



**ABORIGINAL HEALTH COUNCIL  
OF  
WESTERN AUSTRALIA**

ACN 114 220 478

**CONSTITUTION**

27 October 2023

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## Preamble

The Company uses the following guiding principles in decision-making and uses the principles when undertaking strategic and business planning.

- (a) That as the peak body representing Aboriginal Community Controlled Health Services that deliver primary health care to Aboriginal and Torres Strait Islander peoples and their communities in Western Australia, we will take a leadership role in forming partnerships with government and non-government agencies and other organisations for the purpose of advancing the health and well-being of Aboriginal and Torres Strait Islander people and their communities in Western Australia.
- (b) That Aboriginal and Torres Strait Islander people's health includes the physical well-being of an individual and the social, emotional and cultural well-being of the whole community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well-being of their community. It is a whole of life view which includes the cyclical concept of life-death-life.
- (c) That Aboriginal Community Control is about community participation, engagement, responsibility and accountability to the community that constitute the client base of the services provided, the Member base and the broader Aboriginal community in which our Member Services and AHCWA work.
- (d) That Aboriginal Community Control is central to achieving and maintaining cultural well-being and is therefore essential to the philosophy and operations of Aboriginal health care services.
- (e) That understanding Aboriginal and Torres Strait Islander culture and incorporating cultural understanding and awareness into policy development and implementation is necessary if improved health outcomes are to be achieved.
- (f) That Aboriginal and Torres Strait Islander peoples constitute an unacceptable proportion of disadvantaged people in Australian society and that this is due to past and present discriminatory policies and laws that impact upon the health, social and economic well-being of Aboriginal and Torres Strait Islander peoples.
- (g) That improvement in health outcomes for Aboriginal and Torres Strait Islander peoples and their communities will be advanced through equitable health access and funding models.
- (h) That equity in health will be advanced through a genuine commitment on the part of all Australians to redress the history of oppression and inequity that continues to impact negatively upon Aboriginal and Torres Strait Islander peoples.
- (i) That as the peak body representing Aboriginal Community Controlled Health Services providing comprehensive primary health care to Aboriginal and Torres Strait Islander peoples and their communities we will:
  - advocate for and seek to influence policy and legislation that advances the health and well-being of Aboriginal and Torres Strait Islander peoples and their communities in Western Australia specifically and in Australia generally; and
  - also advocate for, contribute to and apply principles of Australian and international standards for best practice, evidence-based frameworks in every area of operations including all levels of governance and service delivery.

This preamble is included for guidance and context purposes only and does not form part of this Constitution.

## Part A – Preliminary Matters

### 1 Defined Terms and Definitions

The Dictionary and Interpretation provisions in Schedule 1:

- (a) define some of the terms used in this Constitution;
- (b) set out the Rules of Interpretation which apply to this Constitution; and
- (c) clarify the effect of the Corporations Act on this Constitution.

### 2 Name, Nature of Company and Liability

- (a) The name of the company is Aboriginal Health Council of Western Australia or, if the name is lawfully changed in accordance with the Corporations Act and this Constitution, that name.
- (b) The company is a Public Company Limited by Guarantee which is established to be, and to continue as a charity.
- (c) The liability of each Member is limited. Each Member guarantees to contribute up to a maximum of \$10 to the assets of the company if it is wound up while the Member is a Member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each Member is limited to making such contribution and no more.

## Part B – Purpose

### 3 Purpose and Activities of the Company

#### 3.1 Purpose

The purpose of the company is to relieve the poverty, sickness, suffering, disability, destitution, misfortune, distress and helplessness experienced by Aboriginal and Torres Strait Islander peoples predominantly in Western Australia with a focus on the physical, social, cultural, spiritual and family well-being of the individual and their community (Charitable Purpose).

#### 3.2 Activities

The activities of the company must be conducted in the furtherance of its Charitable Purpose and may include:

- (a) working with Members to advance the health and well-being of Aboriginal and Torres Strait Islander peoples and in so doing provide support to Members to achieve their charitable objectives as articulated by each Member;
- (b) advocating for:
  - (i) improving the social determinants of health. Social determinants of health include: the environment in which people live including housing; social and economic status; educational opportunities and outcomes; employment opportunities; social and emotional well-being; and mental health;
  - (ii) improving resources and resource allocation including public funding resource allocation;
  - (iii) policy and legislation that strives for equitable health access and funding models;
  - (iv) Aboriginal community control in the delivery of effective primary health care services to Aboriginal and Torres Strait Islander peoples; and

- (v) culturally appropriate support service delivery models and governance frameworks that operate according to accepted Australian and international standards for best practice in service delivery as they relate to the services provided by Members;
- (c) initiating, supporting, participating in and contributing to research that is culturally appropriate, ethical and relevant to the needs of Members and Aboriginal and Torres Strait Islander peoples;
- (d) carrying on, supporting or facilitating of culturally appropriate training and educational materials to improve health awareness and health outcomes;
- (e) promoting health services that advance Aboriginal Community Controlled Health Services and the interests of Members and in such a manner and to such an extent that any such services do not conflict with the interests of a Member or Members;
- (f) providing services that:
  - (i) support and advance the Objectives of the Company; and
  - (ii) support Members, in whatever form, in their endeavour to promote and advance the health and wellbeing of Aboriginal and Torres Strait Islander peoples; and
- (g) conducting any other activities ancillary to or necessary for the fulfilment of the Charitable Purpose.

## Part C – Members and Membership

### 4 Membership

#### 4.1 Members of the Company

- (a) The Members of the company are:
  - (i) those noted as such in the Members Register; and
  - (ii) the applicants that have been admitted as Members of the company in accordance with Rule 4.2 and have not since ceased to be a Member.
- (b) If an applicant is admitted as a Member of the company, the Secretary must ensure:
  - (i) the applicant is given notice of admission as a Member of the company; and
  - (ii) the name and details of the applicant are entered in the Members' Register in accordance with Rule 4.6.
- (c) The Secretary must ensure each applicant not admitted as a Member of the company is informed of this decision. The Directors may, but are not required to, provide reasons for the decision not to admit an applicant into membership.
- (d) The region a Member belongs to is based on the location within which is delivers services, with reference to the Region Map.

#### 4.2 Becoming a Member

- (a) To become a Member of the company, an applicant must:
  - (i) satisfy the eligibility criteria for the relevant class of membership as described in the table at Schedule 2;
  - (ii) complete and lodge a Membership Application in such form as determined by the Directors from time to time which, for the avoidance of doubt, may include applying using the Internet;

- (iii) ensure that all information provided when applying for membership of the company is true and accurate and is not misleading or deceptive;
  - (iv) pay any joining and annual fee that may be required under Rule 4.7;
  - (v) by a resolution of Directors, be assessed as satisfying the relevant eligibility criteria as described in the table at Schedule 2. The Directors may resolve to refuse an application for membership if they determine that the applicant does not meet the eligibility criteria for the class of membership applied for;
  - (vi) subject to being assessed as eligible in accordance with Rule 4.2(a)(vi), be admitted into the relevant membership class by resolution of the Members entitled to vote at a general meeting. Subject to Rule 4.2(b) a resolution about whether to admit the applicant into membership must be put to Members at the next General Meeting (which may be an Annual General Meeting) following the resolution of Directors under Rule 4.2(a)(v) by including a resolution in the Notice for that meeting; and
  - (vii) satisfy such other membership criteria as the Directors may resolve from time to time, acting reasonably.
- (b) The Directors may, at their complete discretion, choose to postpone the assessment of all (but not some) membership applications received less than 60 days prior to the next General Meeting of Members (including by modifying any application delegations or processes relating to assessing membership).

#### 4.3 Member's Rights

Each Member has the rights associated with the class of membership to which they belong as set out in the table at Schedule 2.

