

Constitution of  
Cherbourg Regional  
Aboriginal and  
Islander Community  
Controlled Health  
Ltd

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## **PRELIMINARY**

### **1 Definitions**

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- 1.1 The words and phrases used in this Constitution have the meanings set out at Schedule 1.
- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

### **2 Interpretation**

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- 2.1 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\$, \$A, dollar or \$ is to Australian currency; and
  - (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

### **3 Replaceable rules**

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- 3.1 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## **OBJECTS**

### **4 Objects**

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- 4.1 The Company is established to be a not-for-profit charitable institution whose objects are to assist in the relief of poverty, sickness, destitution, helplessness, distress, suffering and misfortune among Aboriginal and Torres Strait Islander people, through:
- (a) the provision of holistic primary health care services and the delivery of a range of health education programs aimed at improving the standard of health of the Aboriginal and Torres Strait Islander people in the Region;

- (b) providing accessible and effective primary and preventative health care to Aboriginal and Torres Strait Islander people in the Region;
- (c) to develop, implement and evaluate new delivery models of comprehensive primary health care treatment, prevention and early intervention to Aboriginal and Torres Strait Islander people, families and communities;
- (d) developing, contributing to, and advocating for coordinated, integrated and culturally respectful institutional practices and processes for the planning, development, delivery, monitoring and evaluation of primary health care services and population health programs, aged care services, disability services and mental health services to Aboriginal and Torres Strait Islander people, families and communities;
- (e) providing information and disseminating knowledge to Aboriginal and Torres Strait Islander people in the Region to promote understanding about medical, health and welfare facilities and benefits and the prevention and control of diseases to improve the health and well-being of Aboriginal and Torres Strait Islander people, families and communities;
- (f) promoting and encouraging the use of traditional Aboriginal and Torres Strait Islander methods of healing, medicine and culture;
- (g) supporting the self-determination, social development, education and training of Aboriginal and Torres Strait Islander people in the Region;
- (h) collaborating with other providers to strengthen service delivery capacity to Aboriginal and Torres Strait Islander people, families and communities, and maintaining professional relationships with strategic stakeholders;
- (i) expanding the delivery of comprehensive primary health care, health promotion and health education to under-serviced Aboriginal and Torres Strait Islander people, families and communities;
- (j) collecting and analysing:
  - (i) data from authoritative services;
  - (ii) demographic and epidemiological information; and
  - (iii) Information on related social issues;
 with the aim of improving the health and wellbeing of Aboriginal and Torres Strait Islander people, families and communities;
- (k) providing temporary accommodation for Aboriginal and Torres Strait Islander people requiring health services;
- (l) advocating for, responding to and conducting quality, applied research (including through research partnerships);
- (m) advocating for policy and procedural enhancements on all matters related to the health and well-being of Aboriginal and Torres Strait Islander people, families and communities;
- (n) raising funds and engaging in fundraising activities to support the Objects;
- (o) carrying on any business or activity which may seem to the organisation capable of being conveniently carried on in connection with the Objects with which this organisation is established; and

- (p) doing all such other things necessary, incidental or conducive to achieving the above objects.
- 4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the objects in clause 4.1; and
  - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

## **MEMBERSHIP**

### **5 Admission**

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- 5.1 The number of Members of the Company is unlimited.
- 5.2 The Members of the Company are:
- (a) the persons who consented to become Members in the application for registration of the Company with the Australian Securities and Investment Commission; and
  - (b) any other person eligible under clause 5.3 who the Board or the Members admit to membership in accordance with this Constitution.
- 5.3 Any person is eligible to become a Member if the person:
- (a) is an Aboriginal or Torres Strait Islander person;
  - (b) is aged 18 years or over;
  - (c) is normally and permanently resident in the Region;
  - (d) subscribes to the Objects;
  - (e) agrees to assume the liability to pay the Members guarantee set out in clause 57.1; and
  - (f) the Board is satisfied that the person:
    - (i) is of good character and standing in the community;
    - (ii) has not engaged in any personal attacks, bullying or abusive behaviour with respect to other members, officers or employees of the Company;
    - (iii) has not behaved in a manner that has significantly interfered with the operation of the Company or of Company meetings; and
    - (iv) has not acted in a manner that is contrary to the interests of the corporation or brought the Company into disrepute.
- 5.4 Applications for membership of the Company must be in a form approved by the Board and signed by the applicant.

- 5.5 The Board will consider each application for membership at the next Board meeting after the application is received. In considering an application for membership, the Board may:
- (a) accept or reject the application; or
  - (b) ask the applicant to give more evidence of eligibility for membership.
- 5.6 If the Board asks for more evidence under clause 5.5(b), its determination of the application for membership is deferred until the evidence is given.
- 5.7 The Board does not have to give any reason for rejecting an application for membership.
- 5.8 Within 15 Business Days following the acceptance or rejection of an application for membership, the Secretary will send the applicant written notice of the acceptance or rejection (as applicable).

## **6 Register of Members**

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- 6.1 Upon admission of a person as a Member, the person will be entered into the Register.
- 6.2 The Secretary must maintain the Register which must include:
- (a) the name and address of each Member;
  - (b) the date on which the Member was admitted as a member of the Company;
  - (c) the date (where applicable) when each Member resigns or ceases to be a Member; and
  - (d) 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.
- 6.3 If a Member changes its address, it must notify the Secretary in writing of its new address as soon as reasonably practicable.

## **7 Membership Fees**

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- 7.1 The Company will not charge membership fees.

