



Constitution
of the
National Institute for Aboriginal and Torres
Strait Islander Health Research Limited

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PRELIMINARY

1 Definitions

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

2 Interpretation

- 2.1 In this Constitution, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
 - (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

3 Replaceable rules

- 3.1 To the extent that they are not inconsistent with this Constitution, the replaceable rules in the Corporations Act will apply to the Company.

OBJECTS

4 Objects

- 4.1 The Company is established to be a not-for-profit organisation whose primary objects are:
- (a) to promote and facilitate the formation of collaborative alliances to pursue world class research and research training in the detection, prevention, treatment and control of diseases and injury and the promotion of health

and well-being particularly affecting Aboriginal and Torres Strait Islander persons or communities (**Alliances**);

- (b) to undertake strategic research on health systems, health determinants and health conditions with the aim of identifying methods of detecting, preventing, controlling or treating diseases and injury to which Aboriginal and Torres Strait Islander persons and communities are susceptible and the promotion of their health and well-being;
- (c) to promote knowledge exchange to improve the detection, prevention, treatment and control of disease and injury amongst Aboriginal and Torres Strait Islander people and to promote their health and well-being;
- (d) to attract, retain and develop the capacity of the research workforce in the field of Aboriginal and Torres Strait Islander health; and
- (e) to disseminate the intellectual property of the Company and the Alliances amongst Aboriginal and Torres Strait Islander people and communities, health professionals, health carers and the public in such a manner as to facilitate the detection, prevention, treatment or control of diseases or injury and to promote health and well-being amongst Aboriginal and Torres Strait Islander people and communities.

4.2 The Company may also undertake the following ancillary activities to the extent necessary to support the achievement of its primary objects:

- (a) to ensure the Alliances are managed, operated and governed so as to achieve the objectives set out in clause 4.1 and clause 4.2 (b) – (j);
- (b) to build on the legacy of the work undertaken by the Cooperative Research Centre for Aboriginal Health;
- (c) to ensure that participants in the Alliances with their differing disciplines and backgrounds will, through their participation in the Alliances and in projects relating to the field of Aboriginal and Torres Strait Islander health, add value to each other so that the performance of the Alliances will be greater than that of each participant performing independently;
- (d) to strengthen capacity of, and develop career pathways for, Aboriginal and Torres Strait Islander people in health research and related fields;
- (e) to ensure highest quality research is carried out with greatest impact on Aboriginal and Torres Strait Islander health outcomes through improved research partnerships, greater Aboriginal and Torres Strait Islander participation and control, and better ethical practices;
- (f) to promote and protect Aboriginal and Torres Strait Islander knowledge and rights, and the potential benefits to Aboriginal and Torres Strait Islander people and communities, in the dissemination of any intellectual property identified through or arising out of the work of the Company and the Alliances;
- (g) to collect authoritative information about relevant matters and to disseminate it to Aboriginal and Torres Strait Islander people and communities and to other health consumers, to service providers, to government, to the media and to the wider community;
- (h) to cooperate with other agencies which have similar objectives;

- (i) to otherwise promote the health interests of all Aboriginal and Torres Strait Islander people and communities; and
 - (j) to do all things necessary or incidental to achieving both the primary and ancillary objectives.
- 4.3 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (a) carry out the objects in this clause 4; and
 - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.3(a).

INCOME AND PROPERTY OF THE COMPANY

5 Income and property of Company

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

MEMBERSHIP

6 Admission

- 6.1 The Members of the Company are:
- (a) the organisations who consented to become Members in the application for registration of the Company, set out in Schedule 2 to this Constitution;
 - (b) any organisation that was a participant in the Cooperative Research Centre for Aboriginal Health at the time of incorporation of the Company that applies to become a Member of the Company; and
 - (c) any person that the Directors admit to membership in accordance with this Constitution.
- 6.2 Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.
- 6.3 The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
- (a) accept or reject the application; or

- (b) ask the applicant to give more evidence of eligibility for membership.
- 6.4 If the Directors ask for more evidence under clause 6.3(b), their determination of the application for membership is deferred until the evidence is given.
- 6.5 The Directors must provide written reasons for rejecting an application for membership.
- 6.6 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance.
- 6.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