#### 4.4 Member Representative

- (a) Each Member may appoint up to two (2) Representatives and must inform the company of each Representatives details to be entered in the Members Register in accordance with Rule 4.6(b)(iv).
- (b) Each Representative must be an Aboriginal and/or Torres Strait Islander person.
- (c) Each Member must ensure that each of its Representatives:
  - (i) treat all other Members, Representatives, Directors, employees and volunteers of the company with respect and dignity;
  - (ii) does not engage in any activities or behaviours that would amount to discrimination, bullying or harassment or infringe on anyone else's human rights;
  - (iii) demonstrate knowledge of and commitment to the Charitable purpose; and
  - (iv) does not diminish or tarnish the reputation of the company or otherwise bring the company into disrepute.
- (d) Each Member must ensure the company is notified in writing within five (5) Business Days of any change to the:
  - (i) appointment or removal; or
  - (ii) contact details,
    - of its Representatives.

#### 4.5 Membership Not Transferable

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

#### 4.6 Register of Members

- (a) A Register of Members must be kept in accordance with the law.
- (b) Without limiting the requirement under Rule 4.6(a), the following must be entered in the Register in respect of each Member:
  - (i) the name and address of the Member;
  - (ii) the date membership started and the date it stopped;
  - (iii) whether the member is an Ordinary Member or Associate Member;
  - (iv) in the case of a Member that has appointed one or more Representatives, the full name and contact details of each Representative; and
  - (v) any other information required by the Directors or the law from time to time.

#### 4.7 Membership Fees

- (a) Unless a different amount applies as determined under Rule 4.7(d), the joining fee for membership of the company is \$0. The joining fee, if any, is payable at the same time as the application for membership is made. The joining fee will be reimbursed to the applicant if the application for membership is declined.
- (b) Unless a different amount applies as determined under Rule 4.7(d), the annual membership for membership of the company is \$0. The first year's membership fee, if any, is payable at the same time as the application for membership is made and is required in addition to any joining fee. The first year's membership fee will be reimbursed to the applicant if the application for membership is declined.
- (c) Other than the initial membership fee that may be payable under Rule 4.7(b), annual membership fees (if any) are to be paid at such times and in such manner as the Directors determine from time to time.
- (d) The Ordinary Members may at their complete discretion resolve at a General Meeting:
  - (i) that the joining fee and/or the membership fee be a different amount;
  - (ii) that the joining fee and/or membership fee payable by one or more Members be payable at a different time or times, including by instalments;
  - (iii) that the joining fee and/or membership fee be different depending on membership class; and
  - (iv) to adopt such policy relating to joining and membership fees as they see fit and the time such policy should be in force.
- (e) A Member that has not paid the required membership fee in accordance with this Rule 4.7 may not exercise any of the rights associated with that Member's membership, including the right to exercise any vote the Member may have at a meeting of Members, and may not participate in the calling of a General Meetings or in the putting of resolutions to be considered at a General Meeting.



- (f) The joining fee and annual membership fee that may be required under this Rule 4.7 are exclusive of any GST that may be payable.
- (g) For the avoidance of doubt, where a membership fee is payable by instalments pursuant to Rule 4.7(d)(ii), any reference in this Constitution to a membership fee includes an instalment of a membership fee.

#### 4.8 Membership Renewal

The Directors may, at their discretion, send a notice to one or more Members requiring that Member to confirm or to renew membership of the company and/or to confirm or update that Member's details (Membership Renewal Notice).

## 5 Ceasing to be a Member

### 5.1 General Overview

- (a) There are a number of reasons why a Member's membership will stop. For instance, if a Member:
  - (i) resigns from membership (see Rule 5.2);
  - (ii) automatically stops being a Member (see Rule 5.3); or
  - (iii) is expelled from membership (see Rules 5.4 and 5.5).
- (b) The Directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of Members as they so determine from time to time provided they are permitted by law and consistent with the requirements set out in this Rule 5.
- (c) Where a Member ceases to be a Member in accordance with the law or this Constitution, that Member's name must be removed from the Register of Members.
- (d) Upon the removal of a Member's name from the Register of Members:
  - (i) the Member will forfeit all rights and privileges attached to their membership and all rights which that Member may have against the company arising out of the membership; and
  - (ii) the company will have no liability to such Member in respect of that Member's removal from the Register of Members.
- (e) Any Member that ceases to be a Member remains liable for:
  - (i) any monies which may be owing by that Member to the company; and
  - (ii) in the case of the company being wound up within one year of the date membership ceased, the relevant contribution under Rule 2(c).

### 5.2 Resignation from Membership

A Member may resign from membership of the company at any time by providing written notice to the company (supported by a signed copy of the Minutes or Resolution of the Directors or Management Committee of the Member evidencing the decision to resign from membership) addressed to the Chairperson or Secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

### 5.3 Automatic Stopping of Membership

A Member's membership will automatically stop if the Member:

- (a) is subject to an insolvency event for a continuous period of 60 days or more, is dissolved or wound up;

- (b) fails to pay any required membership fee in accordance with Rule 4.7 within two months after the date on which that membership fee becomes due or such later time as the Directors may determine;
- (c) fails to return a Membership Renewal Notice in accordance with Rule 4.8 within two months after the return due date specified in that notice or such later time as determined by the Directors; or
- (d) no longer complies with the membership requirements described at Rule 4.2 as determined by a Special Resolution of Directors.

#### 5.4 Disciplining, Suspension and Expulsion of Members

- (a) This Rule 5.4 describes what needs to happen when considering whether to discipline a Member. In summary, the process involves:
  - (i) putting the Member in question on notice and giving the opportunity to provide information;
  - (ii) passing a Directors' Resolution to warn, suspend, expel or otherwise discipline that Member; and
  - (iii) if the decision is to expel a Member, inform that Member of the right to appeal the decision under Rule 5.5.
- (b) Provided the steps set out in this Rule 5.4 are followed, the Directors may resolve to warn, suspend, expel or otherwise discipline a Member if that Member or any of its Representatives:
  - (i) has refused or failed to comply with the provisions of this Constitution or any company code of conduct;
  - (ii) acts in a way that, in the opinion of the Directors, is, or could be, prejudicial to the interests or reputation of the company.

(Member Disciplinary Resolution)
- (c) The Directors must give the Member in question at least 14 days prior notice of the date that the Directors will consider the Member Disciplinary Resolution. This notice must be in writing and inform the Member:
  - (i) that the Directors are to consider warning, suspending, expelling or otherwise disciplinary the Member (as the case may be);
  - (ii) of the reasons why the Directors are considering taking the determined action;
  - (iii) of the right for the Member to give the Directors, either orally or in writing, any explanation or defence relevant to the proposed disciplinary action;
  - (iv) of the date, place and time of the meeting at which the resolution is to be considered; and
  - (v) of the right for the Member to attend the meeting at which the resolution is to be considered but not to be present during any Director deliberations or the putting of or voting on the resolution unless the Directors resolve otherwise.
- (d) Where a Director is connected with a Member subject to a Member Disciplinary Resolution by virtue of being a Representative, Director, officer, employee or volunteer of that Member, that Director is not entitled to vote on the relevant Member Disciplinary Resolution.
- (e) All Member Disciplinary Resolutions are to be passed by an Ordinary Resolution of Directors and, subject to Rule 5.5 relating to appealing a resolution to expel a Member, such decision of the Directors is final.

- (f) Directors must notify the relevant Member in writing about the Directors' decision within 14 days after the date a Member Disciplinary Resolution is passed, but failure to do so does not invalidate the decision.
- (g) Subject to a successful appeal under Rule 5.5, the Member Disciplinary Resolution takes effect at the time and date the resolution was passed.