## **8 Rights and Obligations of Members**

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- 8.1 Subject to this Constitution, Members are entitled to attend, speak and vote at general meetings of the Company.
- 8.2 Members are entitled to vote in accordance with clause 20.
- 8.3 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.



- 8.4 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.
- 8.5 A Member must comply with this Constitution and the standards of conduct, policies and procedures set by the Board.

## **9 Suspension or Expulsion of a Member**

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- 9.1 The Board may suspend a Member's membership for a period of time, at the Board's discretion, if the Member:
- (a) does not comply with this Constitution or any policy or procedure set by the Board;
  - (b) misbehaves in a way that interferes with the operation of the Company or Company meetings;
  - (c) causes harm or threatens to cause harm to a Director, an officer, another Member or an employee or client of the Company;
  - (d) has committed any act or omission that will, in the opinion of the Board be injurious to the reputation or interests or activities of the Company;
  - (e) has been convicted of an indictable offence;
  - (f) ceases to satisfy the eligibility criteria for membership of the Company or the Board is uncertain as to whether the Member satisfies the eligibility criteria;
  - (g) makes false representations to the Company;
  - (h) misuses, damages, steals or destroys property belonging to the Company;
  - (i) provided false evidence in relation to his or her eligibility to be a Member;
  - (j) fails to provide evidence or details when requested by the Company regarding the Member's continued eligibility for membership; or
  - (k) does not participate in general meetings for a period of 2 years.
- 9.2 The Board may expel the Member and cancel the Member's membership,<sup>1</sup> if the Member:
- (a) 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;
  - (b) has been convicted of an indictable offence;
  - (c) steals from the Company; or
  - (d) has been suspended on conditions set by the Board and has not satisfied those conditions within the timeframe required by the Board.

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<sup>1</sup> If the Member is a Member Director, the Member's expulsion will terminate his or her position as an Member Director.

- 9.3 If the Board resolves to suspend or expel a Member, the Secretary must give written notice of the suspension or expulsion to the Member within seven days of the Board's decision.
- 9.4 A Member suspended or expelled by the Board may appeal the suspension by giving notice to the Secretary within 30 days of the issue of the notice of suspension.
- 9.5 At the next general meeting of the Company held after the Member gives notice under clause 9.4:
- (a) the Member appealing the suspension or expulsion will be given an opportunity at the general meeting to present the Member's case fully, either in person or through another Member 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 will vote to either:
    - (i) lift the suspension;
    - (ii) affirm the suspension; or
    - (iii) terminate the Member's membership,and the decision of the Members at that general meeting is final.
- 9.6 A Member will remain suspended until the earlier of:
- (a) the date the Members or the Board resolve to lift the suspension;
  - (b) the date the Members resolve to terminate the Members membership under clause 9.5(b);
  - (c) if a period of suspension is imposed with no conditions, the date the period of suspension lapses;
  - (d) if conditions must be satisfied to lift the suspension, the date that the conditions are satisfied; or
  - (e) when the Member ceases to be a Member pursuant to clause 10.
- 9.7 Any Member suspended in accordance with this clause 9, during suspension is not permitted to:
- (a) vote at meeting of Members;
  - (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.

## **10 Ceasing to be a Member**

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- 10.1 A Member's membership of the Company will cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if the Board expels the Member in accordance with clause 9.2 and the Member does not appeal that decision within the timeframe under clause 9.4, on expiry of the appeal period;
- (c) where the Members have resolved to terminate a Member's membership under clause 9.5(b), on the date of the resolution;
- (d) if a Member cannot be contacted at their address entered on the register of Members for a period of two (2) years and two (2) or more reasonable attempts have been made to contact the Member in that period; or
- (e) if the Member:
  - (i) dies, on the date of their death; or
  - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health, on the date that the person becomes incapacitated.

10.2 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 any moneys which were due at the date of ceasing to be a Member;
- (c) is not permitted to:
  - (i) use the Company's premises;
  - (ii) use any of the Company's property; or
  - (iii) participate in any of the activities of the Company other than as a legitimate client of the Company.

## **11 Powers of attorney**

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11.1 If a Member executes or proposes to execute any document or do any act by or through an attorney that affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Secretary for notation.

11.2 If the Secretary asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

11.3 The Secretary or the Board may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## **GENERAL MEETINGS**

### **12 Calling general meeting**

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- 12.1 The Board may, at any time, call a general meeting.
- 12.2 A Member may:
- (a) only request the Board to 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 section 249E or 249F of the Corporations Act.
- 12.3 Subject to the Corporations Act, the Members need not all be physically present in the same place for a general meeting to be held provided that it is held by any technological means by which the Members are able simultaneously to hear each other and the proceedings and to participate in discussion and voting.

### **13 Notice of general meeting**

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- 13.1 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) of a general meeting must be given to Members.
- 13.2 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 place, facsimile number and electronic address for the purposes of proxy appointment.
- 13.3 The Board may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 12.2).
- 13.4 The Secretary must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 52.1 entitled to receive notices from the Company.
- 13.5 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 at or any resolution passed at the general meeting.

## PROCEEDINGS AT GENERAL MEETINGS

### 14 Meeting Attendance

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14.1 In clauses 14.2, 15, 17 and 20, **Member** includes a Member present in person or by proxy or attorney.

#### 14.2 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 for a general meeting of Members will be 10% 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) subject to 14.2(c)(iii), in any other case:
    - A. it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Board; and
    - B. if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved;
  - (iii) if it is an annual general meeting:
    - A. it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Board; and
    - B. if at the adjourned annual general meeting a quorum is not present within 30 minutes after the time appointed for the annual general meeting, the members present will be deemed to constitute a quorum.