7 Ceasing to be a Member

- 7.1 A Member's membership of the Company will cease:
 - (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (b) where the Member is an individual, if the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - (iii) is subject to the appointment of a trustee in bankruptcy pursuant to the *Bankruptcy Act 1966* (Cth); or
 - (iv) is convicted of an indictable offence;
 - (c) where the Member is not an individual, if:
 - (i) the Member ceases to be a participant in an Alliance, unless otherwise approved by the Directors;
 - (ii) a liquidator is appointed in connection with the winding-up of the Member;
 - (iii) an order is made by a Court for the winding-up or deregistration of the Member; or
 - (iv) the Member ceases to carry on business or ceases to exist for any reason.
- 7.2 Any Member ceasing to be a Member:
 - (a) will not be entitled to have any claim upon any portion of the property or assets of the Company; and
 - (b) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

8 Powers of attorney

- 8.1 If a Member executes or proposes to execute any document or do any act by or through an attorney that affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 8.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 8.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

9 Representatives

- 9.1 Any corporation or organisation which is a Member may by written notice to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
 - (b) remove a Representative.
- 9.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
 - (b) stand for election as an office bearer or Director; and
 - (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.
- 9.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 9.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 9.5 The appointment of a Representative may set out restrictions on the Representative's powers.

GENERAL MEETINGS

10 Calling general meeting

- 10.1 Any Director may, at any time, call a general meeting.
- 10.2 A Member may:

- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
- (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

11 Notice of general meeting

- 11.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 11.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 11.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 11.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 10.2).
- 11.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 47.1 entitled to receive notices from the Company.
- 11.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

PROCEEDINGS AT GENERAL MEETINGS

12 Member

- 12.1 In clauses 12, 13, 15 and 19, Member includes a Member present in person or by proxy, attorney or Representative.

12.2 Quorum

- (a) No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum of Members is two-thirds of Members.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (ii) in any other case:
 - A. it will stand adjourned to the same time and place seven (7) days after the meeting, or to another day, time and place determined by the Directors; and
 - B. if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

13 Chairperson

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

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

- (a) there is no chairperson or deputy chairperson;
- (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
- (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.

13.3 If no election is made under clause 13.2, then:

- (a) the Members may elect one of the Directors present as chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

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

14 Adjournment

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

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

- 14.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 14.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 14.4 Notice of an adjourned general meeting must only be given in accordance with clause 11.1 if a general meeting has been adjourned for more than 21 days.

15 Decision on questions

- 15.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 15.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 15.3 Unless a poll is demanded:
 - (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 15.4 The demand for a poll may be withdrawn.
- 15.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

16 Taking a poll

- 16.1 A poll will be taken when and in the manner that the chairperson directs.
- 16.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 16.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 16.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 16.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 16.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

17 Casting vote of chairperson

17.1 The chairperson of a general meeting will only be entitled to vote if voting as a Member, proxy, attorney or Representative. The chairperson does not have a casting vote at a general meeting.

18 Offensive material

18.1 A person may be refused admission to, or required to leave and not return to, a meeting if the person:

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

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

VOTES OF MEMBERS

19 Entitlement to vote

19.1 A Member entitled to vote has one vote.

20 Objections

20.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

20.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

20.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

21 Votes by proxy

21.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

21.2 A proxy need not be a Member.

21.3 A proxy may demand or join in demanding a poll.

21.4 A proxy or attorney may vote on a poll.

- 21.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

22 Document appointing proxy

- 22.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 22.2 For the purposes of clause 22.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 22.3 A proxy's appointment is valid at an adjourned general meeting.
- 22.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 22.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 22.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more directors or the Secretary.

23 Lodgement of proxy

- 23.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 23.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

24 Validity

- 24.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:
- (a) died;
 - (b) became mentally incapacitated; or
 - (c) revoked the proxy or power,
- unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

APPOINTMENT AND REMOVAL OF DIRECTORS

25 Number and Appointment of Directors

- 25.1 There will not be less than 3 nor more Directors than the maximum permitted under the Corporations Act.
- 25.2 The initial Directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a Company (**Interim Board**). The initial chairperson will be Pat Anderson provided that she has consented to be an initial Director. Otherwise, the initial chairperson will be elected by the Interim Board from within their number.
- 25.3 In addition to its normal duties, the Interim Board will oversee the selection process set out in clauses 25.4 – 25. 8 for the appointment of skills-based Directors.
- 25.4 The Interim Board must, within 3 months of the date of registration of the Company, establish a selection committee (**SC**) comprising of at least four (4)

eminent persons appointed by the Interim Board. The SC may include no more than one of the Directors from the Interim Board.

