

# Council of Aboriginal Services Western Australia Limited

## Constitution

A charitable company limited by guarantee

Adopted on: \_\_\_\_\_

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# Constitution

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# Constitution

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## 1 Interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Aboriginal Community-Controlled Organisation** or **ACCO** means an organisation that is an “Aboriginal and/or Torres Strait Islander Community-Controlled Organisation” within the meaning of clause 44 of the National Agreement, being (as at the date of first adoption of this Constitution) an organisation that delivers services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is:

- (a) incorporated under relevant legislation and not-for-profit;
- (b) controlled and operated by Aboriginal and/or Torres Strait Islander people;
- (c) connected to the community, or communities, in which they deliver the services; and
- (d) governed by a majority Aboriginal and/or Torres Strait Islander governing body.

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

**Annual Subscription Fee** means any amount determined in accordance with article 4.7.

**Approved Institution** means a fund, authority or institution which falls within the description of an item in any of the tables in Subdivision 30-B of the Tax Act, which has been established for charitable purposes, and which is endorsed as a deductible gift recipient under or for the purposes of the Tax Act.

**Associate Member** means an Associate Organisation that is admitted as a Member in accordance with article 4.3.

**Associate Organisation** means an organisation (other than an ACCO) that delivers services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is:

- (a) incorporated under relevant legislation;
- (b) connected to the community, or communities, in which they deliver the services; and
- (c) either:
  - (i) controlled and operated by Aboriginal and/or Torres Strait Islander people; or

- (ii) governed by a majority Aboriginal and/or Torres Strait Islander governing body.

For the avoidance of doubt, an “Associate Organisation” does not need to be a “not-for-profit” organisation.

**Business Day** means a day other than a Saturday, Sunday or a public holiday in Perth, Western Australia.

**Charitable Fundraising Legislation** means the *Charitable Collections Act 1946* (WA) and corresponding legislation in other Australian States and Territories.

**Chief Executive Officer** means a person appointed as an executive director under article 11.

**Committee** means a committee constituted under article 9.8(a)(i).

**Company** means Council of Aboriginal Services Western Australia Limited.

**Constitution** means this constitution and a reference to an article or a Part is a reference to an article or a Part of this constitution.

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

**Cultural Governance** means the power and authority for Aboriginal people, their families and communities to guide and inform all policies and practices across the business, in partnership with its Membership.

**Director** means a person holding office as a director.

**Directors** means all or some of the Directors acting as a board.

**Founding Member** means an ACCO or an Associate Organisation that agreed in writing to the terms of this Constitution before the application for the Company’s registration was lodged, being those organisations listed in Schedule 1.

**Member** means an organisation entered in the Register as a member of the Company and who has not ceased to be a member in accordance with this Constitution.

**Membership Renewal Notice** has the meaning given in article 4.8(a).

**National Agreement** means the National Agreement on Closing the Gap developed in partnership between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations.

**Nomination Committee** means a committee of Directors established pursuant to article 9.8(a)(i) in connection with the nomination and election of Directors, comprising not less than 3 Directors.

**Nomination Form** means a consent to nomination (in a form prescribed by the Directors from time to time) which is signed by the person nominating for election pursuant to article 8.3 and two directors of their nominating Ordinary Member, and which includes the following information:

- (a) the Portfolio(s) to which the person requests be allocated to if elected as a Director;

- (b) a statement (not more than one A4 page in length) detailing the person's experience in the Portfolio(s) identified by the person in their Nomination Form (**Experience Statement**); and
- (c) any other information relevant to the nomination of the person as a Director, as determined by the Directors (acting reasonably) from time to time.

**Objects** means the objects specified in articles 2.2 and 2.3.

**Ordinary Member** means an ACCO who is admitted as a Member in accordance with article 4.3.

**Portfolio** means each portfolio relating to the Social Determinants affecting Life Outcomes for Aboriginal people and the Objects of the Company for which the Directors are responsible for overseeing.

**Register** means the register of Members of the Company and, if appropriate, includes a branch register.

**Registered Charity** means a charity that is registered under the ACNC Act.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a Member at a general meeting of the Company in accordance with article 6, subject to the Corporations Act.

**Requesting Members** has the meaning given in article 5.3(b).

**Returning Officer** means:

- (a) a person formally representing an organisation independent of the Company (e.g. the Western Australian Electoral Commission) that is appropriately qualified to conduct polls or elections; or
- (b) if a person within paragraph (a) is not reasonably available, the Company Secretary,

appointed to act as the returning officer responsible for conducting the election of Directors pursuant to article 8.3.

**Secretary** means a person appointed under article 12 as a secretary of the Company, and where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Social Determinants affecting Life Outcomes for Aboriginal people** includes the environment (including housing), social and economic status, early childhood development, educational opportunities and outcomes, employment opportunities, social and emotional wellbeing and such other social determinants as the Directors reasonably determine from time to time and which are aligned with the "Closing the Gap" priority areas.

**Social Support Services** includes services that deliver goods, services, conditions, opportunities and/or other forms of support to individuals and groups to aid the acquisition of social, economic and emotional wellbeing.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

**Valid Membership Application** means a properly completed membership application (in the form prescribed by the Directors) that is signed by (or on behalf of) 2 or more Members, one of whom is from the region in which the relevant ACCO or Associate Organisation (as applicable) operates.

**Virtual Meeting** means a meeting of the Company described in article 5.5(a)(iii) and held in accordance with article 5.5.

**Virtual Meeting Technology** means any technology that allows Members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting without being physically present at the meeting.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) a reference to a document includes any variation or replacement of it
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or “such as” or similar expressions;
- (e) a reference to “person” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes and permitted assigns;
- (g) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (h) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacement of any of them;
- (j) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (l) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (m) a reference to “writing” or “written” includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (n) a chairperson appointed under this Constitution may be referred to as a chairman, chairwoman or as chair , as appropriate; and

- (o) a reference to a person being “present” at a meeting includes participating using technology approved by the Directors in accordance with this Constitution.

### **1.3 Corporations Act**

- (a) In this Constitution unless the contrary intention appears:
  - (i) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
  - (ii) “section” means a section of the Corporations Act.
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any provisions in this Constitution which are inconsistent with those Acts.
- (c) If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any provisions in this Constitution which is inconsistent with that Act.

### **1.4 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

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## **2 Purpose and objects of the Company**

### **2.1 Charitable purpose**

The Company may only pursue charitable purposes associated with its Objects and must do so predominantly in Australia.

### **2.2 Principal Objects**

The Company is established to address and relieve the poverty and distress faced by Aboriginal and Torres Strait Islander people in Western Australia by advancing their language, spiritual, emotional, cultural, social and physical wellbeing, early childhood development, legal, justice and enterprise through local, regional, national and state-wide strategies which support social services.