14.3 Only Members, officers and persons invited by the Board may attend general meetings.

14.4 Once a general meeting has been opened by the chairperson, attendance at the meeting will be closed and no further Members will be admitted to the meeting.

### 15 Chairperson

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15.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Board meetings will be the chairperson at every general meeting.

15.2 The Directors present may elect a chairperson of a general meeting if:

- (a) there is no chairperson or deputy chairperson; or

- (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.

15.3 If no election is made under clause 15.2, 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.

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

## **16 Adjournment**

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16.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

16.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

16.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

16.4 Notice of an adjourned general meeting must only be given in accordance with clause 13.1 if a general meeting has been adjourned for more than 21 days.

## **17 Decision on questions**

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17.1 Subject to the Corporations Act in relation to special resolutions and the requirements of this Constitution, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

17.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.

17.3 Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

17.4 The demand for a poll may be withdrawn.

17.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## **18 Taking a poll**

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18.1 A poll will be taken when, and in the manner, the chairperson directs.

18.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

18.3 The chairperson may determine any dispute about the admission or rejection of a vote.

18.4 The chairperson's determination, if made in good faith, will be final and conclusive.

18.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

18.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **19 Offensive behaviour**

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19.1 At the discretion of the chairperson, a Member may be refused admission to, or required to leave and not return to, a general meeting if the Member:

- (a) refuses to permit examination of any article in the Member's possession; or
- (b) is in possession of any:
  - (i) electronic or recording device;
  - (ii) placard or banner; or
  - (iii) other article;

which the chairperson considers to be dangerous, offensive or liable to cause disruption; or

- (c) behaves in a manner that is offensive, threatening, abusive or harmful or causes a disruption to the meeting or its process.

## **VOTES OF MEMBERS**

### **20 Entitlement to vote**

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20.1 Subject to this Constitution, Members are entitled to vote and will have one vote at general meetings of the Company if present in person, by attorney or proxy.

## **21 Objections**

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- 21.1 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 its vote.
- 21.2 An objection must be referred to the chairperson of the general meeting whose decision is final.
- 21.3 A vote is valid for all purposes unless it is disqualified by the chairperson under clause 21.2.

## **22 Votes by proxy**

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- 22.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 22.2 A proxy must be a Member.
- 22.3 Each Member is limited to holding one proxy.
- 22.4 A Member whose proxy or attorney is present at a general meeting may be counted as present for the purposes of establishing a quorum.
- 22.5 A proxy may demand or join in demanding a poll.
- 22.6 A proxy or attorney may vote on a poll.
- 22.7 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

## **23 Document appointing proxy**

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- 23.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Board may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 23.2 For the purposes of clause 23.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Board.
- 23.3 A proxy's appointment is valid at an adjourned general meeting.
- 23.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.



23.5 Subject to clause 38.1, unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:

- (a) to vote on:
  - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
  - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
- (b) to vote on all motions before the general meeting.

## **24 Lodgement of proxy**

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24.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

- (a) the time for holding the general meeting or adjourned general meeting at which the proxy or attorney proposes to vote; or
- (b) the taking of a poll at which the proxy or attorney proposes to vote.

24.2 The Company receives an appointment of a proxy or a power of attorney when it is received at:

- (a) the Company's registered office;
- (b) a facsimile number at the Company's registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **25 Validity**

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25.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) is wound up;
- (b) is deregistered; or
- (c) has revoked the proxy or power,

unless any written notification of the wind up, deregistration or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## APPOINTMENT AND REMOVAL OF DIRECTORS

### 26 Composition of Board of Directors

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- 26.1 There will not be less than three nor more than eight Directors unless the Company in general meeting by resolution changes the maximum number.
- 26.2 Subject to clause 26.1 and clause 31, the Board of Directors will consist of:
- (a) up to six Directors appointed by the Members pursuant to clause 29 (collectively the **Member Directors**); and
  - (b) up to two skills-based Directors appointed by the Board pursuant to clause 30 (**Skills-based Directors**).

### 27 Term of Member Directors

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- 27.1 Subject to clauses 32 and 34, a Member Director's term of office will be from the conclusion of the meeting held on the Meeting Date to the expiry of two years following the Meeting Date.
- 27.2 A retiring Member Director is eligible for re-appointment.
- 27.3 Member Directors must retire from office at the conclusion of the term of their appointment unless they are re-appointed.

### 28 Eligibility to be a Member Director

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- 28.1 To be eligible to be a Member Director, a person must have been a Member for at least 12 months prior to the date the Member Director is to be appointed (**Meeting Date**) and must:
- (a) be at least 18 years of age;
  - (b) be an Aboriginal or Torres Strait Islander;
  - (c) not be a Close Family Relative of more than one person in the Senior Management Team of the Company;
  - (d) not be a Close Family Relative of another Director of the Company;
  - (e) not, and must not have been, an employee or contractor to the Company for at least:
    - (i) two years if the person's employment or contract with the Company was involuntarily terminated; or
    - (ii) in all other circumstances, one year, prior to the date of appointment unless approved by the Board;
  - (f) complete Corporate Governance Training within six months of being appointed or re-appointed unless an extension is granted by the Board;
  - (g) hold a Directors Identification Number prior to the date of appointment. If the person does not hold a Directors Identification Number, the person have

applied for a Directors Identification Number and obtain and maintain one within three months of being appointed;

- (h) if required by law, the person must hold and maintain a current Working with Children Card or, if the person does not hold a current Working with Children Card, the person must have applied for a Working with Children Card prior to the time of appointment as a Member Director, and obtain and maintain one within six months of being appointed or re-appointed;
- (i) consent to the conduct of a Police Check on appointment and re-appointment and the Board must be satisfied that the results of that check do not reveal any matter that would make the person unsuitable to hold a position of trust in the Company;
- (j) not be disqualified from managing a corporation under Part 2D 6 of the Corporations Act; and
- (k) not be disqualified from being a Responsible Person for the Company.