25.5 The SC will identify suitable candidates, which may include members of the Interim Board, for nomination and appointment as:

- (a) an Independent chairperson; and
- (b) six other Directors;

with skills in one or more of the following areas:

- (c) Aboriginal and Torres Strait Islander health;
- (d) corporate governance;
- (e) research and development/technology transfer;
- (f) education/capacity development;
- (g) finance;
- (h) business development/legal/marketing; and
- (i) public/private investment and sectoral experience.

25.6 Where the position to be filled is that of the Independent chairperson, to be eligible for nomination, the person must have corporate governance experience and must be an Aboriginal or Torres Strait Islander person.

25.7 In the course of identifying suitable candidates, the SC may consult the Members and the Directors.

25.8 The SC will consider all nominees identified under clause 25.5 and recommend to the Interim Board the nominee or nominees it considers most suited to filling the positions under clause 25.5(a) and 25.5(b) taking into account the requirements of clauses 25.5(c)-(i), 25.6 and 25.11.

25.9 At the next meeting of the Directors held after the SC has made its recommendations under clause 25.8, the Interim Board will appoint the skills-based Directors, taking into consideration the recommendations of the SC and the requirements of clauses 25.5(c)-(i), 25.6 and 25.11. The Directors appointed under this clause 25.9 will take office at the end of the meeting. A Director on the Interim Board will cease to be a Director at the end of the meeting unless that Director has been appointed as a skills-based Director under this clause 25.9.

25.10 Where the Directors determine that it is necessary or desirable for the proper functioning of the Company to increase the number of skills-based Directors, the Directors may declare an additional vacant position on the board and fill that vacancy in accordance with clause 26.

25.11 In appointing directors under this Constitution, the Directors must ensure that the Directors comprise a majority of Aboriginal and Torres Strait Islander persons and includes at least one Aboriginal person and one Torres Strait Islander person.

26 Filling Vacancies

- 26.1 Where a vacancy on the board of the Company arises, the Directors must establish a vacancy selection committee (**VSC**) within one month of the vacancy arising comprising at least four (4) eminent persons appointed by the Directors. The VSC may include no more than one of the current Directors.
- 26.2 The VSC will identify suitable candidates for nomination and appointment as directors. In the course of identifying candidates, the VSC may consult the Members and the Directors.
- 26.3 To be suitable for nomination and appointment as a director, a candidate must have the expertise or skills-base identified as being relevant to the Directors for the discharge of their responsibilities and the overall operation and management of the Company.
- 26.4 Where the vacancy to be filled is that of the chairperson, to be eligible for nomination, the person must have corporate governance experience and must be an Aboriginal or Torres Strait Islander person.
- 26.5 The VSC will consider all nominations received under clause 26.2 and recommend to the Directors the nominee or nominees it considers most suited to filling the vacancy, taking into account the requirements of clauses 25.11, 26.3 and 26.4.
- 26.6 At the next meeting of Directors held after the VSC has made its recommendation under clause 26.5, the Directors will appoint a person to fill any vacancy taking into consideration the recommendation of the VSC and the requirements of clauses 25.11, 26.3 and 26.4.

27 Chairperson

- 27.1 The first chairperson will be the person specified in clause 25.2.
- 27.2 Thereafter, the chairperson will be appointed in the manner set out in clauses 25 and 26.
- 27.3 If the chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must, in the absence of a deputy chairperson having previously been elected, elect a Director to be chairperson of the meeting.
- 27.4 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

28 Vacation of office

- 28.1 The office of a Director immediately becomes vacant if the Director:
- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;

- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) is subject to the appointment of a trustee in bankruptcy pursuant to the *Bankruptcy Act 1966* (Cth);
- (d) resigns by notice in writing to the Company;
- (e) is removed by a resolution of the Company;
- (f) is absent from Directors' meetings for six (6) consecutive months without leave of absence from the Directors; or
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

POWERS AND DUTIES

29 Powers and duties of Directors

- 29.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 29.2 Without limiting the generality of clause 29.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

PROCEEDINGS OF DIRECTORS

30 Directors' meetings

- 30.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 30.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director and each Director's alternate.
- 30.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.

- 30.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 30.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 30.6 Subject to clause 33, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 30.7 Clauses 30.4 to 30.5 apply to meetings of Directors' committees as if all committee members were Directors.
- 30.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 30.9 A quorum is a majority of Directors for the time being.
- 30.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 30.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

31 Decision on questions

- 31.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 33, each Director has one vote.
- 31.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.
- 31.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.
- 31.4 If the Alternate Director is a Director, he or she also has a vote as a Director.