### **2.3 Other Objects**

In furtherance of article 2.2, the Objects of the Company include to:

- (a) work with Members to advance the health and wellbeing of Aboriginal and Torres Strait Islander peoples and in so doing provide support to Members to achieve their charitable and enterprise objectives (as articulated by each Member);
- (b) provide support and resources to Aboriginal people to enable them to take control over the delivery of Aboriginal services to Aboriginal people in Western Australia;
- (c) encourage the preservation and practice of traditional Aboriginal and Torres Strait Islander culture and language;

- (d) assist in the establishment of, and capacity building of Aboriginal Community Controlled Organisations, Aboriginal Enterprises and other Aboriginal Community Controlled social service specific Peak Bodies;
- (e) advocate for:
  - (i) the improvement in the Social Determinants affecting Life Outcomes for Aboriginal people;
  - (ii) the improvement of resources and resource allocation (including public funding) for ACCOs;
  - (iii) policy and legislation that strives for equitable human rights, justice and access to funding for social support services which includes language and heritage;
  - (iv) 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;
  - (v) culturally appropriate training and educational materials to improve community awareness and outcomes of all Social Determinants affecting Life Outcomes for Aboriginal people; and
  - (vi) recognition and acknowledgement of the value of Aboriginal culture and language;
- (f) initiate, support, participate in and contribute to research that is culturally appropriate, ethical and relevant to the needs of the Members;
- (g) represent the views and needs of Aboriginal and Torres Strait Islander people at all levels of the government and non-government, the media and the general public in relation to social policies, community services planning and service delivery challenges; and
- (h) do all other things as may be incidental or ancillary to the attainment of these Objects.

For the avoidance of doubt, the Company shall not provide Social Support Services in Western Australia in furtherance of the Objects as that service delivery is to be undertaken by the Members only.

## **2.4 Powers**

The Company has the legal capacity and powers of an individual, and all the powers of a body corporate under the Corporations Act.

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# **3 Income and assets of the Company**

## **3.1 Application of income and assets**

All income and assets of the Company must be applied towards the promotion of the Objects.

### **3.2 No income and assets distributed to Members**

The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in articles 3.3 and 16.

### **3.3 Permitted payments by the Company**

Subject to articles 7.8 and 7.10, article 3.2 does not stop the Company from doing the following things, provided they are done in good faith;

- (a) paying a Member for goods and services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
- (b) making a payment to a Member in carrying out the Company's charitable purpose(s).

### **3.4 Provision of services**

Nothing in this Constitution will prevent the Company from providing services to an officer of the Company or a Member, provided the provision of such services is in good faith and in accordance with the Company's Objects.

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## **4 Membership**

### **4.1 Becoming a Member**

Except for a Founding Member, an organisation may only become a Member under this article 4.

### **4.2 Application for Membership**

- (a) An:
  - (i) ACCO may apply to become an Ordinary Member; or
  - (ii) Associate Organisation may apply to become an Associate Member,

in each case, by submitting to the Secretary a Valid Membership Application.

- (b) By completing a Valid Membership Application, if accepted, the applicant agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.

### **4.3 Admission as a Member**

- (a) Subject to article 4.3(b), the Directors must resolve whether to accept or reject each Valid Membership Application for membership and, within a reasonable time, notify the applicant of their decision. The Directors are not required to give reasons for the rejection of an application for membership of the Company.
- (b) If the Directors are not certain that an applicant is an ACCO or an Associate Organisation, or that the application has been otherwise made in accordance with article 4.2(a), the Directors must convene a general meeting of the Company at which the Members may, by way of special resolution, direct the Directors to accept the relevant application.

- (c) Except for the Founding Members, an organisation is admitted as a Member when the organisation's application is accepted by:
  - (i) a resolution of the Directors; or
  - (ii) a special resolution of the Members in accordance with article 4.3(b).

#### 4.4 Rights of Members

Each Member has the rights associated with the category of membership to which they belong as set out in this Constitution and in Schedule 2.

#### 4.5 Application fee and guarantee

- (a) The Directors may resolve from time to time that any organisation applying to become a Member must pay an application fee and, if so, how much and when and how it is to be paid.
- (b) Each Member must contribute the guarantee amount referred to in article 17 in the circumstances referred to in article 17.

#### 4.6 Register of Members

- (a) Upon admission as a Member, that organisation's details will be recorded in the Register by a Director or the Company Secretary.
- (b) A Member must promptly notify the Company of any change in the Member's details which are recorded in the Register.

#### 4.7 Annual Subscription Fee

- (a) The Directors may determine whether there will be an Annual Subscription Fee and, if so, the annual amount for each Member or category of Members.
- (b) Each Member must pay the applicable Annual Subscription Fee in advance by 30 June each year.
- (c) The Directors:
  - (i) must notify Members of the manner for payment of the Annual Subscription Fee (if applicable); and
  - (ii) may waive the payment of all or any part of an Annual Subscription Fee (if applicable) for a Member or any category of Members.

#### 4.8 Membership Renewal Notice

- (a) The Directors may, by no later than 30 March each year, send to a Member a notice (**Membership Renewal Notice**) requiring the Member to renew its membership and confirm or update its details in the Register.
- (b) If a Member receives a Membership Renewal Notice under article 4.8(a), it must return a completed Membership Renewal Notice to the Secretary by no later than 30 June in that calendar year.

#### **4.9 Directors may create and vary categories and category rights**

The Directors may, subject to this Constitution and the Corporations Act and the approval of not less than 75% of the Ordinary Members:

- (a) prescribe, revoke and amend the criteria for membership and any categories of membership (but are not obliged to accept persons fulfilling those criteria as Members or Members of a category);
- (b) establish any new category of Members and define the rights, restrictions and obligations of Members in that category; and
- (c) vary or cancel the rights, restrictions and obligations of Members in any new or existing category, if, in addition to the approval of not less than 75% of the Ordinary Members:
  - (i) at least 75% of the Members of that category give their written consent; or
  - (ii) a special resolution to that effect is passed at a separate meeting of those Members.

The articles on general meetings apply to meetings of a category of Members so far as they are capable of application and with the necessary changes to every separate meeting.

#### **4.10 No transfer of Membership**

A Member must not sell, transfer or dispose of their interests in the Company to another Member or a third party.

#### **4.11 Ceasing to be a Member**

An organisation ceases to be a Member on:

- (a) the organisation ceasing to be an ACCO or an Associate Organisation;
- (b) the resignation by the organisation as a Member in accordance with article 4.12;
- (c) the termination or cancellation of the organisation's membership in accordance with this Constitution;
- (d) the organisation being dissolved or otherwise ceasing to exist;
- (e) the organisation having a liquidator or provisional liquidator appointed to it; or
- (f) the organisation being insolvent.

#### **4.12 Resignation**

- (a) A Member may, by written notice to the Company signed by at least 2 directors of the Member (or, if the Member only has 1 director, that director), resign from membership with immediate effect or with effect from a specified date occurring not more than 6 months after the service of the notice.
- (b) A Member remains liable after resignation for all money due by the Member to the Company at the date of resignation, in addition to any

sum for which the Member is liable as a Member under articles 4.4 and 4.7.