28.2 For the purposes of clause 28.1(f), if a Member Director has not successfully completed Corporate Governance Training within six months (or any extended period granted by the Board) of appointment the Member Director will cease to be eligible to be a Director and his or her appointment will expire at the expiration of that six month period.

28.3 For the purposes of clause 28.1(g), if a Member Director is refused or fails to obtain a Directors Identification Number within three months of appointment the Member Director will cease to be eligible to be a Director and his or her appointment will expire at the expiration of that three month period.

28.4 For the purposes of clause 28.1(h), if a Member Director is required by law to hold a Working with Children Card and does not successfully obtain a Working with Children Card within 6 months of appointment the Member Director will cease to be eligible to be a Director and his or her appointment will expire at the expiration of that 6 month period.

28.5 A person other than a retiring Member Director, is only eligible for appointment as a Member Director if the person has left at the Company's registered office a written notice in Approved Form signed by the nominated person:

- (a) giving the person's consent to the nomination and the person's consent to be a Director if appointed; and
- (b) signed by the Member who proposes the person's nomination; and
- (c) attaching a brief outline of the person's relevant skills, experience and qualifications for the position.

28.6 A retiring Member Director may renominate by advising the Secretary in writing.

28.7 All nominations must be reviewed by the Board or its delegate to confirm eligibility prior to being put forward to the Selection Committee for appointment as a Member Director.

## 29 Appointment of Member Directors

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- 29.1 Subject to clause 29.3 and clause 31, the Board will hold a selection process for the purpose of appointing the Member Directors in accordance with this clause 29.
- 29.2 A Member Director may be appointed by special resolution of the Board in a Board meeting called for the purpose of appointing persons to Member Director positions that will become vacant as a result of the expiry of the term of office of the existing Director on or before the Meeting Date in accordance with the following process:
- (a) at least one month prior to the date the Board is to be held (**Meeting Date**), the Board will appoint a selection committee (**Selection Committee**) that will consist of at least two Directors and at least two but no more than four Members;
  - (b) a person must not be appointed on the Selection Committee if they are seeking appointment or reappointment as a Director or they are a Close Family Relative of any person seeking appointment or reappointment as a Director;
  - (c) at least one month prior to the Meeting Date, the Board will issue a notice calling for nominations for any Member Director positions that will become vacant (**Vacancy Notice**), including any particular skills or attributes the Board is seeking;
  - (d) the corporation must issue the Vacancy Notice to each Member inviting them to nominate as candidates for appointment as Member Directors and must include the Approved Form for submitting a nomination;
  - (e) all nominations must comply with clause 28 and be received at least two weeks prior to the Meeting Date;
  - (f) the Selection Committee will consider each of the eligible nominations and taking into account the following requirements of the Board:
    - A. the number of Member Director positions the Board has specified as vacant and to be filled;
    - B. the skills and attributes the Board is seeking;
    - C. ability to read and understand reports of the financial accounts;
    - D. leadership experience;
    - E. experience with Directorships;
    - F. standing and respect amongst the Aboriginal and Torres Strait Islander Community in the Region;
    - G. diversity in age;
    - H. representation across different Aboriginal and Torres Strait Islander families;
    - I. representation across the Service Districts;
    - J. skills or experience in one or more of the following areas:

- Primary and allied health, aged care, disability and well-being service delivery;
- Business Management;
- Accounting or Finance;
- Risk Management;
- Legal or Compliance;
- Information Technology or Information Management;
- Media or Communications;
- Corporate Governance;
- Human Resource Management; and
- Community Engagement and Development;

although the selected Member Directors appointed and the final Board need not meet all these requirements;

- (g) at least one week prior to the Meeting Date the Selection Committee will notify the Secretary of the nominees it recommends be appointed to each of the Member Director positions that have been specified by the Board as becoming vacant;
- (h) the Board meeting will vote to endorse each recommended nominee;
- (i) a nominee endorsed at the Board meeting is appointed as a Member Director and will take office at the close of the meeting; and
- (j) a nominee who is not endorsed at the meeting will not be appointed as a Member Director.

29.3 Where the number of eligible persons nominated for the relevant vacant positions of Member Directors does not exceed the number of vacant positions, the Board may at its discretion, pass a special resolution to appoint all the eligible nominated persons as Member Directors without the need to hold a selection process under clause 29.2.

### **30 Appointment of Skills-based Directors**

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30.1 Skills-based Directors will be appointed by a Special Resolution of the Board.