#### 5.5 Right of Appeal

- (a) Where a resolution that a Member no longer complies with the membership criteria is passed in accordance with Rule 5.3(d) or where a resolution to expel a Member is passed in accordance with Rule 5.4(b), the company must give that Member written notice of the decision (Cessation Notice). The Cessation Notice must be sent within 14 days of the relevant resolution.
- (b) The Member who is the subject of the Cessation Notice may, by notice in writing to the Chairperson, request that a resolution to confirm or reject the Directors' resolution be put to the Members in a General Meeting. Such notice must be received by the company within 14 days of the date of the Cessation Notice.
- (c) If the Appeal Notice is received by the company within the timeframe required under Rule 5.5(b), the Directors must ensure (within 30 business days of receipt of the Notice) a resolution to confirm or reject the Directors' resolution is considered by the Members at a General Meeting called in accordance with Rule 6.2 to consider this resolution only.
- (d) The Member that is subject to the Cessation Notice must be given the opportunity to provide a written statement and to make representations at the General Meeting in relation to the resolution of the Directors. Any written statement given by the Member must be distributed to all Members prior to the General Meeting, provided the notice is reasonable in length and is not defamatory or if circulated would result in the breach of law.
- (e) If the Ordinary Members resolve to:
  - (i) confirm the resolution of the Directors that is related to the Cessation Notice, the Member must be removed from the Register of Members from the date of the resolution of the Directors described at Rule 5.5(a); or
  - (ii) reject the resolution of the Directors that is related to the Cessation Notice the Member must not be removed from the Register of Members and no period of cessation will be noted.
- (f) If an Appeal Notice is not received by the Chairperson within the required timeframe, then:
  - (i) the Directors are not required to ensure that a resolution to confirm or reject the Directors' resolution is considered by the Members at a General Meeting; and
  - (ii) the Member ceases to be a Member from the date of the resolution in accordance with Rule 5.3(d) or 5.4(b), as appropriate.
- (g) A Member who has been expelled may reapply for membership in accordance with Rule 4.2 provided at least six months has expired since that Member ceased being a Member.

## 6 General Meetings

### 6.1 Introduction

- (a) For as long as the company is registered as a charity with the Australian Charities and Not-for-Profits Commission or its successor, and for as long as the law permits or requires, the Directors:
  - (i) unless the Corporations Act otherwise requires a meeting of Members for a particular resolution to be passed, may determine whether or not to hold meetings of Members including Annual General Meetings;
  - (ii) must ensure that the Australian Charities and Not-for-Profits Commission Governance Standards, in particular Governance Standard 2 relating to accountability to Members, are complied with, and
  - (iii) must ensure that if the company does hold a meeting of Members, it does so in accordance with this Constitution and the Corporations Act despite the fact that the provisions of the Corporations Act dealing with Members' meetings may not be directly applicable to the company.
- (b) If there is any inconsistency between the Corporations Act and this Constitution with respect to the calling and holding of Members' meetings then, to the extent permitted by law, the provisions of the Constitution will prevail.

### 6.2 Calling of General Meetings and the Putting of Resolutions

- (a) A General Meeting of Members may be initiated by:
  - (i) a resolution of Directors;
  - (ii) subject to Rule 6.2(b), the Ordinary Members in accordance with the Corporations Act; or
  - (iii) the court in accordance with the Corporations Act.
- (b) For as long as the number of Members is 60 or less, the number of Members required to call a meeting of Members is three Ordinary Members (despite this exceeding the 5% threshold prescribed under the Corporations Act). Ordinary Members calling a General Meeting must be from at least three separate Regions. For the avoidance of doubt, all other provisions of the Corporations Act dealing with the way Members may call meetings still apply.
- (c) If an Ordinary Member wants a resolution to be considered by the Members at a General Meeting, then, subject to Rule 6.2(d), a Notice of that Resolution must be given to the company in accordance with the Corporations Act.
- (d) For as long as the number of Members is 60 or less, the number of Ordinary Members required to provide a Notice of a Resolution under Rule 6.2(c), is two or 10% (whichever is greater) despite this exceeding the 5% threshold prescribed under the Corporations Act.

### 6.3 Notice of General Meetings

- (a) Subject to the provisions of the Corporations Act dealing with consent to short notice, if a General Meeting of Members (including any Annual General Meeting) is called under Rule 6.2 at least 21 days' notice of that meeting must be given to each person who is at the date of the notice:
  - (i) a Member of the company eligible to receive notices of meetings;
  - (ii) a Director of the company; or
  - (iii) the Auditor of the company.
- (b) A Notice of a General Meeting must specify:
  - (i) the date, time and place of the meeting;
  - (ii) the general nature of the business to be transacted at the meeting, including the text of any resolutions to be proposed at the meetings; and
  - (iii) any other matters required under the law.
- (c) Notwithstanding Rule 6.3(b), where the company holds an Annual General Meeting, the ordinary business of that meeting may include any of the following, even if not referred to in the Notice of Meeting:
  - (i) the consideration of the Annual Financial Report, the Directors' Report and the Auditor's Report; and
  - (ii) the appointment of the Auditor and the fixing of the Auditor's remuneration.
- (d) A person who is entitled to receive Notice of a General Meeting or who is requested by the Chairperson to attend a General Meeting is entitled to be present whether or not the person is a Member.

### 6.4 Quorum at General Meetings

- (a) No business may be transacted at any General Meeting, except the election of a Chair (if required) and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and the quorum remains present throughout the meeting.
- (b) The quorum for a General Meeting of Members is 12 Ordinary Members or a majority of current Ordinary Members (whichever number is the lowest) present by at least one Representative in person and entitled under these Rules to vote at a General Meeting. For the avoidance of doubt, Associate Members are not counted towards quorum.
- (c) If a quorum is not present within one hour after the time appointed for a General Meeting:
  - (i) where the meeting was convened by, or at the request of, Ordinary Members, the meeting must be dissolved; or
  - (ii) where the meeting was convened by, or at the request of, the Directors or the court, the meeting must be adjourned to the same time of the same day in the next week, and to the same place, unless the Directors specify otherwise.
- (d) At a meeting adjourned under Rule 6.4(c)(ii), the meeting is to proceed and the number of Ordinary Members present at the meeting is deemed to be the quorum for that meeting.
- (e) In determining whether a quorum is present pursuant to Rule 6.4(b) or 6.4(c)(ii), if a Member has appointed more than one Representative and both are present, only one Representative must be counted.

## 6.5 Chair of General Meetings

- (a) Subject to Rule 6.5(b), the Chairperson must preside as Chair at each General Meeting.
- (b) If at a General Meeting:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is absent from the meeting (or part of the meeting); or
  - (iii) the Chairperson is present but is prevented from acting or not willing to act as Chair of the meeting or of part of the meeting,the Deputy Chairperson (if there is one) must preside as Chair of that meeting or part of it until such time as the Chairperson joins the General Meeting or can resume the role of Chair (as applicable).
- (c) Subject to Rules 6.5(a) and 6.5(b), if at a General Meeting:
  - (i) there is no Chairperson and no Deputy Chairperson;
  - (ii) the Chairperson and Deputy Chairperson are absent from the meeting (or part of the meeting); or
  - (iii) the Chairperson and Deputy Chairperson are present but are prevented from acting or not willing to act as Chair of the meeting or part of the meeting,the Ordinary Members present may elect a person present to be Chair of that meeting or part of it until such time as the Chairperson or Deputy Chairperson joins the General Meeting or can resume the role of Chair (as applicable).

## 6.6 Conduct of and Participation in General Meetings

- (a) The Chair of a General Meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the Chair necessary or desirable for:
  - (i) proper and orderly debate or discussion; and
  - (ii) the proper and orderly casting or recording of votes.
- (b) The Chair of a General Meeting at which a quorum is present must if so directed by the Ordinary Members present with a two-thirds majority of votes, adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (c) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of adjournment.
- (d) The Chair's rulings on any matter relating to order of business, procedure, the conduct of the General Meeting and resolutions moved in accordance with the Constitution are final. No motion of dissent from a ruling will be accepted.
- (e) In addition to the rights provided for in Rule 6.3(a)(iii) and 6.3(c), the Auditor of the company (if any) is entitled to be heard at any General Meeting which the Auditor attends.