PAYMENTS TO DIRECTORS

32 Payments to Directors

- 32.1 No payment will be made to any Director of the Company other than payment:
- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
 - (b) for any service rendered to the Company by the Director in a professional or technical capacity, where the provision of the service has the prior

approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;

- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

33 Directors' interests

33.1 No contract made by a Director with the Company, and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested, is void or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

33.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

33.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

33.4 Any Director having direct or indirect material personal interest in any contract or arrangement which the Company proposes to enter will declare his or her interest immediately by written notice to the chairperson. A general notice that the Director is an employee of a particular Member or Alliance Participant and is to be regarded as interested in all transactions with that Member or Alliance Participant will be a sufficient disclosure under this clause for that Director and the relevant transactions and the Director will not be required to give special notice relating to any particular transaction with that Member or Alliance Participant.

33.5 Subject to clause 33.6, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted by the Corporations Act to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;

- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 33.6 The prohibition on voting in clause 33.5 will not apply to any contract or arrangement:
- (a) in relation to a Member or a Alliance Participant who employs a Director;
 - (b) to give the Director any security for advances;
 - (c) for an indemnity of the Director; or
 - (d) where the Director is interested merely as a shareholder or director of another company.
- 33.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

34 Alternate Directors

- 34.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate for a period determined by that Director.
- 34.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 34.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 34.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 34.5 The appointment of an Alternate Director:
- (a) may be revoked at any time by the appointor or by the other Directors; and
 - (b) end automatically when the appointor ceases to be a Director.
- 34.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

35 Remaining Directors

- 35.1 The Directors may act even if there are vacancies on the board.
- 35.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

- (a) appoint a Director; or
- (b) call a general meeting.

36 Delegation

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

37 Written resolutions

- 37.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 37.2 For the purposes of clause 37.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 37.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 37.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 37.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

38 Validity of acts of Directors

- 38.1 If it is discovered that:
 - (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
 - (b) a person appointed to one of those positions was disqualified,

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

39 Minutes and Registers

- 39.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 37;
 - (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 33.
- 39.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 39.3 The Company must keep all registers required by this Constitution and the Corporations Act.

LOCAL MANAGEMENT

40 Local management

- 40.1 The Directors will appoint a chief executive officer who will be responsible for:
- (a) the day-to-day management of the Company;
 - (b) delivering to the Directors within two (2) months after the end of each Financial Year the annual reports of the Company describing the level of activity, achievements and such other information as required in sufficient detail and containing the audited financial statements for the Financial Year as necessary to meet the financial and other reporting requirements of the Company under the Corporations Act; and
 - (c) carrying out such other activities for the Company, in accordance with the directions of the Directors.
- 40.2 The Directors may appoint such other executives as it sees fit to provide support for the CEO on operational issues relating to the Company.
- 40.3 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 40.4 Without limiting clause 40.3 the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (b) delegate to any person appointed under clause 40.4(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

40.5 The Directors may at any time revoke or vary any delegation under this clause.

41 Appointment of attorneys and agents

41.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,
determined by the Directors.

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

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

41.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

41.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.

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

SECRETARY

42 Secretary

- 42.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 42.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 42.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

SEALS

43 Common Seal

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

44 Duplicate Seal

- 44.1 If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:
- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face; and
 - (b) must not be used except with the authority of the Directors.

INSPECTION OF RECORDS

45 Inspection of records

- 45.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 45.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

NOTICES

46 Service of notices

- 46.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 46.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 46.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 46.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 46.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's address for the purposes of clause 46.
- 46.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 46.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 46.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

47 Persons entitled to notice

- 47.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director and Alternate Director; and
 - (c) any Auditor.
- 47.2 No other person is entitled to receive notice of a general meeting.

AUDIT AND ACCOUNTS

48 Audit and accounts

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

GIFT FUND

49 Operation of gift fund

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

50 Transfer of the gift fund in specified circumstances

- 50.1 On:
- (a) revocation of the endorsement of the Company under sub-division 30-B of the ITAA; or
 - (b) the winding up of the gift fund by the Company,
- any balance in the Gift Fund Account or an account set up by the Company to acknowledge tax deductible gifts made to it must be transferred to such other gift fund, gift funds, entity or entities having objects similar to the objects of the Company as will be determined by the Members at or before that time, provided that each recipient must be endorsed as a deductible gift recipient under sub-division 30-B of the ITAA.

