member.

13.9 Any suspended Member is not permitted during the suspension to:

- (a) vote at a Members' meeting;
- (b) use the Company's premises;
- (c) use any of the Company's property; or
- (d) participate in any of the activities of the Company other than as a legitimate client of the Company.

13.10 An expelled Member will not be eligible to have its membership reinstated without the Members passing a Special Resolution to re-admit the expelled Member into the Company.

14. Ceasing to be a Member

14.1 A Member's membership of the Company will cease:

- (a) if the Member gives the Secretary written notice of resignation, which must provide at least one month's notice, the later of:
 - (i) one month from the date of receipt of that notice by the Secretary; or
 - (ii) the date of resignation specified on the notice;
- (b) if a suspended Member does not satisfy the conditions of suspension within the required timeframe, on the expiry of that timeframe;
- (c) if a Member is expelled, on the date the resolution is passed to expel the Member;
- (d) if a liquidator is appointed in connection with the winding up of the Member, on the date of appointment of the liquidator;
- (e) if the Member is deregistered, on the date of deregistration; or
- (f) if an order is made by a court for the winding up or deregistration of the Member, on the date of the court order.

14.2 Any Member ceasing to be a Member:

- (a) will not be entitled to have any claim upon any portion of the property or assets of the Company;
- (b) will remain liable for and will pay to the Company all fees and moneys which were due at the date of ceasing to be a Member; and

- (c) is not permitted to:
 - (i) use the Company's premises;
 - (ii) use any of the Company's property; and
 - (iii) participate in any of the activities of the Company other than as a legitimate client of the Company.

15. Delegates

15.1 Full Member Delegates

- (a) Each Full Member may, by written notice to the Secretary:
 - (i) appoint Delegates to act as its representatives in all matters connected with the Company, as permitted by the Corporations Act; and
 - (ii) remove and replace its Delegates.
- (b) Delegates of a Full Member are entitled to:
 - (i) exercise at a general meeting all the powers that the corporation or organisation that appointed them could exercise as if it were a natural person; and
 - (ii) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Delegate.
- (c) Both Delegates of a Full Member do not need to be present for one of the Delegates to exercise the powers of the Full Member or be counted towards a quorum as it is assumed that the relevant Members have consulted one another prior to any meeting requiring a decision.

15.2 Associate Member Delegates

- (a) Each Associate Member may, by written notice to the Secretary:
 - (i) appoint one Delegate to act as its representative in all matters connected with the Company, as permitted by the Corporations Act; and
 - (ii) remove and replace its Delegate.
- (b) A Delegate of an Associate Member is entitled to exercise at a general meeting all the powers that the corporation or organisation that appointed them could exercise if it were a natural person.

15.3 Appointment and removal

- (a) Only one Delegate may act on behalf of each Member, at any one time.
- (b) A certificate executed in accordance with section 127 of the Corporations Act or section 99.5 of the CATSI Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of a Delegate.
- (c) The appointment of a Delegate may set out restrictions on the Delegate's powers.

15.4 **Voting**

The chairperson of a general meeting may allow a Delegate of a Full Member to vote on the condition that they subsequently establish their status as a Delegate within a period prescribed by and to the satisfaction of the chairperson of the general meeting.

15.5 **Delegate eligibility requirements**

To be eligible to be elected as a Delegate, a person must:

- (a) be at least 18 years of age;
- (b) be an executive employee or officer of the appointing Member;
- (c) be approved by the Board as a person suitable to be a Delegate; and
- (d) agree to comply with the Members' Charter.

16. Suspension or expulsion of Delegates

16.1 Members must ensure that its Delegates comply with this Constitution.

16.2 Without limiting any other rights or remedies of the Company, the Board may suspend or expel a Delegate if the Delegate:

- (a) does not comply with this Constitution;
- (b) has committed any act or omission that will, in the opinion of the Board, be injurious to the reputation, interests or activities of the Company;
- (c) in the opinion of the Board, develops, or is likely to develop, a conflict of interest;
- (d) has been convicted of an indictable offence;
- (e) violates any of the Company's policies and procedures, including the Members Charter;
- (f) causes harm or threatens to cause harm to a Director, a Delegate or an employee or officer of the Company or a Member;
- (g) makes false representations to the Company;
- (h) steals from the Company; or
- (i) destroys or removes property belonging to the Company.