30.2 To be eligible to be a Skills-based Director, a person need not be a Member or an Aboriginal or Torres Strait Islander but must:

- (a) be at least 18 years of age;
- (b) not be a Close Family Relative of more than one person in the Senior Management Team of the Company;
- (c) not be a Close Family Relative of another Director of the Company;
- (d) not, and must not have been, an employee or contractor to the Company for at least:

- (i) two years if the person's employment or contract with the Company was involuntarily terminated; or
  - (ii) in all other circumstances, one year,  
prior to the date of nomination unless approved by the Board;
- (e) complete Corporate Governance Training within six months of being appointed or re-appointed unless an extension is granted by the Board;
  - (f) hold a Directors Identification Number prior to the date of appointment. If the person does not hold a Directors Identification Number, the person have applied for a Directors Identification Number and obtain and maintain one within three months of being appointed;
  - (g) if required by law, hold and maintain a current Working with Children Card or, if the person does not hold a current Working with Children Card, the person must apply for a Working with Children Card prior to being appointed as a Skills-based Director, and obtain and maintain one within six months of being appointed or re-appointed;
  - (h) consent to the conduct of a Police Check on appointment and re-appointment and the Board must be satisfied that the results of that check do not reveal any matter that would make the person unsuitable to hold a position of trust in the Company;
  - (i) be independent of any organisation that provides funding or sponsorship to the Company or has any financial interest in the business activities of the Company;
  - (j) not be disqualified from managing a corporation under Part 2D 6 of the Corporations Act; and
  - (k) not be disqualified from being a Responsible Person for the Company.
- 30.3 A Skills-based Director does not need to be an Aboriginal or Torres Strait Islander person but in appointing a Skills-based Director the Board will give preference to appointment of an Aboriginal or Torres Strait Islander person where possible.
- 30.4 For the purposes of clause 30.2(e), if a Skills based Director has not successfully completed Corporate Governance Training within 3 months (or such extended period as granted by the Board) of appointment the Skills-based Director will cease to be eligible to be a Director and his or her appointment will expire at the expiration of that 3 month period.
- 30.5 For the purposes of clause 30.2(f), if a Member Director is refused or fails to obtain a Directors Identification Number within three months of appointment the Member Director will cease to be eligible to be a Director and his or her appointment will expire at the expiration of that three month period.
- 30.6 For the purposes of clause 30.2(f), if a Skills-based Director is required by law to hold a Working with Children Card and does not successfully obtain a Working with Children Card within 6 months of election the Skills-based Director will cease to be eligible to be a Director and his or her appointment will expire at the expiration of that 6 month period.

- 30.7 Subject to clauses 30.9, 32 and 34, the term of a Skills-based Director's appointment is one year.
- 30.8 Skills-based Directors will cease to hold office as a Director at the conclusion of the term of their appointment unless they are reappointed.
- 30.9 A Skills-based Director may be removed from office by Special Resolution of the Board.
- 30.10A retiring Skills-based Director will be eligible for re-appointment.
- 30.11 The Board will determine the process for nominating, recruiting and subject to this clause 30, appointment of Skills-Based Directors.

## **31 Casual Directors**

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- 31.1 If the Company does not have the number of Member Directors required under clause 26.2(a), the Board may appoint one or more Members as Directors up to the number required.
- 31.2 A Member appointed to fill a casual vacancy under this clause must satisfy the eligibility criteria for a Member Director.
- 31.3 A Member appointed to fill a Member Director casual vacancy under this clause will hold office only until the completion of the next selection process for Member Directors held under clause 29.

## **32 Suspension of a Director**

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- 32.1 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 Special Resolution of the Board at a meeting specifically called for that purpose may suspend that Director:
- (a) for a fixed period of time; or
  - (b) until reasonable conditions specified by the Board have been met by the suspended Director within a reasonable time frame.
- 32.2 If a Director suspended under clause 32.1(b) fails to meet the conditions in the specified time frame the Board may, by Special Resolution:
- (a) extend the time frame for meeting the conditions;
  - (b) remove the suspension; or
  - (c) call a general meeting to expel the Director from office under clause 32.3.
- 32.3 The Company may by resolution in a general meeting remove any Director before the end of the Director's period of office at a general meeting called under clause 32.2(c).
- 32.4 A suspended Director is entitled to attend meetings of the Board as an observer but may not vote until such time as the suspension is removed.

### **33 Chairperson**

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- 33.1 The Board will elect a chairperson from the Member Directors.
- 33.2 The Member Director elected as chairperson will hold the office of chairperson of the Board from the date he or she is elected until:
- (a) the chairperson ceases to be a Member Director for any reason;
  - (b) the chairperson submits a notice of resignation as chairperson to the Secretary in writing;
  - (c) the expiry of two years from the date he or she was elected as chairperson;  
or
  - (d) the chairperson is removed from that office by a Special Resolution of the Board.
- 33.3 A retiring chairperson will be eligible for re-election.

### **34 Vacation of office**

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- 34.1 The office of a Director immediately becomes vacant at the expiry of his or her term of office unless re-appointed to the Board.
- 34.2 The office of a Director immediately becomes vacant if the Director:
- (a) is a Skills-based Director and is removed from office under clause 30.9;
  - (b) is prohibited by the Corporations Act from holding office or continuing as a Director;
  - (c) is prohibited from being a Responsible Person for the Company;
  - (d) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Board incapable of performing his or her duties;
  - (e) resigns by notice in writing to the Company;
  - (f) ceases to meet the relevant eligibility criteria to be a Director or ceases to be a Director under clause 28.2, 28.3, 28.4, 30.4, 30.5 or 30.6;
  - (g) is removed by the Members in accordance with the Corporations Act;
  - (h) is absent from Board meetings for three consecutive meetings without a leave of absence from the Board;
  - (i) is expelled as a Director under clause 32.3 or otherwise ceases to hold office under this Constitution; or
  - (j) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act or the ACNC Act, as applicable.