#### **4.13 Failure to return Membership Renewal Notice or pay Annual Subscription Fee (if applicable)**

- (a) If a Member breaches article 4.7(b) or article 4.8(b), the Member's membership automatically terminates and the Member ceases to be a Member.
- (b) The Directors may, but need not, reinstate a Member whose membership is terminated under article 4.13(a) if the Member pays all overdue Annual Subscription Fee amounts, or returns a completed Membership Renewal Notice.
- (c) If a Member's membership is reinstated under article 4.13(b), the Member will not be entitled to:
  - (i) vote at a general meeting of the Company; or
  - (ii) hold office as a Director of the Company,

in each case, for a period of 6 weeks after payment of the applicable Member's Annual Subscription Fee is made.

#### **4.14 Suspension of Membership**

- (a) If:
  - (i) a Member wilfully refuses or neglects to comply with the provisions of this Constitution, by-laws, policies or other standards prescribed by the Directors, or acts in a manner which in the opinion of the Directors is prejudicial to the interests of the Company; or
  - (ii) the Directors consider that a Member is not (or is no longer) an ACCO or an Associate Organisation,

the Directors may by resolution suspend that Member's membership for a period of no more than 12 months, provided that the following procedure is observed:

- (iii) the Directors or Secretary must give written notice to the Member setting out what is alleged against the Member and the Member must be given the opportunity to rectify the matter;
- (iv) at least 14 days before the Directors' meeting at which the resolution is to be considered, the Member must be given notice of the meeting setting out:
  - (A) what is alleged against the Member; and
  - (B) the intended resolution;
- (v) at the Directors' meeting, and before voting on the resolution, the Member must be given an opportunity to give a written or verbal explanation as the Member thinks fit (provided that written or verbal explanation is not defamatory or in breach of any applicable law).

- (b) The Secretary must give written notice to the Member of the decision under article 4.14(a) as soon as possible.

#### **4.15 Cancellation of Membership**

- (a) If the Directors approve a resolution under article 4.14(a), the Directors must, as soon as practicable:
  - (i) call a general meeting of the Company in accordance with this Constitution for the purposes of the Members determining whether the Member's membership should be cancelled;
  - (ii) provide a copy of the notice of meeting to the Member setting out:
    - (A) what is alleged against the Member; and
    - (B) the intended resolution;
  - (iii) at the general meeting, and before voting on the resolution, give the Member a reasonable opportunity to give a written or verbal explanation as the Member thinks fit (provided that written or verbal explanation is not defamatory or in breach of any applicable law).
- (b) If the Members resolve, by way of a special resolution, to cancel the Member's membership, the Member's membership automatically terminates and the Member ceases to be a Member.

#### **4.16 Limited liability**

A Member has no liability as a Member except as set out in this article 4 and article 17.

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## **5 General meetings**

### **5.1 Annual general meeting**

- (a) Annual general meetings of the Company are to be held in accordance with this article 5, subject to any applicable law.
- (b) A general meeting, called the annual general meeting, must be held by the Company at least once in every calendar year:
  - (i) within 18 months after registration of the Company; and
  - (ii) subsequent to the first annual general meeting, and within 5 months after the end of the financial year of the Company.
- (c) The annual general meeting shall be specified as such in the notice convening it.

### **5.2 Business at annual general meeting**

The business of an annual general meeting may include any of the following even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, the Director's report and auditor's report (if any);

- (b) the election of Directors; and
- (c) the appointment and fixing of the remuneration of the auditor (if relevant).

### 5.3 Convening a general meeting

- (a) The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if requested to do so by any 2 Directors or if required to do so under any applicable law.
- (b) If:
  - (i) Ordinary Members with at least 5% of the votes that may be cast at the general meeting; or
  - (ii) at least 20 Ordinary Members who are entitled to vote at the general meeting,  
  
(such Ordinary Members being the **Requesting Members**) make a request to the Company for a general meeting to be held, the Directors must:
    - (iii) within 21 days of the Requesting Members' request, give all Members notice of a general meeting; and
    - (iv) hold the general meeting within 2 months of the Requesting Members' request.
- (c) The percentage of votes that Ordinary Members have is to be worked out as at the midnight before the Requesting Members request the meeting.
- (d) The request made by the Requesting Members for a general meeting must:
  - (i) be in writing;
  - (ii) state any resolution to be proposed at the meeting;
  - (iii) be signed by the Requesting Members making the request; and
  - (iv) be given to the Company.
- (e) Separate copies of a document setting out the request may be signed by the Requesting Members if the wording of the request is identical in each copy.

### 5.4 General meetings called by Ordinary Members

- (a) If the Directors do not call the meeting within 21 days of being requested under article 5.3(b), the Requesting Members may call and arrange to hold a general meeting.
- (b) To call and hold a meeting under article 5.4(a), the Requesting Members must:
  - (i) as far as possible, follow the procedures for general meetings as set out in this Constitution;

- (ii) hold the meeting not later than 3 months after the request is given to the Company; and
  - (iii) call the meeting using the list of Members on the Register, which the Company must provide to the Requesting Members at no cost.
- (c) The Company must pay the Requesting Members any reasonable expenses they incur because the Directors did not call and hold the meeting.

## 5.5 Virtual Meetings

- (a) Meetings of the Company may be held:
- (i) at one or more physical venues;
  - (ii) at one or more physical venues and using Virtual Meeting Technology; or
  - (iii) using Virtual Meeting Technology.
- (b) In circumstances where a Virtual Meeting is held:
- (i) a Member, proxy, attorney or Representative who attends the meeting using Virtual Meeting Technology is taken for all purposes to be present in person at the meeting while so attending (including for the purposes of establishing quorum under article 7.1);
  - (ii) the chairperson and deputy chairperson who attends the meeting using Virtual Meeting Technology is taken for all purposes to be present in person at the meeting while so attending; and
  - (iii) subject to the provisions of this article 5.5, all the provisions in this Constitution relating to a meeting apply, insofar as they can and with such changes as are necessary, to a Virtual Meeting.
- (c) If a meeting is to be held as a Virtual Meeting:
- (i) the place for the meeting is taken to be the address of the Registered Office;
  - (ii) the time at which the meeting is held is taken to be the time at the Registered Office; and
  - (iii) all resolutions put to Members at the meeting must be conducted by poll.
- (d) If any Virtual Meeting Technology used in holding a meeting encounters a technical difficulty, whether before or during the meeting, which results in a Member not being able to participate in the meeting, subject to the Corporations Act, the chairperson may allow the meeting to continue or may adjourn the meeting either:
- (i) for such reasonable period as may be required to fix the Virtual Meeting Technology; or
  - (ii) to such other time and location as the chairperson considers appropriate.

- (e) For the purposes of this article 5.5:
  - (i) "reasonable opportunity to participate" includes a reasonable opportunity to exercise a right to speak;
  - (ii) a person may elect to exercise a right to speak (including a right to ask questions) orally rather than in writing; and
  - (iii) if a document is required or permitted to be tabled at the meeting, the document is taken to have been tabled at the meeting if the document is:
    - (A) given to the Members entitled to attend the meeting (whether physically or using Virtual Meeting Technology) before the meeting; or
    - (B) made accessible to the Members attending the meeting (whether physically or using Virtual Meeting Technology) during the meeting.

