

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

## Table of contents

PRELIMINARY	4
1 Definitions	4
2 Interpretation	4
3 Replaceable rules	4
OBJECTS	4
4 Objects	4
INCOME AND PROPERTY OF THE COMPANY	6
5 Income and property of Company	6
MEMBERSHIP	6
6 Admission	6
7 Ceasing to be a Member	8
8 Powers of attorney	10
9 Representatives	11
GENERAL MEETINGS	11
10 Calling general meeting	11
11 Notice of general meeting	11
PROCEEDINGS AT GENERAL MEETINGS	12
12 Member	12
13 Chairperson	13
14 Adjournment	13
15 Decision on questions	13
16 Taking a poll	14
17 Casting vote of chairperson	14
18 Offensive material	14
VOTES OF MEMBERS	15
19 Entitlement to vote	15

20	Objections	15
21	Votes by proxy	15
22	Document appointing proxy	15
23	Lodgement of proxy	16
24	Validity	16
APPOINTMENT AND REMOVAL OF DIRECTORS		17
25	Number and Appointment of Directors	17
26	Filling Vacancies	19
27	Chairperson	19
28	Vacation of office	20
POWERS AND DUTIES		20
29	Powers and duties of Directors	20
PROCEEDINGS OF DIRECTORS		21
30	Directors' meetings	21
31	Decision on questions	21
PAYMENTS TO DIRECTORS		22
32	Payments to Directors	22
33	Directors' interests	22
34	Alternate Directors	23
35	Remaining Directors	24
36	Delegation	24
37	Written resolutions	24
38	Validity of acts of Directors	25
39	Minutes and Registers	25
LOCAL MANAGEMENT		25
40	Local management	25
41	Appointment of attorneys and agents	26
SECRETARY		27

42	Secretary	27
SEALS		27
43	Common Seal	27
44	Duplicate Seal	27
INSPECTION OF RECORDS		27
45	Inspection of records	27
NOTICES		28
46	Service of notices	28
47	Persons entitled to notice	28
AUDIT AND ACCOUNTS		29
48	Audit and accounts	29
GIFT FUND		29
49	Operation of gift fund	29
50	Transfer of the gift fund in specified circumstances	29
WINDING UP		29
51	Winding up	29
INDEMNITY		30
52	Indemnity	30
AMENDMENTS		31
53	Amendments	31
Schedule 1	Definitions	32
Schedule 2	Subscribing Members	35

## 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 will comprise:
- (a) Founding Members; and
  - (b) such other class or classes of Membership established by the Directors from time to time, in accordance with clause 6.10.
- 6.2 The Directors will use best endeavours to ensure that by and from the 2014 annual general meeting the Members will include at least a majority of Aboriginal and Torres Strait Islander persons or organisations.
- 6.3 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.
- 6.4 A person seeking admission to Membership who is not a natural person must nominate a natural person to be its Nominee in accordance with clause 6.12.
- 6.5 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 will appoint Members to fulfil the objectives of this Constitution, and may at their absolute discretion:
- (a) accept or reject the application; or
  - (b) ask the applicant to give more evidence of eligibility for Membership.
- 6.6 If the Directors ask for more evidence under clause 6.5(b), their determination of the application for Membership is deferred until the evidence is given.