## **POWERS AND DUTIES**

### **35 Powers and duties of Directors**

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- 35.1 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 general meeting.
- 35.2 Without limiting the generality of clause 35.1, the Board 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;
  - (d) guarantee or become liable for the payment of money or the performance of any obligation by or of any other person; and
  - (e) commit to contracts or sub-contracts providing access to money, personnel, technology, equipment or other resources intended for implementation of the Objects.

## **PROCEEDINGS OF DIRECTORS**

### **36 Board meetings**

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- 36.1 A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting.
- 36.2 A Board meeting must be called on at least 48 hours written notice of a meeting to each Director unless otherwise approved by the Board.
- 36.3 It is not necessary to give notice of a Board meeting to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 36.4 The Directors need not all be physically present in the same place for a Board meeting to be held.
- 36.5 Subject to the Corporations Act, a Board meeting may be held by the Directors communicating with each other by any technological means by which they are able to simultaneously hear each other and to participate in discussion provided that:
- (a) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other Directors taking part; and
  - (b) a Director may not leave the meeting by disconnecting his or her telephone or other means of communication and will be conclusively presumed to have been present and to have formed part of the quorum at all times

during the meeting unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

- 36.6 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 unless suspended.
- 36.7 The Board may meet, adjourn and regulate its meetings as the Directors think fit.
- 36.8 A quorum is at least half the Directors plus one but must be a minimum of three Directors.
- 36.9 Where a quorum cannot be established for the consideration of a particular matter at a Board meeting, the chairperson may call a general meeting to deal with the matter.
- 36.10 Notice of a Board meeting may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

### **37 Decision on questions**

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- 37.1 Subject to this Constitution, questions arising at a Board meeting are to be decided by consensus where possible.
- 37.2 If the Board is unable to achieve a consensus decision, the matter will be decided by a majority of votes of the Directors present and voting unless this Constitution requires a Special Resolution.
- 37.3 Subject to clauses 32.3 and 37.4, each Director has one vote.
- 37.4 In the event of a deadlock, the chairperson of a meeting will have a casting vote in addition to his or her deliberative vote.

## **PAYMENTS TO DIRECTORS**

### **38 Payments to Directors**

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- 38.1 No payment will be made to any Director of the Company other than payment:
- (a) of 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 Board of the Company;
  - (b) for any service rendered to the Company by the Director in a professional or technical capacity (other than as a Director), where the provision of the service has the prior approval of the Board of the Company and where the amount payable is approved by the Board of the Company and is not more than an amount which would be a commercially reasonable payment for the service;
  - (c) of a stipend or sitting fees where the amount payable does not exceed the Remuneration Limit;

- (d) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Board of the Company; and
- (e) 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.

### **39 Directors' interests**

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- 39.1 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 a Director may be interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 39.2 No Director contracting with or 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 of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 39.3 A Director is not disqualified from contracting with the Company merely because of being a Director.
- 39.4 Any Director having a direct or indirect, or an actual, potential or perceived material personal interest (**Material Personal Interest**) in any contract or arrangement that the Company proposes to enter will declare his or her interest at the relevant Board meeting or by prior written notice to the chairperson.
- 39.5 Subject to clause 39.6, a Director who has a Material Personal Interest in a matter that is being considered at a Board 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 or ACNC Act (as applicable) to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any Board meeting 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.
- 39.6 The prohibition on voting in clause 39.5 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 member or director of another company.

39.7 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.

39.8 A Director who has an interest described in clause 39.7 must provide written notice to the Secretary when the interest arises and when the Director no longer has the interest.

## **40 Remaining Directors**

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40.1 The Board may act even if there are vacancies on the Board.

40.2 If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Board may act only to appoint a Director.

## **41 Committees and Delegation**

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41.1 The Board may establish such other committees, and on such terms, as it deems appropriate.

41.2 Subject to this Constitution, at least one member of each committee must be a Director.

41.3 Meetings of any committee of the Board will be governed by the provisions of this Constitution which deal with Board meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if each committee member was a Director.

41.4 The Board may delegate any of its powers, other than those which by law must be dealt with by the Board, to an officer, an employee, a committee or committees (**Delegate**).

41.5 The Board may at any time revoke any delegation of power to a Delegate.

41.6 A Delegate must exercise its powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.

41.7 A Delegate may be authorised by the Board to sub-delegate all or any of the powers for the time being vested in it.

## **42 Written resolutions**

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42.1 The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a

statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.

42.2 For the purposes of clause 42.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

42.3 Any document referred to in this clause may be in the form of a facsimile, digital or electronic transmission.

42.4 The minutes of Board meetings must record that a meeting was held in accordance with this clause.

42.5 This clause applies to meetings of Board committees as if all committee members were Directors.

### **43 Validity of acts of Directors**

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43.1 If it is discovered that:

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

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

### **44 Minutes and Registers**

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44.1 The Board must cause minutes to be made of:

- (a) the names of the Directors present at all Board meetings and meetings of Board committees;
- (b) all proceedings and resolutions of general meetings, Board meetings and meetings of Board committees;
- (c) all resolutions passed by Directors in accordance with clause 42;
- (d) all appointments of officers;
- (e) all orders made by the Board and Board committees; and
- (f) all disclosures of interests made under clause 38.1.