## 6.7 Decisions at General Meetings

- (a) Except in the case of any resolution which under this Constitution or as a matter of law requires a special resolution, questions arising at a General Meeting are to be decided by a majority of votes cast by the Ordinary Members present at the meeting and who are entitled to vote. Such decision is then for all purposes a decision of the Members.
- (b) If there is an equality of votes upon any proposed resolution at a meeting of Members the Chair may exercise a second or casting vote in addition to any vote the Chair may exercise as a Representative of a Member.
- (c) Unless a poll is demanded, a resolution put to the vote of a General Meeting must be decided on a show of preference of Members, with each Member Representative present and entitled to vote indicating a preference by a means appropriate to that Member and that is readily interpreted and understood by the Chair (Show of Preference).
- (d) For the avoidance of doubt:
  - (i) if two Representatives for the same Member are in attendance at a General Meeting, each Representative may exercise one vote on a Show of Preference and a poll; and
  - (ii) if only one Representative of a Member is in attendance at a General Meeting, that Representative may exercise two votes on a Show of Preference and a poll.
- (e) A poll may be demanded before a vote being decided by a Show of Preference is taken or before or immediately after the declaration of the result of the Show of Preference:
  - (i) by the Chair of the meeting;
  - (ii) by at least five Members present and entitled to vote on the relevant resolution; or
  - (iii) for as long as the number of Members is 60 or less, three or 10% of Member present and entitled to vote on the relevant resolution (whichever is greater) despite this exceeding the 5% threshold prescribed under the Corporations Act.
- (f) Unless a poll is demanded, a declaration by the Chair on the result of a vote on a Show of Preference is decisive of the outcome of that resolution. Such declaration does not need to refer to the number or proportion of votes for or against the resolution.
- (g) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a General Meeting, it will be taken when and in the manner that the Chair directs, and in all cases the result of the poll will be recorded as a resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a General Meeting on the appointment of a Chair of the meeting.
- (i) The demand for a poll may be withdrawn.

## 6.8 Voting Rights

- (a) Each Member has the voting rights associated with the class of Member to which it belongs as described in the table at Schedule 2.
- (b) An objection to the qualification of a person to vote at a General Meeting:
  - (i) must be raised before or immediately after the result of the resolution for which the vote objected to is given; and
  - (ii) must be referred to the Chair of the meeting, whose decision is final.
- (c) A vote not disallowed by the Chair of a meeting under Rule 6.8(b) is valid for all purposes.

## 6.9 Members' Decisions without Meetings

- (a) Subject to the Directors resolving that all other reasonable attempts to convene a General Meeting of Members has failed, the company may pass a Members' resolution in writing in accordance with Rule 6.9(b).
- (b) Unless the Corporations Act requires the holding of a meeting, Ordinary Members may pass resolutions outside of a Members' meeting in any manner (including through the use of technology) provided:
  - (i) all Ordinary Members entitled to vote on the resolutions are sent a copy of the resolutions and are given a reasonable time to respond considering the urgency and nature of the matters under consideration;
  - (ii) each such resolution is passed by at least 75% of all current Ordinary Members entitled to vote (unless a higher number or threshold is required under this Constitution or by law); and
  - (iii) such manner complies with:
    - a. the law; and
    - b. any policies and procedures relating to the passing of Member resolutions in writing as determined by the Directors from time to time.
  - (iv) For the avoidance of doubt, where a rule in this Constitution requires a resolution to be made by Ordinary Members in a General Meeting, such resolution can, provided it is passed in accordance with this Rule 6.9 and permitted by law, be passed outside of a General Meeting.

## Part D – Not-for-Profit

### 7 No Profits for Members

- (a) Subject to Rule 7(b), the assets and income of the company must be applied solely in furtherance of the Charitable Purpose and no portion of the income or assets of the company may be paid or transferred, directly or indirectly, to any Member.
- (b) The company may, with the approval of the Directors, make payment in good faith to a Member of the Company:
  - (i) by way of reasonable and proper payment for any goods supplied or services rendered to the company;
  - (ii) by way of interest on money lent to the company by that Member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;



- (iii) by way of reasonable and proper rent for premises let by that Member to the company;
  - (iv) by way of a grant (or similar contribution) awarded in furtherance of the Charitable Purpose;
  - (v) as a result of the Member's participation in a social bond or similar program of the company;
  - (vi) by way of distribution to an Ordinary Member, but only if the Ordinary Member is an Eligible Recipient; and
  - (vii) for authorised out-of-pocket expenses reasonably and properly incurred by that Member in connection with the affairs of the company.
- (c) For the avoidance of doubt, nothing in this Rule 7:
- (i) prevents a Member from receiving such services as may ordinarily be provided by the company in the course of undertaking its activities; or
  - (ii) prohibits a Member from receiving a minor benefit that is directly related to membership of the company.

## Part E – Directors and Secretary

### 8 Directors

#### 8.1 Number of Directors

- (a) The minimum number of Directors is three. Subject to Rules 8.1(b) and 8.1(c), the maximum number of Directors is 13.
- (b) The Directors may change the maximum number of permitted Director positions in the manner required by the Corporations Act.
- (c) If the number of Regions changes, then the maximum number of Directors will correspondingly change to properly account for the number of Region Appointed Directors.
- (d) If there are no Ordinary Members in one or more Regions, then the Director positions that would have ordinarily been filled by a Region Appointed Director from each such Region must remain vacant until the earlier of:
  - (i) the time such Region again has one or more Ordinary Members and a Director has been validly appointed under Rules 8.2 to 8.4; and
  - (ii) the date the corresponding Regions or Regions are removed or merged with another Region by a special resolution of Ordinary Members.
- (e) If at any time the number of Directors falls below three, the remaining Director or Directors may act but only:
  - (i) in an emergency;
  - (ii) for the purpose of convening a General Meeting of the company; or
  - (iii) for the purpose of increasing the number of Directors to three.

#### 8.2 Becoming a Director

Subject to Rule 8.3, a person may become a Director of the company in the following ways:

- (a) appointment by the Ordinary Members from a Region (Region Appointed Directors);

- (b) election by the Ordinary Members to the office of an Executive Director (Executive Directors);
- (c) election by the Ordinary Members to the office of Youth Director (Aboriginal Youth Director); and
- (d) appointment by the Directors to fill any vacancy however arising in accordance with this Constitution.

### 8.3 Composition of Directors

- (a) The Directors will comprise of:
  - (i) one Region Appointed Director from each Region;
  - (ii) four Executive Directors – being one each of:
    - a. Chairperson;
    - b. Deputy Chairperson;
    - c. Treasurer; and
    - d. Secretary, and
  - (iii) one person meeting the criteria described at 8.4(e) as an Aboriginal Youth Director.
- (b) The Directors must ensure that:
  - (i) no more than three directors are from the same Region; and
  - (ii) no more than two Directors are directly related family members.
- (c) If there is a vacancy in a Region Appointed Director position (within a Region that has one or more Ordinary Members) for a period of six months or more, the Directors may ask all (but not some) of the Ordinary Members within the corresponding Region to nominate a person who satisfies the requirements under Rule 8.4 to fill the vacant position. The Directors may then resolve to appoint one of the nominated persons to fill the vacant Directors position until the next Director election takes place.
- (d) If no nominations are received in accordance with Rule 8.3(c) within a further six months, then the Directors may resolve to appoint a person of their choosing from that Region to fill the position until the next Director election takes place.
- (e) If there is a vacancy in any Executive Director position, the Directors may resolve to appoint another Director (who has consented to do so) to fill that vacancy, such position to be held until the next Director election takes place.
- (f) A person who resigns from the position of Chairperson, Deputy Chairperson, Secretary or Treasurer may continue to hold office as a Director but only if:
  - (i) there is a Director vacancy available (including within another Executive Director position);
  - (ii) filling the vacancy does not result in a breach of the requirements described at Rule 8.3(b); and
  - (iii) in the case of filling a vacant Region Appointed Director position, a majority of Ordinary Members in the corresponding Region have approved the appointment in writing.