## 5.6 Notice of general meeting

- (a) Notice of a general meeting must be given in accordance with this article 5.6, article 5.7 and article 15, subject to any applicable laws.
- (b) Notice of a general meeting must be provided at least 21 days before the meeting.
- (c) Subject to article 5.6(d), notice of a general meeting may be provided by the Company less than 21 days before the meeting if:
  - (i) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
  - (ii) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (d) Notice of a general meeting cannot be provided by the Company less than 21 days before the meeting if a resolution will be moved to:
  - (i) remove a Director in accordance with the Corporations Act;
  - (ii) appoint a Director in order to replace a Director who was removed; or
  - (iii) remove an auditor in accordance with the Corporations Act.
- (e) Notice of a general meeting must be given to:
  - (i) each Member;
  - (ii) each Director; and
  - (iii) the auditor (if any).

## 5.7 Contents of notice of general meetings

Subject to any applicable laws, every notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held pursuant to article 5.5(a)(ii) or (iii), the Virtual Meeting Technology that will be used to facilitate the holding of the meeting );
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (d) contain a statement setting out the following information:
  - (i) that a Member who is entitled to vote at the general meeting has a right to appoint a proxy;
  - (ii) that the proxy must be a member or shareholder of a Member;
  - (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
  - (iv) that the proxy appointment must be delivered to the Company at least 48 hours before the meeting to its Registered Office or the place, fax number or electronic address specified in the notice of meeting.

#### **5.8 Calculation of period of notice**

In computing the period of notice for a general meeting, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

#### **5.9 Cancellation or postponement of general meeting**

- (a) Where a general meeting (including an annual general meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.
- (b) This article does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

#### **5.10 Notice of cancellation or postponement of a general meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member; and
- (b) to each other person entitled to be given notice of a general meeting.

#### **5.11 Contents of notice postponing general meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and

- (c) the Virtual Meeting Technology that will be used to facilitate the holding of the postponed meeting if it was to be held pursuant to article 5.5(a)(ii) or (iii).

#### **5.12 Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

#### **5.13 Business at postponed general meeting**

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

#### **5.14 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

#### **5.15 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of any category of Members of the Company and is entitled to speak at those meetings.

#### **5.16 Auditor entitled to notice of meeting**

- (a) The auditor (if any) is entitled to receive notice of and to attend all general meetings and all separate meetings of any category of Members of the Company and is entitled to speak at those meetings.
- (b) The Company must give the auditor (if any) all communications relating to the general meeting that a Member is entitled to receive.

#### **5.17 Circulating resolutions**

- (a) The Company may pass a resolution without a general meeting being held if all the Members 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.
- (b) Separate copies of the document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Member signs.

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## **6 Appointment of proxies, attorneys and Representatives**

### **6.1 Representatives**

- (a) A Member may, prior to each general meeting of the Company or each meeting of creditors or debenture holders of the Company, appoint an

individual as a Representative to exercise all or any of the powers the Member may exercise at such meeting in the capacity of the Member's proxy appointed under article 6.2.

- (b) The appointment of a Representative by a Member must:
  - (i) be in writing;
  - (ii) include the name of the Representative;
  - (iii) be signed on behalf of the Member by at least 2 directors of the Member (or, if the Member only has 1 director, that director); and
  - (iv) be received by the Company at the address stated in the notice under article 5.7 or at the Registered Office at least 48 hours before the relevant meeting.
- (c) A Representative has all the rights of a Member relevant to the purposes of the appointment as a Representative.

## **6.2 Appointment of a proxy**

- (a) A Member who is entitled to attend and vote at general meetings may appoint a proxy to attend and vote at a general meeting on their behalf.
- (b) A proxy must be a member or shareholder of a Member and may be an individual.
- (c) A proxy appointed to attend and vote for a Member has the same rights as the Member to:
  - (i) speak at the meeting;
  - (ii) vote (but only to the extent allowed by the appointment); and
  - (iii) join in a demand for a poll.
- (d) An appointment of proxy must be signed on behalf of the Member appointing the proxy by at least 2 directors of the Member (or, if the Member only has 1 director, that Member), and must contain:
  - (i) the Member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the name; and
  - (iv) the meeting(s) at which the appointment may be used.
- (e) Proxy forms must be received by the Company at the address stated in the notice under article 5.7 or at the Registered Office at least 48 hours before a meeting.
- (f) A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- (g) A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **6.3 Right to appoint attorney**

- (a) A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any category of Members.
- (b) To be effective, an instrument appointing an attorney under this article, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

### **6.4 Proxy, attorney or Representative at postponed general meeting**

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office written notice to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

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## **7 Proceedings at general meetings**

### **7.1 Number for a quorum**

- (a) Subject to article 7.3, the quorum for a general meeting is:
  - (i) where the Company has only 1 Member, that Member;
  - (ii) where the Company has between 2 and 20 Ordinary Members, 50% of all current Ordinary Members of the Company or 2 Ordinary Members (whichever is the greater) present in person or by proxy, attorney or Representative and entitled to vote under this Constitution are a quorum at a general meeting; or
  - (iii) otherwise, 10% of all current Ordinary Members of the Company or 20 Ordinary Members (whichever is the greater) present in person or by proxy, attorney or Representative and entitled to vote under this Constitution are a quorum at a general meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative of a Member is to be counted, except that:
  - (i) where a Member has appointed more than 1 proxy, attorney or Representative, only 1 is to be counted; and
  - (ii) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted once for that Member and once for each Member for

whom that individual is attending as proxy, attorney or Representative.

- (c) Where the Company has more than 1 Ordinary Member, Associate Members are not counted towards a quorum.

## **7.2 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairperson of the meeting (on the chairperson's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

## **7.3 If quorum not present**

If within 60 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next fortnight and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## **7.4 Adjourned meeting**

- (a) The quorum for a meeting adjourned under article 7.3(b) is:
  - (i) where the Company has only 1 Member, that Member;
  - (ii) where the Company has between 2 and 20 Ordinary Members, 50% of all current Ordinary Members of the Company or 2 Ordinary Members (whichever is the greater) present in person or by proxy, attorney or Representative and entitled to vote under this Constitution are a quorum at a general meeting; or
  - (iii) otherwise, 10% of all current Ordinary Members of the Company or 20 Ordinary Members (whichever is the lesser), present in person or by proxy, attorney or Representative and entitled to vote under this Constitution.
- (b) If a quorum is not present within 60 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **7.5 Appointment of chairperson and deputy chairperson**

- (a) At a general meeting of the Company, the Ordinary Members must elect:
  - (i) a Director to preside as chairperson of the Company; and
  - (ii) a Director to preside as deputy chairperson of the Company.
- (b) A chairperson or deputy chairperson elected under article 7.5(a) remains in that position unless the Ordinary Members elect a new chairperson or deputy chairperson (as applicable) in accordance with article 7.5(a).

## **7.6 Absence of chairperson at general meeting**

If a general meeting is held and:

- (a) a chairperson has not been elected by the Members; or
- (b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairperson of the meeting (in order of precedence):

- (i) any deputy chairperson;
- (ii) a Director chosen by a majority of the Directors present; or
- (iii) the only Director present.

## **7.7 Conduct of general meetings**

The chairperson of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairperson's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairperson under this article is final.