16.3 If the Board resolves to suspend or expel a Delegate, the Secretary must give written notice of the suspension or expulsion:

- (a) to the Delegate (where the Company has the Delegate's contact details); and
- (b) the Delegate's appointing Member, no less than 21 days before a general meeting.

16.4 The written notice to the Member must specify:

- (a) the reasons for the suspension or expulsion of the Delegate; and
- (b) further action required by the Member (if any).

- 16.5 The Member which appointed a suspended or expelled Delegate may appeal the suspension or expulsion by giving notice to the Secretary within 14 days of receiving the notice of suspension or expulsion.
- 16.6 If a Member appeals the suspension or expulsion of a Delegate, the Member will have the opportunity to present their case fully to the Board who will determine whether to either:
- (a) lift the suspension and/or reinstate the Delegate; or
 - (b) affirm the suspension or expulsion.
- 16.7 A Member may replace its Delegate who has been suspended or expelled.

GENERAL MEETINGS OF MEMBERS

17. Calling general meeting

- 17.1 Any Director may, at any time, call a general meeting.
- 17.2 A Member may:
- (a) only request the Directors call a general meeting in accordance with section 249D of the Corporations Act; and
 - (b) not request or call and arrange to hold a general meeting, except under sections 249E or 249F of the Corporations Act.

18. Notice of general meeting

- 18.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 18.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a postal address, facsimile number and electronic address for the purposes of proxy appointments.
- 18.3 A notice of an annual general meeting need not state the business to be transacted at the meeting but it must include, as applicable:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of Directors; and
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 18.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 17.2).

- 18.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons entitled to receive these notices from the Company.
- 18.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings of or any resolution passed at the general meeting.

19. Quorum

- 19.1 In clauses 19.1, 29 and 21, a reference to a Member or Delegate includes, respectively, a Member or Delegate present in person or by proxy, attorney or representative.
- 19.2 **Quorum**
- (a) No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
 - (b) A quorum of Members is a majority of Members.
 - (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (ii) in any other case:
 - (A) it will stand adjourned to one hour after the time appointed for the general meeting, or to another day, time and place determined by the Directors; and
 - (B) at the adjourned general meeting, the quorum is the number of Delegates present.

20. Adjournment

- 20.1 The chairperson of a general meeting at which a quorum is present:
- (a) in their discretion, may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs them to do so.
- 20.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 20.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 20.4 Notice of an adjourned general meeting must only be given in accordance with clause 18.1 if a general meeting has been adjourned for more than 21 days.

21. Decision on questions

- 21.1 Unless specified otherwise in this Constitution or a poll is demanded, voting at a general meeting must be conducted and decided by:
- (a) a show of hands;
 - (b) a vote in writing, which may be electronically; or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 21.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 21.3 Subject to the requirements of the Corporations Act in relation to Special Resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 21.4 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 21.5 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
- 21.6 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) a majority of the Delegates present; or
 - (b) the chairperson.
- 21.7 A vote in writing must be taken when and how the chairperson directs, except in the following cases where it is to be taken immediately:
- (a) for the election of a chairperson; or
 - (b) to decide whether to adjourn the meeting.
- 21.8 A demand for a vote in writing may be withdrawn.
- 21.9 A decision of a general meeting may not be invalidated on the grounds that a person voting at the general meeting was not entitled to vote.
- 21.10 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no Chairperson or Deputy Chairperson;
 - (b) neither the Chairperson nor Deputy Chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the general meeting.
- 21.11 If no election is made under clause 21.10, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

- 21.12 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

22. Circular resolutions of Members

- 22.1 Subject to clause 22.3, the Members may pass a resolution without a general meeting being held (a **circular resolution**).
- 22.2 The Directors must notify the Auditor (if any) as soon as possible that a circular resolution has or will be put to Members and set out the wording of the circular resolution.
- 22.3 Circular resolutions cannot be used where the Corporations Act or this Constitution requires a meeting to be held.
- 22.4 A circular resolution is passed if at least one Delegate of each Member entitled to vote on the resolution signs or agrees to the circular resolution, in the manner set out in clause 22.6 or clause 22.7, with no dissenting votes.
- 22.5 A circular resolution may specify a timeframe in which votes must be received by the Company.
- 22.6 Members Delegates may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 22.7 The Company may send a circular resolution by email to Members and Members' Delegates may agree to that resolution by sending a reply email to that effect, including the text of the resolution in their reply.