44.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

44.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## **MANAGEMENT**

### **45 Management**

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- 45.1 The Board may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 45.2 Without limiting clause 45.1, the Board will appoint a managing director, chief executive officer or a general manager who, subject to clause 45.4, will be responsible for:
- (a) the day-to-day management of the Company;
  - (b) delivering to the Board within three months after the end of each Financial Year, the annual reports of the Company describing the level of activity, achievements and such other information as required in sufficient detail and containing the audited financial statements for the Financial Year as necessary to meet the financial and other reporting requirements of the Company under the Corporations Act; and
  - (c) carrying out such other activities for the Company,
- in accordance with the directions of the Board and the position description for the CEO approved by the Board.
- 45.3 The Board may appoint such other executives as it sees fit to provide support for the CEO on operational issues relating to the Company or delegate authority to the CEO to make such appointments, within the limits of continuing solvency and a balanced budget.
- 45.4 Without limiting clause 45.1 the Board may:
- (a) establish local boards or agencies or joint committees with other corporations for managing any of the affairs of the Company and appoint any persons to be members of those local boards or agencies or joint committees; and
  - (b) delegate to any person appointed under clause 45.4(a) any of the powers, authorities and discretions which may be exercised by the Board under this Constitution or the CEO under clause 45.2,
- on any terms and subject to any conditions determined by the Board.
- 45.5 The Board may at any time revoke or vary any delegation under this clause.

### **46 Appointment of attorneys and agents**

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- 46.1 The Board may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);

- (c) for the period; and
- (d) subject to the conditions,  
determined by the Board.

46.2 An appointment by the Board of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local board established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm;
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Board; or
- (e) CEO or other executives of the Company.

46.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Board thinks fit.

46.4 The Board may appoint attorneys or agents by facsimile or electronic transmission to act for and on behalf of the Company.

46.5 An attorney or agent appointed under this clause may be authorised by the Board to sub-delegate all or any of the powers, authorities or discretions for the time being vested in it.

## **47 Secretary**

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47.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Board for a term and at remuneration and on conditions determined by them.

47.2 The Secretary may be a Director, or an outsourced provider.

47.3 The Secretary will be responsible for maintaining the company register, including:

- (a) the Register;
- (b) minutes and records of all appointments of Directors and officers;
- (c) the names of Directors present at Board meetings, committee meetings or general meetings; and
- (d) all proceedings at Director and general meetings.

47.4 The Secretary must keep ASIC and the ACNC informed of all notifiable information within the required timeframes.

47.5 The Secretary must ensure that the minutes of proceedings at a meeting are signed by the chairperson of the meeting or by the chairperson of the next meeting at which the minutes are accepted as a true and accurate record of the meeting.

47.6 The Secretary is entitled to attend and be heard on any matter at all Board' and general meetings.

47.7 The Board may, subject to the terms of the Secretary's contract of engagement, suspend, remove or dismiss the Secretary.

## **SEALS**

### **48 Common Seal**

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48.1 If the Company has a Seal:

- (a) the Board must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Board or a Board committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Board to countersign the document.

### **49 Duplicate Seal**

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49.1 If the Company has a Seal, the Company may have one or more duplicate Seals each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face; and
- (b) must not be used except with the authority of the Board.

## **INSPECTION OF RECORDS**

### **50 Inspection of records**

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50.1 Except as otherwise required by the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.

50.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.

## **NOTICES**

### **51 Service of notices**

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51.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:

- (a) by serving it on the person; or



- (b) by sending it by post or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

51.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the day after the day on which it was posted.

51.3 A notice sent by electronic notification is taken to be served:

- (a) by properly addressing the electronic notification and transmitting it; and
- (b) on the day after its despatch.

51.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.

51.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's address for the purposes of clause 51.

51.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

51.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.

51.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

## **52 Persons entitled to notice**

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52.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director;
- (c) the Secretary; and
- (d) any Auditor.

52.2 No other person is entitled to receive notice of a general meeting.

52.3 A general meeting, resolution or any proceeding at a general meeting, will not be invalid if the notice of the general meeting was not sent to a person entitled to receive it provided it was sent by the Company to the last known address of the person.

## **INCOME AND PROPERTY OF THE COMPANY**

### **53 Income and property of Company**

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- 53.1 The Income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- 53.2 No Income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## **AUDIT AND ACCOUNTS**

### **54 Audit and accounts**

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- 54.1 The Board 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.
- 54.2 The Board must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act and the ACNC Act.
- 54.3 The results of the audit must form part of the report provided to the Members at the next annual general meeting of the Company.

## **GIFT FUND**

### **55 Operation of gift fund**

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- 55.1 Where the ITAA requires that a gift fund be established for the receipt of tax deductible donations, the Company must establish a separate gift fund account to which such donations must be credited.
- 55.2 The Gift Fund Account must only be used or applied for purposes that are consistent with the objects of the Company and separate records must be maintained as to the receipt and disbursement of moneys from that account.

### **56 Transfer of the gift fund in specified circumstances**

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- 56.1 On:
- (a) revocation of the endorsement of the Company under sub-division 30-B of the ITAA; or
  - (b) the winding up of the gift fund by the Company,

any balance in the Gift Fund Account must be transferred to such other gift fund, gift funds, entity or entities having objects similar to the objects of the Company as will be determined by the Members at or before that time, provided that each recipient must be endorsed as a deductible gift recipient under sub-division 30-BA of the ITAA.

## **WINDING UP**

### **57 Winding up**

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57.1 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 57.1(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.

57.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another entity which is:

- (a) an organisation with similar purposes which is not carried on for profit or gain of its individual members;
- (b) required to apply its profits (if any) or other income in promoting objects similar to those of the Company; and
- (c) endorsed as a deductible gift recipient under sub-division 30-BA of the ITAA,

such entity to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Queensland for determination.