## **7.8 Adjournment of general meeting**

The chairperson of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

## **7.9 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **7.10 Resolutions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **7.11 Casting vote for chairperson**

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the general meeting is entitled to a casting vote in addition to any votes to which the chairperson is entitled as an Ordinary Member (or proxy, attorney or Representative of an Ordinary Member).

### **7.12 Voting on show of hands**

Subject to article 5.5(c)(iii), at any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

### **7.13 Demanding a poll**

- (a) At a general meeting of the Company, a poll may be demanded by:
  - (i) at least 3 Ordinary Members entitled to vote on the resolution;
  - (ii) Ordinary Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the chairperson of the meeting.
- (b) A poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.

### **7.14 Poll**

If a poll is effectively demanded in accordance with article 7.13:

- (a) the poll must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairperson or on a question of adjournment, the poll must be taken immediately;
- (c) the demand may be withdrawn (unless article 5.5(c)(iii) applies); and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### **7.15 Entitlement to vote**

- (a) Subject to this Constitution, the Corporations Act or any other applicable laws, and to any rights and any restrictions attached to any category of Members:
  - (i) on a show of hands, each Ordinary Member present in person and each other person present as a proxy, attorney or Representative of an Ordinary Member has one vote; and
  - (ii) on a poll, each Ordinary Member present in person has one vote and each person present as proxy, attorney or Representative of an Ordinary Member has one vote for each Ordinary Member that the person represents.
- (b) For the avoidance of doubt, Associate Members are not entitled to vote.

### **7.16 Validity of vote in certain circumstances**

Unless the Company has received written notice of the revocation before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if the Member revoked the appointment or authority before the person voted.

### **7.17 Objection to voting qualification**

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairperson of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

### **7.18 Suspension or if any Annual Subscription Fee not paid**

In addition to any other rights of the Company, if:

- (a) any Annual Subscription Fee is due and payable by a Member and is not paid; or
- (b) a Member is suspended,

the Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy, attorney or Representative, at a general meeting of the Company.

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## **8 The Directors**

### **8.1 Number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than 3 and not more than 11.

### **8.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors.

### 8.3 Retirement and election of Directors

- (a) At the first general meeting of the Company following the first adoption of this Constitution (**Inaugural General Meeting**):
- (i) all Directors in office at that time must retire and those retiring Directors may submit themselves for re-election; and
  - (ii) the Company must elect:
    - (A) up to 6 Directors who must not hold office without re-election past the third annual general meeting following the Director's election nor for more than 3 years (whichever is the longer period); and
    - (B) up to 5 Directors who must not hold office without re-election past the second annual general meeting following the Director's election nor for more than 2 years (whichever is the longer period).
- (b) The election contemplated in article 8.3(a)(ii) must be conducted in the following manner:
- (i) not later than 60 Business Days prior to the Inaugural General Meeting:
    - (A) the Company must publish a notice on its website informing Members that Director elections will be taking place at the Inaugural General Meeting, and make a copy of a blank Nomination Form available for download; and
    - (B) the Directors must appoint a Returning Officer to oversee the election process;
  - (ii) when giving notice of the Inaugural General Meeting, the Company must provide a copy of each Experience Statement submitted by each eligible candidate (as approved by the Nomination Committee in accordance with article 8.5) to all persons entitled to receive such notice under this Constitution;
  - (iii) the election will be conducted by way of ballot;
  - (iv) a ballot paper shall be prepared in advance of the meeting:
    - (A) with the names of each of the candidates that validly nominated for election listed in alphabetical order (by surname), together with the Portfolio(s) to which the candidate proposes to be allocated if elected as a Director;
    - (B) with a box next to each candidate's name; and
    - (C) which states the number of Director positions to be filled (being not more than 11) (**Total Positions Number**);
  - (v) each Ordinary Member present and voting at the Inaugural General Meeting shall be entitled to complete a ballot paper by marking a unique number between 1 and the Total Positions Number in the box next to each candidate's name (to avoid doubt, each number must only be used once), with the Total

Positions Number representing the most preferred candidate and 1 representing the least preferred candidate;

- (vi) a ballot paper will only be valid and counted if it is completed in accordance with paragraph (v) – that is, a unique number between 1 and the Total Positions Number has been written in each box on the ballot paper or, if there are more than 11 boxes on the ballot paper, in 11 (and no more than 11) boxes;
- (vii) the Returning Officer will tally the votes in all valid ballot papers by summing the numbers in each box against the name of a candidate, and produce a list of the candidates in order of total votes (the candidate with the most votes being named first, and in descending order thereafter) (**Election List**);
- (viii) the Returning Officer will declare the outcome of the election, such that:
  - (A) the first 6 candidates on the Election List will be elected to office under article 8.3(a)(ii)(A);
  - (B) the 5 candidates who are next on the Election List (i.e. after the candidates elected under 8.3(a)(ii)(A)) will be elected to office under article 8.3(a)(ii)(B); and
  - (C) any remaining candidates on the Election List will not be elected to office; and
- (ix) for the purposes of paragraphs (vii) and (viii), if two or more candidates receive an equal number of votes, their order on the Election List will be determined by the Returning Officer:
  - (A) putting the names of those candidates in a box;
  - (B) randomly withdrawing the names from the box (without looking in the box); and
  - (C) reading out each name as it is withdrawn from the box, and the order in which the names are withdrawn is the order in which those candidates will appear on the Election List.
- (c) Without prejudice to the operation of article 8.3(a)(ii)(B), a Director must not hold office without re-election:
  - (i) past the third annual general meeting following the Director's appointment or last election; or
  - (ii) for more than 3 years,whichever is the longer.
- (d) Except where article 8.3(b) applies, if the election of a Director is to take place at a general meeting:
  - (i) the Directors must appoint a Returning Officer to oversee the election process; and
  - (ii) if the number of persons validly nominated for election at the meeting exceeds the number of Director vacancies, then the election must be conducted by way of ballot in the same manner

as the Inaugural General Meeting described in article 8.3(b) (with such amendments necessary to properly facilitate the relevant election).

#### **8.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which the retirement is to take effect.

#### **8.5 Eligibility for election as Director**

- (a) To be eligible to become a Director of the Company, a person must:
- (i) be a member, director or employee of an Ordinary Member and have submitted a valid Nomination Form to the Company;
  - (ii) have the capacity to fulfil the duties of a Director (including under the Corporations Act, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), the *Associations Incorporation Act 2015* (WA) or the ACNC Act (as applicable));
  - (iii) be an Aboriginal or Torres Strait Islander person;
  - (iv) ordinarily reside in Western Australia;
  - (v) submit to the Company the results of a police background check (dated not more than 3 months before the date of the person's Nomination Form), the contents of which is not considered to be unsatisfactory by the Nomination Committee (acting reasonably);
  - (vi) not have been employed by the Company within the two years prior to the date of the meeting at which the election of the Director is to take place, except in circumstances where the person is only deemed to have been an employee of the Company at law because he or she has been paid to fulfil the office of director;
  - (vii) demonstrate, in a manner satisfactory to the Nomination Committee (acting reasonably), a:
    - (A) knowledge of, and commitment to, the charitable purposes of the Company;
    - (B) knowledge of, and commitment to, Cultural Governance policies and practices; and
    - (C) knowledge, life experience and expertise across the Social Determinants affecting Life Outcomes for Aboriginal People;
  - (viii) be present at the general meeting of Members at which the election of the Director is to occur (or the declaration of the election result is made); and
  - (ix) meet any other reasonable eligibility criteria connected to the Objects as may be determined by the Directors from time to time (provided that any additional eligibility criteria is set out in a formal policy of the Company prior to the relevant person's Nomination Form having been received by the Company).