WINDING UP

51 Winding up

- 51.1 If the Company is wound up:
- (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to clause 51.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$10.

51.2 If any surplus remains following the winding up of the Company, the surplus must not be paid to or distributed amongst Members, but must be given or transferred to another organisation which is, by its guiding or founding principles or purposes, is:

- (a) an organisation with similar or complementary purposes to those of the Company or has the capacity to specifically apply the surplus in such a manner;
- (b) is not carried on for profit or gain of its individual members;
- (c) required to apply its profits (if any) or other income in promoting purposes similar or complementary to the Objects of the Company or has the capacity to specifically apply its profits or other income in such a manner; and
- (d) endorsed as a deductible gift recipient under Sub-division 30-B of the ITAA,

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

INDEMNITY

52 Indemnity

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

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

52.3 The amount of any indemnity payable under clauses 52.1 or 52.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in

connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a Tax Invoice for the GST Amount.

52.4 For the purposes of this clause, **officer** means:

- (a) a Director; or
- (b) a Secretary.

AMENDMENTS

53 Amendments

53.1 This Constitution must not be amended other than in accordance with the Corporations Act.

53.2 Subject to Rule 53.1, the Company may revoke, add to or vary the Constitution provided that:

- (a) no part of the Gift Fund Account or the income of the Gift Fund Account becomes subject to any institution, organisation, fund or authority that is not a charitable organisation endorsed to receive donations under sub-Div.30B of the ITAA ; and
- (b) unless the Commissioner of Taxation consents to the revocation, addition or variation;
 - (i) no amendment is allowed to be made to or affecting the objects of the Company; and
 - (ii) no amendment is allowed to be made which authorises the Company to invest money of the Gift Fund Account other than in a manner which trustees are permitted to invest under the laws of Australia or any Australian State or Territory.

Schedule 1 Definitions

Alliance	means the collaborative alliances referred to under clause 4.1(a).
Alliance Participant	means a person who is a participant in an Alliance.
Alternate Director	means a person appointed as an alternate director under clause 34.
Auditor	means the Company's auditor.
CEO	means the person appointed as chief executive officer under clause 40.1.
Company	means the National Institute for Aboriginal and Torres Strait Islander Health Research Limited.
Constitution	means the constitution of the Company as amended from time to time.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
Director	includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director.
Directors	means all or some of the Directors acting as a board.
Financial Year	means the period of 12 months beginning on 1 July of any year and ending on 30 June of the succeeding year provided however, the first financial year will include the period commencing on the date of registration of the Company and ending on 30 June of the immediately following year.
Gift Fund Account	means the gift fund account established under Rule 49.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or any replacement or other relevant legislation and regulations.
GST Amount	means GST as defined in the GST Act.
Independent	means: <ul style="list-style-type: none">(a) independent of the Members or the persons entitled to be Members under clause 6.1(b); and(b) independent to the extent required by any Alliance rules or funder obligations.

ITAA	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
Member	means a member registered in the Register of the Company as a member of the Company.
Register	means the register of Members of the Company.
Representative	means a person appointed as such under clause 9.
Seal	means the Company's common seal (if any).
Secretary	means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.
Tax Invoice	has the same meaning as in the GST Act, including any applicable legislative determinations and public rulings issued through the Australian Taxation Office.

Schedule 2 Subscribing Members

We, the persons whose names and addresses are set out below, wish to form a company under the terms of this Constitution.

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
Central Australian Aboriginal Congress Incorporated 25 Gap Rd Alice Springs NT 0870		

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
Danila Dilba Health Service 2/56 Pruen Rd Berrimah NT 0801		

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
University of Melbourne Parkville Melbourne VIC 3010		

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
Flinders University Sturt Road Bedford Park Adelaide SA 5001		

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
Menzies School of Health Research Royal Darwin Hospital Campus Rocklands Drive Casuarina NT 0810		

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
Charles Darwin University Darwin NT 0909		

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
The Council of the Queensland Institute of Medical Research Herston QLD 4006		

Subscribing Member's Consent:

The undersigned person consents to being a subscribing member of the National Institute for Aboriginal and Torres Strait Islander Health Research Limited and agrees to pay the amount of the guarantee if required in accordance with this Constitution.

Name and Address of Subscriber	Signature of Subscriber	Signature and Name and Address of Witness
Australian Institute of Aboriginal and Torres Strait Islander Studies Lawson Crescent Acton ACT		