23. Casting vote of chairperson

- 23.1 The chairperson does not have a casting vote in addition to the chairperson's votes as a Delegate, proxy, attorney or representative.

24. Entitlement to vote

- 24.1 Each Delegate of a Member entitled to vote has one vote.

25. Objections

- 25.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered their vote.
- 25.2 An objection must be referred to the chairperson of the general meeting whose decision is final.
- 25.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

26. Votes by proxy

- 26.1 A Member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 26.2 A proxy must be a Full Member.
- 26.3 A Member may only hold one proxy.
- 26.4 A proxy appointed to attend and vote for a Member has the same rights as the Member to:
- (a) speak at the meeting;
 - (b) vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 21.6.
- 26.5 An appointment of proxy (**proxy form**) must be signed by the Member appointing the proxy and must contain:
- (a) the Member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 26.6 Proxy forms must be received by the Company at the address stated in the notice pursuant to clause 18.2(c) or at the Company's registered address at least 48 hours before a meeting.
- 26.7 The proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- 26.8 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- (a) revokes the proxy's appointment; or
 - (b) revokes the authority of a representative or agent who appointed the proxy.
- 26.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 26.10 A proxy is entitled to vote on a show of hands.
- 26.11 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) must vote in the way specified on the proxy form; and
 - (c) if the proxy is also a Member or holds more than one proxy, may cast the votes they hold in different ways provided they comply with clause 26.10 and this clause 26.11.

APPOINTMENT AND REMOVAL OF DIRECTORS

27. Number of Directors

- 27.1 The minimum number of Directors is five.
- 27.2 Subject to clause 27.3, the maximum number of Directors is eleven, being:
- (a) eight State/Territory Directors;
 - (b) two Independent Directors; and
 - (c) one Chairperson.
- 27.3 The Directors may change the maximum number of permitted Director positions, in accordance with the law.

28. Directors on registration and initial term

- 28.1 Upon registration of the Company, the Directors will be those directors who are the directors on incorporation of the Company (**Initial Directors**).
- 28.2 Until a Chairperson is elected in accordance with clause 29, the Initial Directors will elect one amongst them to be the chairperson.
- 28.3 Half of the Initial Directors will have a term of two years, at which point they will be eligible for re-election and those remaining will have a term of three years.
- 28.4 The Board will determine which Initial Directors will have an initial two year term, at the first Directors meeting after incorporation.

29. Chairperson

- 29.1 At the first annual general meeting of the Company, the Members will elect the Chairperson from the Nominees for Chairperson.
- 29.2 Prior to the AGM when a Chairperson election will take place, the Company Secretary will notify each Member of the election of the Chairperson and request nominations for election as the Chairperson and the timetable and method for the election process.
- 29.3 Nominations received for election as the Chairperson will be vetted by the Nominations Committee. The Nominations Committee may also nominate people for election as a Chairperson.
- 29.4 Nominations must:
- (a) be signed by at least one Member;
 - (b) include a consent to a Police Check from the nominee;
 - (c) a brief curriculum vitae;
 - (d) a summary as to why the Company would benefit from the nominee becoming the Chairperson; and
 - (e) include such other information as requested in the request for nominations from the Company.

- 29.5 Prior to voting, the Nominations Committee will provide the Members and the Board:
- (a) the names of the eligible Nominees, their curriculum vitae and their respective skills and the benefits that they intend to bring to the Board if elected; and
 - (b) provide commentary in relation to the current skills mix on the Board and how each of the Nominees skills will fit in the desired skills matrix for the Board.
- 29.6 Chairperson elections will take place by poll.
- 29.7 To be eligible for election as Chairperson, and at all times the Chairperson must:
- (a) be Aboriginal or Torres Strait Islander;
 - (b) not be an officer or employee of a Member;
 - (c) not have been an officer or employee of a Member for the previous three years;
 - (d) not be an immediate family Member of a person described in clauses 31.6(a) or 31.6(b);
 - (e) be free from an association from Members which would likely result in a conflict of interest.
- 29.8 The Chairperson will hold this office until the end of the annual general meeting three years after their appointment.
- 29.9 A retiring Chairperson is eligible for re-election as chairperson for a maximum of three terms.
- 29.10 At the first Directors meeting after the election of the Chairperson, the Directors present will elect a Deputy Chairperson, who will hold the office for a period of three years after their appointment.
- 29.11 The Chairperson, or in the chairperson's absence the Deputy Chairperson, will be the chairperson at every general meeting and Directors' meeting.