- (b) Any Director who does not satisfy additional eligibility criteria established in accordance with article 8.5(a)(ix) after having been elected as a Director will:
  - (i) remain in office until the expiry of their office (subject to applicable law and unless otherwise removed in accordance with this Constitution); and
  - (ii) will not be eligible for re-election unless they are able to satisfy the additional eligibility criteria established in accordance with article 8.5(a)(ix).
- (c) Except for a person who is eligible for election under article 8.6, a person is not eligible for election as a Director at a general meeting of the Company unless a valid Nomination Form has been lodged at the Registered Office at least 30 Business Days before the general meeting, but no more than 50 Business Days before the meeting.

## **8.6 Casual vacancy or additional Director**

- (a) Subject to articles 8.1 and 8.5(a), the Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.
- (b) Subject to articles 8.1 and 8.5(a), the Directors may at any time appoint any person to be a Director, either to:
  - (i) fill a casual vacancy (provided that the person appointed to fill the casual vacancy is able to demonstrate a knowledge of and experience in the relevant Portfolio(s) which the vacating Director was responsible for in a manner satisfactory to the Nominations Committee); or
  - (ii) as an addition to the existing Directors.
- (c) A Director appointed under article 8.6(b) holds office:
  - (i) if appointed to fill a casual vacancy, until the expiry of the term of office of the Director whose vacation of office gave rise to the casual vacancy (but is eligible for re-election at the expiry of the term); or
  - (ii) if appointed as an addition to the existing Directors, until the conclusion of the next annual general meeting of the Company (but is eligible for election at that meeting).

## **8.7 Remuneration for services as a Director**

A Director is entitled to reasonable remuneration (at no more than market rates) for their services as a Director out of the funds of the Company as determined by resolution of the Ordinary Members. 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.

## **8.8 Reimbursement of expenses**

A Director is entitled to be reimbursed out of the funds of the Company such reasonable authorised travelling and other expenses as the Director may properly incur when travelling to or from meetings of the Company, the Directors or a Committee or when otherwise engaged on the business of the Company.

## **8.9 Payments to a Director**

Any payment to a Director (including a payment permitted under article 8.8) must be approved by the Directors.

## **8.10 Disclosure of Director's interests**

A Director must comply with any applicable laws relating to disclosure of Director interests.

## **8.11 Director's interests**

- (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 void 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 article 8.11(c) operated to the effect that there are not enough Directors to form a quorum for a Directors' meeting, the Directors (including those who have a material personal interest) may call a general meeting and the general meeting may pass a resolution to deal with the matter.
- (e) Subject to article 8.11(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 article 8.11(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) Article 8.11(e) does not apply if, and to the extent that, it would be contrary to the terms of this Constitution, the Corporations Act and any other applicable law regarding disclosure of and voting on matters involving material personal interests.

## **8.12 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of his joint or separate estate generally;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns from the office by notice in writing to the Company;
- (d) is not present personally at 3 or more consecutive meetings of the Directors in any 12 month period without an approved leave of absence from the Chairperson; or
- (e) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of any compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that appointment.

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## 9 Powers and duties of Directors

### 9.1 Duties of Directors

The Directors must comply with their duties as Directors under all applicable laws.

### 9.2 Directors to manage the Company

The Directors are responsible for overseeing the proper management of the business of the Company. They may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### 9.3 Role of Directors

In addition to their duties at law, the role of a Director includes (but is not limited to):

- (a) overseeing and managing each Portfolio for which the Director is allocated by the Directors (**Relevant Portfolio**);
- (b) engaging with Members across all regions to which the Relevant Portfolio relates;
- (c) formulating and adopting policies and guidelines of the Company;
- (d) approving changes to any by-laws of the Company;
- (e) overseeing the financial management of the Company, including approving the Company's annual reports;
- (f) approving the composition, functions, and rules for proceedings and frequency of meetings of any Committee; and
- (g) creating ad hoc committees, working groups and other structures to meet organisational objectives, or for any purpose deemed necessary.

#### **9.4 Specific powers of Directors**

Without limiting the generality of article 9.2, the Directors may exercise all the powers of the Company, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

#### **9.5 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

#### **9.6 Provisions in power of attorney**

A power of attorney granted under article 9.5 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

#### **9.7 Financial Authorities**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and electronic funds transfers, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed or authorised.

#### **9.8 Delegation of Directors' powers**

- (a) The Directors may resolve to delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to:
  - (i) a Committee or Committees consisting of more than one Director;
  - (ii) a single Director;
  - (iii) an employee of the Company; or
  - (iv) any other person,as they think fit.
- (b) The Directors may delegate their powers for such time as they determine and may revoke, withdraw, alter or vary the delegation of any of those powers.
- (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 article 9.8 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.

- (f) The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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## **10 Proceedings of Directors**

### **10.1 Directors' meetings**

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must hold not less than 4 Director's meetings each calendar year.

### **10.2 Directors may convene a meeting**

Any 3 Directors (excluding the Director elected as chairperson) may at any time, and the Secretary must on the written request of any 3 Directors (excluding the Director elected as chairperson), convene a meeting of the Directors.

### **10.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

### **10.4 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### **10.5 Chairperson and deputy chairperson of Directors' meetings**

The chairperson and deputy chairperson for Directors' meetings are the chairperson and deputy chairperson (as applicable) appointed by the Members in accordance with article 7.5.

### **10.6 Absence of chairperson at a Directors' meeting**

If a Directors' meeting is held and the chairperson is not present within 60 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the deputy chairperson will be the chairperson of the meeting. If a deputy chairperson has not been elected, or is not present or willing to act, the Directors present must elect 1 of their number to be chairperson of the meeting.

### **10.7 Chairperson's casting vote at Directors' meetings**

If there are an equal number of votes for and against a question, the chairperson of a Directors' meeting has a casting vote, unless only 2 Directors are present and entitled to vote on the question.

### **10.8 Quorum for Directors' meeting**

At a meeting of Directors:

- (a) if the number of Directors in office at the time of the meeting is an even number, the number of Directors whose presence in person is necessary

to constitute a quorum is such number equal to 50% of the Directors in office as at the time of the meeting, plus 1 Director; and

- (b) if the number of Directors in office at the time of the meeting is an odd number, the number of Directors whose presence in person is necessary to constitute a quorum is such number equal to 50% of the Directors in office as at the time of the meeting rounded up to the nearest whole number.

### **10.9 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 8.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

### **10.10 Chairperson of Committee**

The members of a Committee may elect 1 of their number as chairperson of their meetings. If a meeting of a Committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairperson of the meeting.

### **10.11 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

### **10.12 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

If there are an equal number of votes for and against a question, the chairperson of the meeting has a casting vote, unless only 2 members of the Committee are present and entitled to vote on the question.