#### 8.4 Qualifications and Requirements of Directors

- (a) All Directors of the company, irrespective of their method of appointment or election must:
  - (i) be 18 years of age or older;
  - (ii) be an Aboriginal or Torres Strait Islander person;
  - (iii) ordinarily reside in Western Australia;
  - (iv) be a Director or the most senior employee (such as the Chief Executive Officer) of a non-suspended Ordinary Member located within the Region nominating the Director, unless the director position is the Youth Director in which this requirement does not apply;
  - (v) be in possession of a Director Identification Number at the time of nomination;
  - (vi) consent to have a police background check performed;
  - (vii) not be a current employee of the company (or have been employed by the company within two years prior to the date of the meeting at which the election of Directors is to take place) except in circumstances where being paid to fulfil the expected office of Director (including the Chairperson) results in that person becoming or being deemed as an employee at law;
  - (viii) not be ineligible to be a Director under the Corporations Act, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), the *Associations Incorporation Act 2015* (WA) or the ACNC Act;
  - (ix) have knowledge about and be committed to the Charitable Purpose;
  - (x) be present at the General Meeting of Members at which the election is to occur or the declaration of the election results are made; and
  - (xi) meet any other criteria relating to the composition of the Board and skills and qualifications of Directors as may be determined by the Directors from time to time.
- (b) To become a Region Appointed Director under Rule 8.2(a) a person must:
  - (i) satisfy the requirements described at Rule 8.4(a);
  - (ii) ordinarily reside in the same Region as the nominating Members;
  - (iii) be nominated in writing for appointment by a majority of Ordinary Members from that Region in the way determined by the Directors from time to time; and
  - (iv) not have the Director nomination declined by a special resolution of 75% or more Ordinary Members present at the corresponding General Meeting and eligible to vote.
- (c) If a nominee for a Region Appointed Director position is declined under Rule 8.4(b)(v), that Region may, within 30 days of the special resolution, nominate an alternative nominee. The alternative nominee for a Region Appointed Director position nominated in accordance with this Rule will not need to satisfy Rule 8.4(b)(iv).
- (d) To be eligible for election as an Executive Director under Rule 8.2(b) a person must:
  - (i) satisfy the requirements described at Rule 8.4(a);
  - (ii) be nominated in writing to the Nominations Committee by at least one Ordinary Member in the way determined by the Directors from time to time;

- (iii) satisfy any other criteria relating to the particular Executive Director role as specified in the corresponding role and duties statement as determined by the Directors from time to time.
- (e) To be eligible for appointment as the Aboriginal Youth Director under Rule 8.2(c), a person must:
  - (i) satisfy the requirements described at Rule 8.4(a);
  - (ii) at the date of appointment, be a Member of the Youth Council;
  - (iii) continue to be a Member of the Youth Council unless the only reason the person has stopped being a Member of the Youth Council is because that person no longer satisfies the age requirements under the Youth Council Terms of Reference (as may be amended from time to time). In these circumstances, the Aboriginal Youth Director will continue in office until that person ceases to be a Director;
  - (iv) subject to Rule 8.4(f), be nominated by a resolution of the Youth Council and approved by a resolution of the Directors;
  - (v) be endorsed by that person's employer to commit to the working hours of the Directors and any relevant committee; and
  - (vi) in the opinion of the Directors, have proven leadership and initiative in addressing and advocating about Aboriginal and Torres Strait Islander health issues as well as a demonstrable willingness to learn governance skills.
- (f) The initial Aboriginal Youth Director will be determined by a resolution of the Directors and will hold office for a period of three years, or such revised period as may be required to align the term of office with the Director elections occurring in that person's third year of office.

#### 8.5 Directors' Term of Office and Term Limits

- (a) The term of office of a Region Appointed Director commences on the date the Directors declare the results of the Region Appointed Director nominations process or, if the results are declared at a General Meeting, at the conclusion of that meeting.
- (b) The term of office for an Executive Director commences on the date the results of the election are declared or, if the election occurs or the results are declared at a General Meeting, at the conclusion of that meeting.
- (c) Subject to Rule 8.5(d), the term of office of each Region Appointed Director and each Executive Director is three years.
- (d) If the nomination process for a Region Appointed Director or an election of Directors is to be conducted within three months of a General Meeting to which those elections relate, then the term of office for that Director will be increased or decreased (as the case may be) to end on the date the results are declared or, if the results are declared at a General Meeting, at the conclusion of that meeting.
- (e) Subject to Rule 8.4(f), the term of office for the Aboriginal Youth Director commences on the date the Directors resolve to approve the Youth Committee's nomination and continues until the conclusion of the next General Meeting which includes the election of Directors following the appointment in accordance with 8.4(e)(iv).
- (f) Each Director is to remain as a Director until that person's term of office expires or until that person resigns or is otherwise removed as a Director of the company in accordance with the law and this Constitution.
- (g) A Director may hold office for multiple terms and is not limited by the

number of terms they may hold.

- (h) If a Region Appointed Director is removed in accordance with Rule 8.6(a)(vii), that Region may appoint another Region Appointed Director for the duration of the term of the removed Director.

#### 8.6 Ceasing to be a Director

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any Director becomes vacant if the Director:
  - (i) dies;
  - (ii) ceases to satisfy any of the eligibility criteria as set out in Rules 8.4(a), 8.4(b), 8.4(d) or 8.4(e) (as appropriate);
  - (iii) is, due to physical or mental impairment, unable to properly perform the duties of a Director, as determined by a suitably qualified professional acting reasonably;
  - (iv) is convicted of an indictable offence;
  - (v) Is an Executive Director who resigns from an executive position and cannot satisfy the requirements described at Rule 8.3(f);
  - (vi) fails to attend three or more consecutive Directors' meetings in any 12 month period without leave of absence approved by the Directors; or
  - (vii) is a Region Appointed Director and a written resolution signed by a majority of Ordinary Members from that Region to remove that Director has been submitted to the Directors together with a signed consent to the removal by the Member that the Director being removed is associated with.
- (b) Nothing in Rule 8.6(a) prevents a Director from vacating office by providing written notice of resignation to the company addressed to the Chairperson or the Secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

#### 8.7 Payments to Directors

- (a) Subject to Rule 8.7(b), each Director is entitled to:
  - (i) reasonable remuneration out of the funds of the company as determined by a resolution of the Members entitled to vote, but if the company in General Meeting has fixed a limit on the amount of remuneration payable to the Directors, the aggregate remuneration of Directors must not exceed that limit;
  - (ii) be reimbursed for all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from General Meetings of the company, meetings of the Directors and meetings of committees; and
  - (iii) receive payment for any goods supplied or services rendered to the company, as long as the amount and the transaction are proper and reasonable in the circumstances.

- (b) Notwithstanding anything else in this Constitution, no payment of any kind can be made by the company to a Director under Rule 8.7(a)(ii) or 8.7(a)(iii) unless that payment is approved by:
  - (i) the Directors; or
  - (ii) such other person or persons to whom the Directors may have delegated such authority in a way consistent with Rules 8.17 or 8.18.
- (c) The Chairperson's remuneration will be considered within the Member approvals under Rule 8.7(a)(i) but, considering the extra duties of this role, may be remunerated differently to other Directors.