30. Election of State/Territory Directors

- 30.1 Upon the expiration of the initial term set out in clause 28, to become a Director a person must be either:
- (a) elected to be a Director by the Members, in which case the person's term of office is to be three years; or
 - (b) appointed by the Directors to fill any vacancy however arising, in which case the person's term of office is to be for 12 months or, if the Company is to hold an annual general meeting, from the time of appointment until the next annual general meeting.
- 30.2 New South Wales, Queensland, Australian Capital Territory, Northern Territory, South Australia, Tasmania, Western Australia and Victoria (each a **Jurisdiction**) will each elect a State/Territory Director for that Jurisdiction to commence on the expiration of the term of the existing Director for that Jurisdiction.
- 30.3 Prior to the AGM when any Director election will take place, the Company Secretary will notify each Member of the Jurisdictions electing Directors and request nominations for election as a Director for those Jurisdictions and the timetable and method for the election process.

- 30.4 Nominations received for election as a State/Territory Director provision will be vetted by the Nominations Committee. The Nominations Committee may also nominate people for election as a State/Territory Director.
- 30.5 To be eligible to be a State/Territory Director, the person must be a director or chief executive officer of a Full Member.
- 30.6 Nominations must:
- (a) be signed by at least one Member from the Jurisdiction in which the person is nominating for election;
 - (b) include a consent to a Police Check from the nominee;
 - (c) a brief curriculum vitae;
 - (d) a summary as to why the Company would benefit from the nominee becoming a Director; and
 - (e) include such other information as requested in the request for nominations from the Company.
- 30.7 Prior to voting, the Nominations Committee will provide the Members in the relevant Jurisdiction and the Board:
- (a) the names of the eligible Nominees for the Jurisdiction, their curriculum vitae and their respective skills and the benefits that they intend to bring to the Board if elected; and
 - (b) provide commentary in relation to the current skills mix on the Board and how each of the Nominees skills will fit in the desired skills matrix for the Board.
- 30.8 State/Territory Director elections will take place by poll.
- 30.9 Only Members from the Jurisdiction can vote in an election of the State/Territory Director for that Jurisdiction.

31. Independent Directors

- 31.1 Prior to the AGM when any Director election will take place, the Company Secretary will notify each Member of the election of Independent Directors and request nominations for election as an Independent Director and the timetable and method for the election process.
- 31.2 Nominations received for election as an Independent Director provision will be vetted by the Nominations Committee. The Nominations Committee may also nominate people for election as an Independent Director.
- 31.3 Nominations must:
- (a) be signed by at least one Member;
 - (b) include a consent to a Police Check from the nominee;
 - (c) a brief curriculum vitae;
 - (d) a summary as to why the Company would benefit from the nominee becoming a Director; and

- (e) include such other information as requested in the request for nominations from the Company.
- 31.4 Independent Director elections will take place by poll.
- 31.5 When the Nominations Committee are considering the nomination of Independent Directors, it must have regard to the mix of skills desirable to properly govern the Company's business.
- 31.6 Independent Directors must not:
- (a) be an officer or employee of a Member;
 - (b) have been an officer or employee of a Member for the previous three years; and
 - (c) be an immediate family Member of a person described in clauses 31.6(a) or 31.6(b).
- 31.7 Prior to voting, the Nominations Committee will provide the Members and the Board:
- (a) the names of the eligible Nominees, their curriculum vitae and their respective skills and the benefits that they intend to bring to the Board if elected; and
 - (b) provide commentary in relation to the current skills mix on the Board and how each of the Nominees skills will fit in the desired skills matrix for the Board.
- 31.8 Independent Director elections will take place by poll and all Members entitled to vote, will vote on the election of Independent Directors.
- 31.9 Independent Directors will be elected to serve a term of three years.

32. Nominations Committee

- 32.1 The Nominations Committee will assess the nominations for election as State/Territory and Independent Directors for suitability and eligibility for those positions.
- 32.2 The Nominations Committee may accept or reject a nomination in its discretion. The decision to reject a nomination must be unanimous vote of the Nominations Committee.