## **INDEMNITY**

### **58 Indemnity**

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58.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

- 58.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 58.3 The amount of any indemnity payable under clauses 58.1 or 58.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a Tax Invoice.
- 58.4 For the purposes of this clause, **officer** means:
- (a) a Director; or
  - (b) a Secretary.

## **AMENDMENTS TO CONSTITUTION**

### **59 Amendments to Constitution**

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- 59.1 Subject to this clause 59, this Constitution must not be amended other than in accordance with the Corporations Act.
- 59.2 The Board must approve any amendments to the Constitution prior to them being adopted by the Company in general meeting.
- 59.3 Subject to clause 59.1, the Company may revoke, add to or vary this Constitution provided that:
- (a) no part of the Gift Fund Account or the income of the Gift Fund Account is transferred to any institution, organisation, fund or authority that is not a charitable organisation endorsed to receive donations under sub-division 30-B of the ITAA; and
  - (b) no part of the Gift Fund Account or the income of the Gift Fund Account becomes able to be used or applied for purposes that are not consistent with the objects of the Company; and
  - (c) unless the Commissioner of Taxation or other relevant authority consents to the revocation, addition or variation:
    - (i) no amendment is allowed to be made to or affecting the Objects of the Company; and
    - (ii) no amendment is allowed to be made which authorises the Company to invest money of the Gift Fund Account other than in a manner in which trustees are permitted to invest under the laws of Australia or any Australian State or Territory.

## Schedule 1 Definitions

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<b>Auditor</b>	means the Company's auditor.
<b>ACNC</b>	means the Australian Charities and Not-for-Profits Commission.
<b>ACNC Act</b>	means the <i>Australian Charities and Not-for-Profits Commission Act 2012</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
<b>Board</b>	means the board of Directors of the Company.
<b>Aboriginal or Torres Strait Islander</b>	means an individual who is of Aboriginal or Torres Strait Islander descent, identifies as an Aboriginal or Torres Strait Islander and the individual is accepted by their community as an Aboriginal or Torres Strait Islander, as the case may be.
<b>CEO</b>	means the person appointed as managing director, chief executive officer or general manager under clause 45.1.
<b>Close Family Relative</b>	means: <ul style="list-style-type: none"><li>(a) biological or adopted father, mother, son, daughter, brother, sister or grandparent; or</li><li>(b) biological or adopted aunt, uncle, niece or nephew; or</li><li>(c) legal or de facto spouse.</li></ul>
<b>Company</b>	means Cherbourg Regional Aboriginal and Islander Community Controlled Health Service Ltd as constituted under this Constitution.
<b>Constitution</b>	means the constitution of the Company as amended from time to time.
<b>Corporate Governance Training</b>	means a course, training or workshop that explains the roles, responsibilities and duties of Directors approved by the Board.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
<b>Director</b>	includes any person occupying the position of director of the Company.
<b>Directors</b>	means all or some of the Directors as the context requires.
<b>Financial Year</b>	means the period of 12 months beginning on 1 July of any year and ending on 30 June of the succeeding year provided that the first financial year will include the

	period commencing on date of registration of the Company and ending on 30 June of the immediately following year.
<b>Gift Fund Account</b>	means the gift fund account established under clause 55.
<b>GST</b>	has the meaning given to that term by the GST Act.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or any replacement or other relevant legislation and regulations.
<b>Income</b>	means all income of the Company including self-generated income and income derived from the performance of services to clients.
<b>Indemnified Officer</b>	has the meaning given to that term by clause 58.3.
<b>ITAA</b>	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company
<b>Meeting Date</b>	has the meaning given to that term in clause 28.1.
<b>Member</b>	means an organisation admitted as a member of the Company under clause 5.
<b>Member Directors</b>	has the meaning given to that term under clause 26.2.
<b>Objects</b>	means the objects of the Company set out in clause 4.
<b>Region</b>	means regions within which the Company provides services including Cherbourg, Murgon, Kingaroy, Wondai, Proston and Goomeri and such other regions that are designated by the Board as being within the Region for the purposes of this Constitution.
<b>Register</b>	means the register of Members of the Company.
<b>Remuneration Limit</b>	means \$15,000 or such higher amount approved by the Company in general meeting as the remuneration limit.
<b>Responsible Person</b>	has the meaning given to that term in the ACNC Act.
<b>Seal</b>	means the Company's common seal (if any).
<b>Secretary</b>	means any person appointed by the Board to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.
<b>Senior Management Team</b>	means: <ul style="list-style-type: none"> <li>(a) the CEO or equivalent;</li> </ul>

	(b) the chief financial officer or equivalent;
	(c) the chief operating officer or equivalent;
	(d) the Secretary; and
	any other position or person the Board deems members of the senior management team.
<b>Selection Committee</b>	has the meaning given to that term in clause 29.2(a).
<b>Skills-Based Directors</b>	has the meaning given to that term in clause 26.2(b).
<b>Special Resolution</b>	means a resolution passed by a majority of at least 75% of the eligible votes present and cast.
<b>Tax Invoice</b>	has the same meaning as in the GST Act, including any applicable legislative determinations and public rulings issued through the Australian Taxation Office.
<b>Vacancy Notice</b>	has the meaning given to that term in clause 29.2(c).
<b>Working with Children Card</b>	means a working with children clearance under the Working with Children (Risk Management and Screening) Act 2000 (Qld).