#### 8.8 Interested Directors

- (a) 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 the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- (b) Each Director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the Directors.
- (c) Where a Director has a material personal interest in a matter to be considered at a meeting, that Director must not be present while the matter is being considered at the meeting or vote on the matter, unless the Directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that Director to do so.
- (d) If Rule 8.8(c) operated to the effect that there are not enough Directors to form a quorum for a Directors' meeting, one or more Directors (including those who have a material personal interest) may call a General Meeting and the General Meeting may, notwithstanding Rule 8.9(a), pass a resolution to deal with the matter.
- (e) Subject to Rule 8.8(f), a Director who is in any way interested in a contract or arrangement (other than by having a material personal interest which is to be dealt with in accordance with Rule 8.8(c)), may, despite the interest:
  - (i) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement;
  - (ii) sign or countersign any document relating to that contract or arrangement; and
  - (iii) remain present in the meeting and vote in relation to that contract or arrangement or any matter arising out of those things.
- (f) Rule 8.8(e) does not apply if, and to the extent that, it would be contrary to law.

#### 8.9 Powers and Duties of Directors

- (a) The Directors are responsible for the governance, business and affairs of the company and may, subject to Rule 8.8(d), exercise all the powers of the company which are not required by the law or this Constitution to be exercised by the Members.
- (b) The Directors must comply with their duties as Directors under legislation and common law. For as long as the company is registered as a charity with the Australian Charities and Not-for-Profits Commission or its successor, the company must also ensure the Directors comply with the requirements described in Governance Standard 5 of the regulations made under the ACNC Act which are to ensure the Directors:

- (i) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the company;
- (ii) act in good faith in the best interests of the company and to further the Charitable Purpose;
- (iii) do not misuse their position as a Director;
- (iv) do not misuse information that they gain in their role as a Director;
- (v) disclose any perceived or material conflicts of interest;
- (vi) ensure that the financial affairs of the company are managed responsibly; and
- (vii) do not allow the company to operate while insolvent.

#### 8.10 Directors' Meetings

- (a) The Directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.
- (b) The Directors must meet as often as required for the proper discharge of their Directors' duties and in any event no less than five times per year at reasonable intervals.

#### 8.11 Convening of Meetings of Directors

A meeting of Directors may be convened by the Chairperson or any three of the Directors.

#### 8.12 Notice of Directors' Meetings

- (a) Notice of a Directors' meeting must be given to each current Director, other than a Director on leave of absence approved by the Directors.
- (b) A notice of a Directors' meeting must:
  - (i) be given in a way permitted by Rule 15;
  - (ii) specify the time and place of and, if relevant, the form of technology for the meeting;
  - (iii) state the nature of the business to be transacted at the meeting; and
  - (iv) be provided with sufficient time for the Directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a Directors' meeting is valid even in circumstances where a Director did not receive notice of the meeting, provided:
  - (i) the notice was not received because of an accident or error;
  - (ii) before or after the meeting, that Director notifies the company of their decision on the resolution; or
  - (iii) the Director attended the meeting.

#### 8.13 Quorum for Directors' Meetings

- (a) No business may be transacted at a Directors' meeting unless there is a quorum of Directors at the time the business is dealt with.
- (b) A quorum consists of a majority of current Directors.
- (c) For the avoidance of doubt, a Director is present at a meeting if participating by technological means such as by telephone.

- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide and as notified to all Directors in accordance with Rule 8.12(a).

#### 8.14 Chairperson, Deputy Chairperson, Secretary and Treasurer

- (a) The Directors must form a committee (Nominations Committee), constituted as they see fit, to establish selection criteria and identify suitable candidates for the office of Chairperson of Directors (Chairperson), Deputy Chairperson of Directors (Deputy Chairperson), Secretary and Treasurer. The Nomination Committee must assess whether each candidate meets the eligibility criteria as set out in Rules 8.4(a) and 8.4(d), and as described in any corresponding role and duties statement as determined by the Directors from time to time.
- (b) The Ordinary Members may by resolution appoint a candidate nominated by the Nominations Committee to fill an Executive Director position and, unless that person first resigns or is removed as Director or steps down from the Executive Director position, will remain in that position for their term of office as a Director.
- (c) If the Nominations Committee does not nominate one or more persons for election to fill an Executive Director position in time for the corresponding Director elections, the Ordinary Members may by resolution elect a Region Appointed Director to fill the vacant Executive Director position. The vacancy created in the number of Region Appointed Directors caused by the election of a Region Appointed Director to the office of Executive Director in accordance with Rule 8.5(c) will be filled by the usual process for the appointment of Region Appointed Directors – such term to be for the duration of the vacated position.
- (d) Subject to the law, and any Board policies and procedures relating to remuneration which may be amended from time to time, the Chairperson is entitled to reasonable remuneration for acting in this office out of the funds of the company as determined under Rule 8.7.
- (e) A person may only fill the office of Executive Director for as long as that person is a Director of the company.
- (f) Subject to Rule 8.14(g), the Chairperson must preside as Chair at each Directors' meeting.
- (g) If at a meeting of Directors:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is absent from the meeting (or part of the meeting);  
or
  - (iii) the Chairperson is present but is prevented from acting or not willing to act as Chair of the meeting or of part of the meeting,the Deputy Chairperson (if there is one), must preside as Chair of that meeting or part of it until such time as the Chairperson joins the meeting or can resume the role of Chair (as applicable).
- (h) Subject to Rules 8.14(f) and 8.14(g), if at a meeting of Directors:
  - (i) there is no Chairperson and no Deputy Chairperson;
  - (ii) the Chairperson and Deputy Chairperson are absent from the meeting (or part of the meeting); or



- (iii) the Chairperson and Deputy Chairperson are present but are prevented from acting or not willing to act as Chair of the meeting or of part of the meeting,

the Directors present may elect one of themselves to be Chair of the meeting or part of the meeting until such time as the Chairperson or Deputy Chairperson joins the meeting or can resume the role of Chair (as applicable).

#### 8.15 Decisions of Directors

- (a) A Directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under the law and this Constitution.
- (b) Questions arising at a Directors' meeting and any other matter to be determined by the Directors under this Constitution are (unless a higher number or threshold is required under the law or this Constitution) to be decided by a majority of votes cast by the Directors present. A decision of a kind made in accordance with this Rule is for all purposes a determination of the Directors.
- (c) If there are an equal number of votes cast for and against a resolution at a Directors' meeting the Chair may exercise a second or casting vote in addition to any vote the Chair may have as a Director of the company.

#### 8.16 Decisions without Meetings

Directors may pass resolutions outside of a Directors' meeting in any manner (including through the use of technology) provided:

- (a) all Directors other than a Director on an approved leave of absence are sent a copy of the resolutions and are given a reasonable time to respond considering the urgency and nature of the matters under consideration;
- (b) any such resolution is passed by at least 75% of all current Directors (unless a higher threshold is required by law or this Constitution); and
- (c) such manner complies with:
  - (i) the law; and
  - (ii) any policies and procedures relating to the passing of Director resolutions as determined by the Directors from time to time.

#### 8.17 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 required for the effective and efficient running and administration of the 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 the directions of the Directors which, for the avoidance of doubt, may be contained within policies, terms of reference, guidelines or protocols.
- (c) The Directors may continue to exercise all of their powers despite any delegation made under this Rule.

#### 8.18 Delegation to Individuals

- (a) The Directors may resolve to delegate any of their powers to such individual or individuals as they so determine including:
  - (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 Rule 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.

#### 8.19 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 invalid just because:

- (a) of a defect in the appointment of the 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.

#### 8.20 NACCHO Director

Any person on the Board of the National Aboriginal Community Controlled Health Organisation (NACCHO) representing the interests of Western Australia will be determined in accordance with the NACCHO Constitution.