33. Directors time in office

- 33.1 Each Director is to remain as a Director until the term of their office expires or until they resign, retire or are otherwise removed as a Director in accordance with the law and this Constitution. However, subject to the law, a person is eligible for reappointment or re-election as a Director.

34. Qualifications and composition of Directors

- 34.1 At all times a majority of the Directors must be Responsible Persons.
- 34.2 Each Director must:
- (a) be at least 18 years old;
 - (b) be Aboriginal or Torres Strait Islander, unless that Director is an Independent Director;

- (c) have knowledge and expertise relevant to and be committed to the purpose, objectives and activities of the Company;
- (d) have completed, or agree to complete within six months of appointment, corporate governance training as determined by the Company with a recognised corporate governance training body; and
- (e) satisfy any other policies relating to the composition of the Board and skills and qualifications of Directors developed by the Directors from time to time, including:
 - (i) Ageing and Aged Care Services;
 - (ii) legal and corporate governance;
 - (iii) finance; and
 - (iv) community engagement.

35. Vacation of office

- 35.1 In addition to the circumstances prescribed by law, the office of any Director becomes vacant if the Director:
- (a) dies;
 - (b) is, due to physical or mental impairment, unable to properly perform their duties as a Director as determined by a suitably qualified health professional, acting reasonably;
 - (c) fails to attend three consecutive Directors' meetings without leave of absence approved by the Directors or the chairperson;
 - (d) is removed from office as a Director;
 - (e) becomes ineligible to be a Director of the Company under the Corporations Act, the CATSI Act or the ACNC Act;
 - (f) is disqualified from being a Responsible Person by the Australian Charities and Not-for-profits Commission; or
 - (g) is removed from office by Members in accordance with requirements of the Corporations Act.
- 35.2 Nothing in this clause 35 prevents a Director from vacating their office if the Director resigns by notice in writing to the Company.
- 35.3 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
- 35.4 Within 14 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office in accordance with clause 35.3 or annul the suspension and reinstate the Director.

36. Alternate Directors

A Director may not appoint an alternate.

37. Remaining Directors

- 37.1 The Directors may act even if there are vacancies on the Board.
- 37.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting as set out in clause 40.10, the Directors may act only to:
- (a) appoint a Director; or
 - (b) call a general meeting.

POWERS AND PAYMENTS

38. Powers and duties of Directors

- 38.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in a general meeting.
- 38.2 Without limiting the generality of clause 38.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or become liable for the payment of money or the performance of any obligation by or of any other person.

39. Payments to Directors

No payment will be made to any Director of the Company other than:

- (a) for service in the role of Director where the amount payable is appropriate for a charitable organisation of the size and nature of the Company and does not exceed an amount previously approved by the Members of the Company;
- (b) out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors;
- (c) for any service rendered to the Company by the Director in a professional or technical capacity, where the provision of the service has the prior approval of the Directors and is not more than an amount which commercially would be reasonable payment for the service; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

PROCEEDINGS OF DIRECTORS

40. Directors' meetings

- 40.1 The Directors' meetings must be held at least quarterly.
- 40.2 A Director may at any time, and the Company Secretary must on the request of a Director, call an additional Directors' meeting.
- 40.3 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.
- 40.4 All Directors must provide the Company with their electronic address to receive communications from the Company or other Directors and must promptly notify the Company of any changes to this electronic address.
- 40.5 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 40.6 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 40.7 Subject to clause 42, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 40.8 Clauses 40.5 and 40.6 apply to meetings of Directors' committees as if all committee members were Directors.
- 40.9 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 40.10 A quorum is a majority of Directors for the time being.
- 40.11 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 40.12 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

41. Decision on questions

- 41.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 42, each Director has one vote.
- 41.2 The chairperson of a Directors meeting will not have a casting vote in addition to their deliberative vote.

42. Directors' interests

- 42.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is voided or rendered voidable merely because that person holds office as a Director or because of the fiduciary obligations arising out of that office.
- 42.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or

arrangement merely because that person holds office as a Director or because of the fiduciary obligations arising out of that office.