### **10.13 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if a majority of the Directors (or, in the case of a special resolution, 75% of the Directors) entitled to vote on the resolution have consented to the resolution in accordance with this article 10.13. The resolution is passed when the last participating Director consents to the resolution in accordance with this article 10.13. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.
- (b) A Director may consent to a resolution by signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution.
- (c) Alternatively, a Director may consent to a resolution by giving the Company a written notice (including by fax or other electronic means) addressed to and received by the Secretary or the chairperson:

- (i) that signifies the Director's assent to the resolution;
- (ii) that sets out the terms of the resolution or identifies those terms; and
- (iii) if the Director has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code), that authenticates the Director's consent by those specified means.
- (iv) Any document referred to in this article may be in the form of a fax or electronic notification. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.
- (v) This article 10.13 applies to resolutions of Committees as if the references to Directors were references to Committee members.

#### **10.14 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

---

### **11 Chief Executive Officer**

- (a) The Directors may:
  - (i) appoint a Chief Executive Officer for any period;
  - (ii) delegate to the Chief Executive Officer any of the powers conferred on the Directors; and
  - (iii) withdraw or vary any of those powers,on any terms and conditions and with any restrictions as they think fit. The Directors may fix the remuneration (on a reasonable basis) of the Chief Executive Officer which may be by way of salary drawn from the Company.
- (b) Subject to the terms of any employment contract between the Company and the Chief Executive Officer, the Directors may at any time remove or dismiss the Chief Executive Officer from employment with the Company.

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## **12 Secretary**

### **12.1 Appointment of Secretary**

The Company must have at least 1 Secretary who is to be appointed by the Directors.

### **12.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **12.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to reasonable remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **13 Seals**

### **13.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **13.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents.

---

## **14 Inspection of records**

### **14.1 Inspection by Members**

A Member may inspect the Company's accounting records and other documents at the Registered Office of the Company during the Company's regular business hours.

### **14.2 Right of a Member or other person to inspect**

Subject to article 14.1, a Member or other person (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **15 Communications and service of documents**

### **15.1 Document includes notice**

In this article 15, a reference to a document includes a notice and a notification by electronic means.

## **15.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

## **15.3 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
  - (i) the document is available; and
  - (ii) how the Member may use the nominated access means to access the document.

## **15.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and, in either case, is taken to have been given and received on the day after the day of its posting.

## **15.5 Fax or other electronic means**

A document sent or given by fax or other electronic means:

- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the date of its transmission.

## **15.6 Evidence of service**

A certificate, signed by a Director, a Secretary or another person given authority by the Directors to sign such a certificate, stating that a document was sent, delivered or given to a Member personally by post, fax or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

---

## **16 Indemnity and insurance**

### **16.1 Indemnity**

To the maximum extent permitted by law (including, for the avoidance of doubt, the law relating to the charitable status of the Company), the Company indemnifies any current or former Director or other officer of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) reasonable legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company if that expenditure has been approved in accordance with the Company's policy.

### **16.2 Insurance**

To the maximum extent permitted by law (including, for the avoidance of doubt, the law relating to the charitable status of the Company), the Company may pay or agree to pay, whether directly or indirectly through an interposed entity, a premium for a contract insuring a person who is or has been a Director or other officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs.

### **16.3 Contract**

The Company may enter into an agreement with a Director or other officer of the Company with respect to the matters referred to in articles 16.1 and 16.2. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company.

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## **17 Winding up**

### **17.1 Contributions on winding up**

Each Member undertakes to contribute to the Company's property an amount not exceeding \$10 if the Company is wound up during, or within one year after the cessation of, the Member's membership, on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

### **17.2 Application of property on winding up**

If any property or funds remain on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, the property or funds may not be paid to or distributed among the Members (unless a Member satisfies the

conditions below) but must be given or transferred to one or more funds or institutions:

- (d) having a public charitable purpose or public charitable objects similar to the purpose and objects of the Company;
- (e) whose constitution or rules prohibit the distribution of its property and funds among its members to an extent at least as great as is imposed on the Company under this Constitution; and
- (f) which is an Approved Institution.

The fund or institution is to be determined by the Members in general meeting, at or before the time of dissolution, and in default by application to the Supreme Court.

### **17.3 Revocation of endorsement as a deductible gift recipient**

If the Company is endorsed as a “deductible gift recipient” under Division 30 of the Tax Act and the endorsement is revoked, despite any other provision in this Constitution, all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions must be transferred to an Approved Institution.

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## **18 Accounts**

The Directors must cause the accounts and records of the Company to be maintained and, if required, audited in accordance with the requirements of the ACNC Act (while the Company is a Registered Charity), Corporations Act and applicable Charitable Fundraising Legislation.

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## **19 Charitable Fundraising Legislation**

If the Company is an authorised fundraiser within the meaning of the Charitable Fundraising Legislation, the Company must comply with relevant requirements of the legislation and conditions of its authority to the extent applicable. This includes:

- (a) establishing and complying with proper and effective controls over fundraising appeals;
- (b) issuing receipts for money received;
- (c) management and administrative requirements; and
- (d) complying with requirements relating to conflicts of interest and dispute and complaint handling mechanisms.

# Constitution

## Schedule 1 – Founding Members

#	Member Service Name	Address	ABN
1	Bundiyarra Aboriginal Community Aboriginal Corporation	56 Eastward Road Rangeway GERALDTON WA 6530	14 269 236 490
2	West Australian Stolen Generations Aboriginal Corporation	57 Murray Street PERTH WA 6000	92 791 516 730
3	Nirrumbuk Aboriginal Corporation	34 Blackman Street BROOME WA 6725	72 899 384 821
4	Nirrumbuk Environmental Health and Services	29 Clementson Street BROOME WA 6725	70 166 603 747
5	Murchison Region Aboriginal Corporation	PO Box 2072 GERALDTON WA 6530	48 700 809 001
6	Moorditjabinjiny Housing Aboriginal Corporation	Unit 157 - 22 St Georges Terrace PERTH WA 6000	74 825 863 964
7	Aboriginal Health Council of WA	450 Beaufort Street HIGHGATE WA 6003	48 114 220 478
8	South West Aboriginal Medical Service Aboriginal Corporation	3/30 Wellington Street BUNBURY WA 6230	98 241 772 591
9	Yorgum Healing Services Aboriginal Corporation	176 Wittenoom Street EAST PERTH WA 6004	37 427 225 301
10	Yura Yungi Medical Service Aboriginal Corporation	342 Terone Street HALLS CREEK WA 6770	77 043 932 146
11	Noongar Family Safety and Wellbeing Council Incorporated	1320 Hay Street WEST PERTH WA 6005	19 968 862 095
12	Mudjar Aboriginal Corporation	4 Woods Street CHADWICK WA 6450	40 453 809 190
13	Kaata-Koorliny Employment & Enterprise Development Aboriginal Corporation T/A Keedac	129 Federal Street NARROGIN WA 6312	48 274 627 975
14	Wirraka Maya Health Service Aboriginal Corporation	17 Hamilton Road SOUTH HEDLAND WA 6722	65 321 646 982
15	Kimberley Aboriginal Medical Services Limited	PO Box 1377 BROOME WA 6725	67 169 851 861