### 9 Secretary

- (a) The person elected or appointed to fill the Executive Director position of Secretary must provide the company with a written consent as part of the nomination process, will automatically become the Secretary of the company and must be noted as such in the company records and with all relevant government regulators.
- (b) The appointment of a Secretary may be on the conditions and, subject to the company's Remuneration Policy, at the remuneration as the Directors determine.
- (c) An Executive Director holding the position of Secretary who ceases to be an Executive Director in accordance with this Constitution will continue to hold the office of company Secretary until a person has been elected or appointed as Executive Director to fulfil this position.
- (d) An act done by a person acting as Secretary is not invalid just because:
  - (i) of a defect in the person's appointment as a Secretary; or
  - (ii) the person is disqualified from being a Secretary,if that circumstance was not known by the person or the Directors when the act was done.

- (e) The Secretary must fulfil all of the requirements described in the corresponding roles and duties statement as determined by the Directors from time to time.

## **10 Treasurer**

- (a) The person elected or appointed to fill the Executive Director position of Treasurer must be noted as such in the company records.
- (b) The appointment of the Treasurer may be on the conditions and, subject to the company's Remuneration Policy, at the remuneration as the Directors determine.
- (c) An Executive Director holding the position of Treasurer who ceases to be an Executive Director in accordance with this Constitution will automatically cease to hold the office of Treasurer.
- (d) The Treasurer must fulfil all of the requirements described in the corresponding roles and duties statement as determined by the Directors from time to time.

## **Part F – Winding Up and Loss of Endorsement**

### **11 Winding Up**

- (a) Before the company is wound up, it must first wind up each of the deductible gift recipient endorsed funds it operates (if any), in accordance with each fund's winding up requirements.
- (b) If upon the winding up or dissolution of the company there remains after satisfaction of all its debts and liabilities, any property or monies whatsoever (Surplus Assets), such Surplus Assets must only be given or distributed to one or more Eligible Recipients. For the avoidance of doubt, Surplus Assets may be given or distributed to one or more Ordinary Members that is also an Eligible Recipient.
- (c) The decision about which Eligible Recipient is (or which Eligible Recipients are) is to be given the Surplus Assets under Rule 11(b) is to be determined:
  - (i) by a resolution of the Ordinary Members at or before the winding up or dissolution of the company; or
  - (ii) if no such resolution is passed, by the Supreme Court.

### **12 Loss of Deductible Gift Recipient Endorsement**

- (a) If the company is endorsed as a deductible gift recipient as a whole and this endorsement is revoked, then the company must ensure that the following assets remaining after the payment of all liabilities are distributed to one or more Eligible Recipients:
  - (i) deductible gifts of money or property received for the Charitable Purpose;
  - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Charitable Purpose; and
  - (iii) money received by the company because of such deductible gifts and contributions.
- (b) The decision about which Eligible Recipients are to receive the funds distributed in accordance with Rule 12(a) is to be determined by a resolution of the Ordinary Members.

## Part G – Administrative Matters

### 13 Minutes, Records and Negotiable Instruments

#### 13.1 Minutes

The Directors must ensure that the following Minutes are recorded, approved and kept in accordance with the law:

- (a) Meetings and resolutions of Members (including those made without meetings under Rule 6.9);
- (b) Meetings and resolutions of Directors (including those made without meetings under Rule 8.16); and
- (c) Meetings and resolutions of committees.

#### 13.2 Inspection of Records

- (a) Subject to the law and Rule 13.2(b), the Directors may determine whether and to what extent, and at what time and places and under what conditions, the Minute books, accounting records and other documents of the company or any of them will be open for inspection.
- (b) A Member may, upon reasonable notice to the Directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company. In the case of Directors' Minutes and Resolutions, the Directors may, at their complete discretion, refuse to provide all or some of the Directors' Minutes or provide such records in a redacted form.
- (c) The company must establish and administer all Registers required to be kept by law and each Member must provide the company with such information as is required for the company to comply with this Rule. If events occur which would cause the information contained in a Register maintained by the company to be inaccurate the Member must notify the company in writing of the change within 21 days of the Member becoming aware that such change has occurred.
- (d) Unless proved incorrect, the Register is sufficient evidence of the matters shown in the Register.
- (e) The company must keep all financial and other records required by law.

#### 13.3 Negotiable Instruments

The Directors may determine how cheques, promissory notes, bank drafts, bills or exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.

### 14 Indemnity and Insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company, including but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) This indemnity:
  - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this Rule);
  - (ii) does not cover any loss or liability of an officer seeking to be indemnified under this Rule if that loss or liability arises from that person's wilful misconduct or fraud; and

- (iii) operated only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the company must take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs.
- (d) To the extent permitted by law, the company may enter into an agreement (including a Deed) with a person who is or agrees to become or has been an officer of the company on any terms and conditions that the Directors think fit to give effect to the rights of that person under this Rule 14. Any such agreement may also give the person rights to inspect and obtain copies of the books of the company for the purposes, and on such other terms and conditions, as the Directors decide.

## 15 Notices

### 15.1 Giving of Notices

Any notice, document or other communication required or permitted to be given under this Constitution or law may be given in any manner (including through the use of technology) provided such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the Directors from time to time.

### 15.2 Timing of Services

- (a) Where a notice is served personally, service of the notice is taken to be effected when delivered.
- (b) Where a notice is served personally, service of the notice is taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post:
  - (i) in the case of a notice of a General Meeting, on the day after the date of its posting; or
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Where a notice is sent by electronic means, including email or fax, services of the notice is taken to be effected:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the notice has not been delivered,
 whichever happens first.
- (d) If the delivery or receipt of notice is on a day which is not a business day or is after 5.00pm on a business day, it is deemed to be received at 9.00am on the following business day.

## 16 General

- (a) Common Seal: The company may, but is not required to, have and use a Common Seal. If the Directors determine that the company have a Common Seal, then it must be kept and used in accordance with the law.
- (b) Formulating Rules: Without limiting the Directors' powers under this Constitution, the Directors may from time to time make regulations and rules about any matter related to the operations or conduct of the company, provided such regulations and rules are not inconsistent with the law or this Constitution. If there is any inconsistency between regulations and rules formulated pursuant to this Rule 16(b) and the provisions of this Constitution or the law, the provisions of the Constitution and the law will prevail.
- (c) Submission to jurisdiction: Each Member submits to the non-exclusive jurisdiction of the Supreme Court of the State of Western Australia, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

## Schedule 1 – Dictionary

### 1 Dictionary

In this Constitution:

**Aboriginal Community Control** has its genesis in Aboriginal peoples' right to self-determination. By definition, organisations controlled by Government to any extent are excluded. By definition, organisations which adopt a vertical approach to health, inconsistent with the Aboriginal holistic definition of health as defined by the National Aboriginal Health Strategy are excluded. (NACCHO – Broome Conference – December 1995).

**Aboriginal Community Controlled Health Service** means a legal entity that:

- (a) through the operation of its governing document, requires at least 75% of its Members to be Aboriginal and/or Torres Strait Islander people;
- (b) through the operation of its governing document, requires at least 75% of its Directors (or equivalent) to be Aboriginal and/or Torres Strait Islander people; and
- (c) delivers Comprehensive Primary Health Care in the State of Western Australia to the community that controls it.

**Aboriginal Community Health Related Organisation** means a legal entity that:

- (a) has Directors (or equivalent) that are elected by Members;
- (b) requires in its governing document that a majority of its Members be Aboriginal and/or Torres Strait Islander people;
- (c) requires in its governing document that the majority of its Directors (or equivalent) be Aboriginal and/or Torres Strait Islander people;
- (d) has a majority of its Members residing within the region in which it provides services;
- (e) provides Aboriginal Health Related Services in the State of Western Australia; and
- (f) has rules in its governing document that prevent the distribution of funds to its Members and Directors (or equivalent).

**Aboriginal Health Related Services** means a service:

- (a) provided by an Aboriginal Community Controlled Health Service; or
- (b) provided by an Aboriginal Community Controlled Health Related Organisation that:
  - (i) is a specialty service or specialty services (which may include the provision of maternal and child health services, alcohol and other drug services, disease prevention services, men's or women's health services, aged and disability services, mental health services and dental services); and
  - (ii) is delivered in pursuance of the achievement of Aboriginal health.