- 42.3 A Director is not disqualified from contracting with the Company in any respect merely because of being a Director.
- 42.4 Any Director having a direct or indirect material personal interest in any contract or arrangement which the Company proposes to enter into will declare their interest immediately by written notice to the chairperson. A general notice that the Director is an employee of a particular Member and is to be regarded as interested in all transactions with that Member will be a sufficient disclosure under this clause 42.4 for that Director and the relevant transactions and the Director will not be required to give special notice relating to any particular transaction with that Member.
- 42.5 Subject to clause 42.6, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 42.6 The prohibition on voting in clause 42.5 will not apply to any contract or arrangement:
- (a) in relation to a Member who employs a Director;
 - (b) to give the Director any security for advances;
 - (c) for an indemnity of the Director; or
 - (d) where the Director is interested merely as a shareholder or director of another company.
- 42.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

43. Elders Council

- 43.1 The Board will establish a council of Elders to advise the Board on cultural issues and issues concerning Aboriginal and Torres Strait Islanders accessing or needing to access Ageing and Aged Care Services.
- 43.2 The Elders Council must consist of at least one Elder from each Jurisdiction.
- 43.3 The Elders Council must meet at least twice a year and may be held by the Elders communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 43.4 The Elders Council need not all be physically present in the same place for an Elders Council meeting to be held.
- 43.5 The Board must ask the Elders Council to meet with the Board at least once each year to seek advice and views of the Elders Council as consumers of Ageing and Aged Care Services and cultural issues in the broader context of the Company, its governance, activities and objectives.

44. Delegation

- 44.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a Board, to a committee or committees.
- 44.2 The Directors may at any time revoke any delegation of power to a committee.
- 44.3 At least one member of each committee must be a Director.
- 44.4 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 44.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 44.6 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. These provisions apply as if each member of the committee was a Director.

45. Written resolutions

- 45.1 The Directors may pass a resolution without a Directors' meeting being held if:
 - (a) all the Directors entitled to vote on the resolution are sent a document containing the written resolution;
 - (b) at least the number required for a quorum sign or approve a statement that they are in favour of the resolution set out in the document;
 - (c) there are no dissenting votes received; and
 - (d) there is no request to hold the resolution over until the next Directors' meeting.
- 45.2 The resolution is passed when:
 - (a) the number of Directors required to pass the resolution, sign or approve the document; and

- (b) the timeframe (which must be reasonable in the circumstances) in which the Directors were required to respond expires.
- 45.3 For the purposes of clause 45.1:
- (a) separate copies of the document may be used for signing by Directors or referenced to approve the document if the wording of the resolution and statement is identical in each copy, and
 - (b) 'sign' and 'approve' includes such methods approved by the Directors in the Company's policy in relation to Company communications.
- 45.4 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 45.5 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 45.
- 45.6 This clause 45 applies to meetings of Directors' committees as if all members of the committee were Directors.

46. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

47. Minutes and registers

- 47.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 45;
 - (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 42.

- 47.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 47.3 The Company must keep all registers required by this Constitution and the Corporations Act.

48. Delegation

48.1 Committees

- (a) The Directors may resolve to:
- (i) establish one or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers such is required for the effective and efficient running and administration of that committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the Directors which, for the avoidance of doubt, may be contained within policies, guidelines or protocols.
- (c) The Directors may continue to exercise all of their powers despite any delegation made under this clause 48.1.

48.2 Delegation to individuals

- (a) The Directors may resolve to delegate any of their powers:
- (i) to one or more Directors;
 - (ii) to one or more Members; or
 - (iii) to one or more employees.
- (b) The Directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the Directors.
- (d) The Directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this clause 48.2 need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.

48.3 Validity of acts

An act done by a Director or by a meeting of the Directors or a committee attended by a Director is not invalidated because:

- (a) of a defect in the appointment of that Director;

- (b) the person is disqualified from being a Director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the Directors or committee, as the case may be, when the act was done.

INDEMNITY, INSURANCE AND ACCESS TO DOCUMENTS

49. Officers' indemnity and insurance

49.1 Indemnity

- (a) Subject to the Corporations Act:
 - (i) the Company, to the extent the person is not otherwise indemnified:
 - (A) must indemnify every officer of the Company and every officer of the Company's wholly owned subsidiaries; and
 - (B) may indemnify the Auditor,

against a Liability incurred as such by an officer or the Auditor (other than to the Company or a related body corporate of the Company), including a Liability incurred as a result of the Company or a wholly owned subsidiary of the Company appointing or nominating the officer as a trustee or officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
 - (ii) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or the Auditor:
 - (A) in defending an action for a Liability incurred as such by the officer or the Auditor; or
 - (B) in resisting or responding to actions taken by a government agency or a liquidator.
- (b) In this clause 49.1, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

49.2 Former officers

The indemnity in favour of officers under clause 49.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even if the person is not an officer at the time the claim is made.