# Constitution

## Schedule 2 – Membership rights

Membership Category	Ordinary Members
All Members	<p>All Members have the right to:</p> <ul style="list-style-type: none"><li>• receive notices of, and to attend and be heard at, any general meeting of the company; and</li><li>• inspect the Company's accounting records and other documents in accordance with article 14.</li></ul>
Ordinary Members only	<p>Ordinary Members have the right to:</p> <ul style="list-style-type: none"><li>• vote on resolutions of Members in accordance with article 7.15;</li><li>• propose a resolution to be considered at a general meeting in accordance with article 5.3;</li><li>• convene a general meeting in accordance with article 5.3;</li><li>• elect a Director to preside as chairperson of the Company in accordance with article 7.5; and</li><li>• nominate, approve, appoint or elect Directors in accordance with articles 8.3, 8.5 and 8.6.</li></ul>

# Constitution

## Schedule 3 – Membership eligibility

Membership Category	Eligibility criteria
Ordinary Member	<p>To be eligible to become an Ordinary Member of the Company, an applicant must:</p> <ul style="list-style-type: none"> <li>• <b>be an Aboriginal Community-Controlled Organisation or ACCO:</b>  an organisation that is an “Aboriginal and/or Torres Strait Islander Community-Controlled Organisation” within the meaning of clause 44 of the National Agreement, being (as at the date of this Constitution) an organisation that delivers services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is: <ul style="list-style-type: none"> <li>(a) incorporated under relevant legislation and not-for-profit;</li> <li>(b) controlled and operated by Aboriginal and/or Torres Strait Islander people;</li> <li>(c) connected to the community, or communities, in which they deliver the services; and</li> <li>(d) governed by a majority Aboriginal and/or Torres Strait Islander governing body; and</li> </ul> </li> <li>• submit a Valid Membership Application to the Secretary in accordance with article 4.2.</li> </ul>
Associate Member	<p>To be eligible to become an Associate Member of the Company, an applicant must:</p> <ul style="list-style-type: none"> <li>• <b>be an Associate Organisation:</b>  an organisation (other than an ACCO) that delivers services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is: <ul style="list-style-type: none"> <li>(a) incorporated under relevant legislation;</li> <li>(b) connected to the community, or communities, in which they deliver the services; and</li> <li>(c) either: <ul style="list-style-type: none"> <li>(i) controlled and operated by Aboriginal and/or Torres Strait Islander people; or</li> <li>(ii) governed by a majority Aboriginal and/or Torres Strait Islander governing body; and</li> </ul> </li> </ul> </li> <li>• submit a Valid Membership Application to the Secretary in accordance with article 4.2.</li> </ul> <p><b>Note:</b> For the avoidance of doubt, an “Associate Organisation” does not need to be a “not-for-profit” organisation.</p>

# Constitution

## Signing page

**DATED: 2<sup>nd</sup> March 2023**

Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a member of the Company, agrees to the terms of this Constitution.

Member Name **Bundiyarra Aboriginal Community Aboriginal Corporation**

Address 56 Eastward Road Rangeway, Geraldton WA 6530

Name of Signatory Alan John McDonald – BACAC Chairperson

Signature



Date 07 February 2023

Member Name **West Australian Stolen Generations Aboriginal Corporation**

Address 57 Murray Street, Perth WA 6000

Name of Signatory James Morrison

Signature



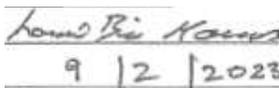
Date 03 February 2023

Member Name **Nirrumbuk Aboriginal Corporation**

Address 34 Blackman Street, Broome WA 6725

Name of Signatory Louie Bin Maarus

Signature



Date

# Constitution

## Signing page

**DATED: 2<sup>nd</sup> March 2023**

Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a member of the Company, agrees to the terms of this Constitution.

Member Name **Nirrumbuk Environmental Health and Services**

Address 29 Clementson Street, Broome WA 6725

Name of Signatory Raymond Christophers

Signature 

Date 06 February 2023

Member Name **Murchison Region Aboriginal Corporation**

Address PO Box 2072, Geraldton WA 6530

Name of Signatory Jennylyn Hamlett

Signature 

Date 02 March 2023

Member Name **Moorditjabin Housing Aboriginal Corporation**

Address Unit 157 - 22 St Georges Terrace, Perth WA 6000

Name of Signatory Sarah Tutolo

Signature 

Date 3 February 2023

# Constitution

## Signing page

**DATED: 2<sup>nd</sup> March 2023**

Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a member of the Company, agrees to the terms of this Constitution.

Member Name           **Aboriginal Health Council of WA**

Address                 450 Beaufort Street, Highgate WA 6003

Name of Signatory     Des Martin

Signature               

Date                     6 February 2023

Member Name           **South West Aboriginal Medical Service Aboriginal Corporation**

Address                 3/30 Wellington Street, Bunbury WA 6230

Name of Signatory     Ernie Hill

Signature                 
8.2.23

Date                     \_\_\_\_\_

Member Name           **Yorgum Healing Services Aboriginal Corporation**

Address                 176 Wittenoom Street, East Perth WA 6004

Name of Signatory     Laurel Sellers

Signature               

Date                     17 February 2023

# Constitution

## Signing page

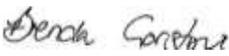
**DATED: 2<sup>nd</sup> March 2023**

Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a member of the Company, agrees to the terms of this Constitution.

Member Name            **Yura Yungi Medical Service Aboriginal Corporation**

Address                    342 Terone Street, Halls Creek WA 6770

Name of Signatory      Brenda Garstone

Signature                 

Date                        13 February 2023

Member Name            **Noongar Family Safety and Wellbeing Council Incorporated**

Address                    1320 Hay Street, West Perth WA 6005

Name of Signatory      Dawn Wallam

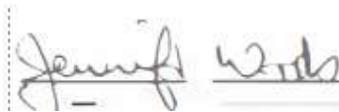
Signature:                

Date:                        17 February 2023

Member Name            **Mudjar Aboriginal Corporation**

Address                    4 Woods Street, Chadwick WA 6450

Name of Signatory      Jennifer Woods

Signature                 

Date                        7 February 2023

# Constitution

## Signing page

**DATED: 2<sup>nd</sup> March 2023**

Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a member of the Company, agrees to the terms of this Constitution.

Member Name **Kaata-Koorliny Employment & Enterprise Development  
Aboriginal Corporation T/A Keedac**

Address 129 Federal Street, Narrogin WA 6312

Name of Signatory Leanne Kickett

Signature



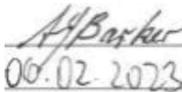
Date 28 February 2032

Member Name **Wirraka Maya Health Service Aboriginal Corporation**

Address 17 Hamilton Road, South Hedland WA 6722

Name of Signatory Alfred Barker

Signature



Date

Member Name **Kimberley Aboriginal Medical Services Limited**

Address PO Box 1377, Broome WA 6725

Name of Signatory Raymond Christophers

Signature



Date 16 February 2023