**Aboriginal Youth Director** has the meaning given at Rule 8.2(c).

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

**Associate Member** means a Member admitted into membership as an Associate Member in accordance with Rule 4.2(a).

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the company's registered office is located.

**Chairperson** has the meaning given at Rule 8.14(a).

**Charitable Purpose** has the meaning given at Rule 3.1.

**Comprehensive Primary Healthcare** means:

- (a) meeting the health and well-being needs of Aboriginal and/or Torres Strait Islander people through comprehensive, holistic, place-based and culturally safe care throughout the life course.
- (b) systematically addressing the broader determinants of the health and well-being of Aboriginal and/or Torres Strait Islander people; and
- (c) empowering Aboriginal and/or Torres Strait Islander individuals, families and communities to optimise their health and well-being.

In this definition 'well-being' includes physical, mental, spiritual, cultural and emotional well-being.

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

**Deputy Chairperson** has the meaning given at Rule 8.14(a).

**Eligible Recipient** means an organisation that:

- (a) has charitable objects or purposes similar to the Charitable Purpose;
- (b) has a governing document which requires its income and property to be applied in promoting its objects and agrees to use any distribution provided to it by the company to further such objects or purposes;
- (c) is registered as a charity with the Australian Charities and Not-for-Profits Commission;
- (d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its Members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the company; and
- (e) if the company is endorsed as a deductible gift recipient for the purpose of any Australian federal tax law, is similarly endorsed as a deductible gift recipient.

**Executive Director** has the meaning given at Rule 8.2(b).

**Member Disciplinary Resolution** has the meaning given at Rule 5.4(b).

**Membership Renewal Notice** has the meaning given at Rule 4.8.

**NACCHO** has the meaning given at Rule 8.20.

**Nominations Committee** means a committee constituted in accordance with Rule 8.14(a).

**Ordinary Member** means a Member admitted into membership as an Ordinary Member in accordance with Rule 4.2(a).

**Region** means a geographical area located in Western Australia as shown on the Region Map and may be varied from time to time by a special resolution of Members.

**Region Appointed Director** has the meaning given at Rule 8.2(a).



**Region Map** means the map of regions defined by the mapped boundaries available at <https://www.ahcwa.org.au/members>

**Representative** means a representative of a Member appointed in the way permitted by Section 250D of the Corporations Act regardless of whether than Member is in fact bound by the Corporations Act.

**Secretary** means the person holding that office in accordance with Rule 8.3(a)(ii)(d).

**Show of Preference** has the meaning given at Rule 6.7(c).

**Surplus Assets** has the meaning given at Rule 11(b).

**Treasurer** means the person holding that office in accordance with Rule 8.3(a)(ii)(c).

**Youth Council** means a committee established by Directors specifically focused on addressing issues relating to young Indigenous Australians.

## 2 Interpretation

### 2.1 General

- (a) In this Constitution the words 'Constitution', 'Director', 'Secretary', 'Member' and the like are, and should be interpreted to be, references to the Constitution, Director, Secretary, Member and the like (as the case may be) of the company named in Rule 2(a) unless the context otherwise requires.
- (b) In this Constitution a reference to the word 'Member' includes all Ordinary Members and Associate Members.
- (c) A reference in a Rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (d) In this Constitution, headings are for convenience only and do not affect the interpretation of this Constitution.
- (e) Unless the contrary intention appears, in this Constitution:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing a gender include every other gender;
  - (iii) words used to denote persons generally include any individual, company, corporation, body corporate, body politic, partnership, joint venture, association, Board, group or other body (whether or not the body is incorporated);
  - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
  - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (f) A requirement in this Constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the Directors.
- (g) In this Constitution, where communication from a Member to the company must be 'signed' by a Member, in addition to any other methods permitted by law, the Member may sign in any manner that allows the Directors to be satisfied, acting reasonably, that the communication is from the relevant Member, including by using an electronic signature.
- (h) 'Writing' or 'written' includes modes of representing or reproducing words, figures, drawings or symbols in a visible or tactile form which renders the message retrievable by people who know the language in question.

### 2.2 Replaceable Rules Not to Apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.

## Schedule 2 – Details about Ordinary Members and Associate Members

| Topic                  | Ordinary Members  | Associate Members  |
|------------------------|---|--|
| Membership Eligibility | <p>To be eligible to become an Ordinary Member of the company an applicant must:</p> <ul style="list-style-type: none"> <li>• be an Aboriginal Community Controlled Health Service;</li> <li>• have similar purposes to the Charitable Purpose; and</li> <li>• be nominated for membership by an existing Ordinary Member in the same Region where the applicant is located, or in the event that there are no existing Ordinary Members that is geographically closest to the nominee.</li> </ul>  | <p>To be eligible to become an Associate Member of the company an applicant must:</p> <ul style="list-style-type: none"> <li>• be an Aboriginal Community Controlled Health Related Organisation; and</li> <li>• be nominated for membership by an existing Ordinary Member in the same Region where the applicant is located, or in the event that there are no existing Ordinary Members in the Region where the applicant is located then by an existing Ordinary Member that is geographically closest to the nominee.</li> </ul>  |
| Membership Rights      | <p>Ordinary Members have the right to:</p> <ul style="list-style-type: none"> <li>• receive notices of and to attend and be heard (through one or both of its Representatives) at any general meeting of the company;</li> <li>• vote on resolutions of members;</li> <li>• propose a resolution to be considered at a general meeting in accordance with rule 6.2(c);</li> <li>• call a general meeting in accordance with rule 6.2(a)(ii);</li> <li>• elect a person to chair a members' meeting in accordance with rule 6.5(c);</li> <li>• nominate, approve, appoint or elect director in accordance with rules 8.2(a), 8.2(b), 8.2(c), 8.3(c), 8.3(f)(iii), 8.4(b)(iv), 8.4(c), 8.4(d)(ii), 8.14(b), 8.14(c) (as applicable);</li> <li>• have one of its director or its most senior employee nominated, elected or appointed as Region Appointed Director or executive Director in accordance with rules 8.5(a) and 8.5(b) (as applicable);</li> <li>• sign a written resolution to remove a Region Appointed Director in accordance with rule 8.6(a)(vii);</li> <li>• receive a distribution of the company's assets the company is wound up or loses its deductible gift recipient endorsement in accordance with rules 10 and 11; and</li> </ul> | <p>Associate Members have the right to:</p> <ul style="list-style-type: none"> <li>• receive notices of and to attend and be heard (through one or both of its Representatives) at any general meeting of the company; and</li> <li>• Inspect the records of the company in accordance with rule 13.2(b).</li> </ul> <p>Associate Members do not have the right to:</p> <ul style="list-style-type: none"> <li>• vote on resolutions of members;</li> <li>• propose a resolution to be considered at a general meeting;</li> <li>• call a general meeting;</li> <li>• elect a person to chair a members' meeting;</li> <li>• nominate, approve, appoint or elect Directors;</li> <li>• have one of its Directors or its most senior employee nominated, elected or appointed as a director;</li> <li>• sign a written resolution to remove a Region Appointed Director; or</li> <li>• receive a distribution of the company's assets if the company is wound up or loses its deductible gift recipient endorsement.</li> </ul> |

|               |  |  |
|---------------|--|--|
|               | <ul style="list-style-type: none"> <li>inspect the records of the company in accordance with rule 13.2 (b)</li> </ul>  |  |
| Voting Rights | <p>Each Ordinary Members has the right to exercise two votes:</p> <ul style="list-style-type: none"> <li>on a Show of Preference at a meeting of members; and</li> <li>on a poll at a meeting of members in accordance with rule 6.7(d).</li> </ul> <p>Ordinary Members may also vote on members' resolutions in writing in accordance with rule 6.9</p> | Associate Members do not have a right to vote. |