49.3 Deeds

Subject to the Corporations Act, without limiting a person's rights under this clause 49, the Company may enter into an agreement with a person who is or has been a Director or officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this clause 49 on any terms and conditions that the Board requires.

49.4 Insurance

Subject to the Corporations Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

50. Directors' access to documents

50.1 A Director has a right of access to the financial records of the Company at all reasonable times.

50.2 If the Directors agree, the Company must give a Director or former Director access to:

- (a) certain documents, including documents provided for or available to the Directors; and
- (b) any other documents referred to in those documents.

COMPANY SECRETARY

51. Company Secretary

51.1 The Company must have at least one Company Secretary.

51.2 The Company Secretary must:

- (a) Have formal qualifications appropriate for a company secretary.

51.3 The Company Secretary must be appointed by the Board.

51.4 A Company Secretary holds office on the terms that the Board decides. The Board may vary any decision previously made by it in respect of a Company Secretary.

51.5 A person automatically ceases to be a Company Secretary if the person:

- (a) is not permitted by the Corporations Act, the CATSI Act or the ACNC Act (or an order made under the Corporations Act, CATSI Act or ACNC Act), to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act or Part 6-5 of the CATSI Act and is not given permission or leave to manage the Company under sections 206GAB or 206G of the Corporations Act or sections 279-30 or 279-35 of the CATSI Act as applicable;
- (c) becomes of unsound mind or is physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under clause 51.6.

51.6 The Board may remove a Company Secretary from that office whether or not the appointment was expressed to be for a specific term.

AUDITOR

52. Auditor

- 52.1 If required under the Corporations Act or the ACNC Act, the Company must appoint an Auditor.
- 52.2 The Auditor will not have any affiliation or interest in the Company nor any affiliation with an actual or potential supplier of goods and services, recipient of grant funds or an organisation with competing or conflicting objectives.

AUDIT AND ACCOUNTS

53. Audit and accounts

- 53.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act and the ACNC Act.
- 53.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act and the ACNC Act.

WINDING UP

54. Winding up

- 54.1 If the Company is wound up:
- (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year,
- undertakes to contribute to the property of the Company for the:
- (c) payment of debts and liabilities of the Company (in relation to clause 54.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
 - (d) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required, not exceeding \$10.
- 54.2 If any surplus remains after satisfying all debts and liabilities in the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but must:
- (a) be given or transferred:
 - (i) to an institution which may be registered as a charitable institution under the TAA;
 - (ii) to an institution which the Commissioner is satisfied has a principal object mentioned in section 149C(3)(a) of the TAA; or
 - (iii) for a purpose the Commissioner is satisfied is charitable or for the promotion of public good; and

- (b) only be given or transferred to an entity which, by its constitution, is:
 - (i) a not for profit organisation;
 - (ii) required to pursue charitable purposes only;
 - (iii) required to apply its profits (if any) or other income in promoting objects similar to those of the Company;
 - (iv) prohibited from making any distribution to its members or other than within any applicable Australian Charities and Not-for-profits Commission guidelines; and
 - (v) an organisation controlled by the Aboriginal and Torres Strait Islanders,with such entity to be determined by the Members at or before winding up and in default, by application to the Supreme Court of Queensland for determination.

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

55. Amending the Constitution

55.1 Subject to the Corporations Act, the Company may modify or repeal this Constitution or a provision of this Constitution by a Special Resolution.

55.2 A Special Resolution modifying or repealing this Constitution takes effect:

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

56. Notices

56.1 A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
 - (iii) sent by electronic message to the electronic address (if any) nominated by that person.

56.2 A notice to a person given by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by electronic message:

- (i) by 5 pm (local time in the place of receipt) on a business day – on that day;
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
- (b) if it is sent by mail:
 - (i) within Australia – on the fifth business day after posting; or
 - (ii) to a place outside Australia – on the tenth business day after posting.

A certificate in writing signed by a Director or Company Secretary stating that a notice was sent is conclusive evidence of service.

- 56.3 For the purposes of clause 56, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.
- 56.4 If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in determining the period.