- 6.7 The Directors must provide written reasons for rejecting an application for Membership.
- 6.8 As soon as practicable following acceptance of an application for Membership, the Secretary will send the applicant written notice of the acceptance.
- 6.9 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.
- 6.10 The Directors may, from time to time, but subject to clause 6.15 and 6.16, establish additional classes of Membership and may prescribe the qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classes of Membership.
- 6.11 Subscriptions will be determined in the following way:
- (a) the Directors will determine the Subscription, if any, payable by Members in each Membership Year;
  - (b) the Directors are entitled to determine, in their absolute discretion, that any Subscription payable in any Membership Year by any Member, or class of Members, will vary to the Subscription payable by any other Member, or class of Members;
  - (c) if the first Membership Year applicable to the person seeking admission to Membership is comprised of less than 12 months, any first year's Subscription payable by that person is to be apportioned according to the number of days remaining in that Membership Year; and
  - (d) any Subscription that is payable is to be paid by each Member, in advance at the commencement of each financial year, by delivery to the Secretary, or to such other person or in such other manner as the Directors determine, from time to time.
- 6.12 A nomination for the purposes of clause 6.4 must:
- (a) be in writing;
  - (b) be signed and executed by the individual, body corporate or entity seeking Membership;
  - (c) be delivered to the Secretary, or to such other person as the Directors determine, from time to time; and
  - (d) accompany the application referred to in clause 6.3.
- 6.13 A Nominee may be disallowed, removed or replaced by written notice to the Secretary, signed or executed by the body corporate or entity which nominated the Nominee.
- 6.14 If the body corporate or entity which nominated a Nominee gives notice to the Secretary that it wishes its Nominee to be removed or replaced (for whatever reason), the Secretary will, subject to approval of the Directors, as soon as practicable, make the appropriate entries in the Register.
- 6.15 If at any time the Directors exercise the powers under clause 6.10, the rights, restrictions or obligations of Members or any class of Members may be varied with either:
- (a) the written consent of not less than 75% of the existing Members; or



- (b) the sanction of a special resolution passed at a separate general meeting of the existing Members.
- 6.16 If the Directors establish a new class of Membership that has the same rights, restrictions or obligations as an existing class of Membership, the establishment of that new class of Membership is not treated as a variation of the rights attaching to that class.
- 6.17 The Secretary must keep and maintain a Register containing:
- (a) the name and address of each Member;
  - (b) the date on which each Member's name was entered in the Register;
  - (c) in the case of a Member who is not a natural person, the name and address of its authorised Nominee;
  - (d) the class of Membership; and
  - (e) any other information which the Directors consider necessary.
- 6.18 Subject to the Corporations Act:
- (a) the Register will be made available for inspection, free of charge, to any Member on request; and
  - (b) a Member may make a copy of entries in the Register.

## **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.

### 7.3 Power to censure, fine, suspend or expel

- (a) If any Member:
  - (i) fails to comply with this Constitution; or
  - (ii) fails to comply with any of the rules, regulations or by-laws of the Company; or
  - (iii) is guilty of any conduct which, in the option of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company or its Members,

the Directors may, subject to clause 7.3(b), by resolution of the Directors (the “**First Resolution**”) censure, fine, suspend or expel that Member.
- (b) A First Resolution under clause 7.3(a):
  - (i) does not take effect unless the Directors, at a meeting held not earlier than 14 days and not later than 28 days after the service on the Member of a notice in accordance with clause 7.3(c), confirm the First Resolution in accordance with that clause; and
  - (ii) if the Member exercises a right of appeal to the Company, does not take effect unless the Members confirm the First Resolution in accordance with clause 7.3(h).
- (c) Where the Directors pass a First Resolution in accordance with clause 7.3(a), the Secretary must, as soon as practicable, serve on the Member, a notice in writing:
  - (i) setting out the First Resolution and the grounds on which it is based;
  - (ii) stating that the Member may address the Directors at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice;
  - (iii) stating the date, place and time of that meeting;
  - (iv) informing the Member that he or she may:
    - A. attend the meeting; or
    - B. give the Directors, before the date of the meeting, a written statement seeking revocation of the First Resolution.
- (d) At a meeting of the Directors held in accordance with 7.3(c), the Directors must:
  - (i) give the Member, or his or her representative, an opportunity to be heard; and
  - (ii) give due consideration to any written statement submitted by, or on behalf of, the Member; and
  - (iii) by resolution, determine whether to confirm or revoke the resolution.

- (e) If the Directors confirm the First Resolution, the Secretary must notify the Member of the confirmation and the Member may, not later than 48 hours after the Secretary so notifies the Member, the date of the meeting of the Directors held in accordance with clause 7.3(c), lodge with the Secretary a notice to the effect that he or she wishes to appeal to the Company in general meeting against the First Resolution.
- (f) If the Secretary receives a notice under clause 7.3(e), the Secretary must notify the Directors and the Directors must call a general meeting of Members within 21 days after the date on which the Secretary received the notice and the general meeting must be held no later than 2 calendar months after the Secretary received the notice.
- (g) At a general meeting of the Members called in accordance with clause 7.3(f):
  - (i) no business other than the question of the appeal shall be transacted;
  - (ii) the Directors may place before the meeting details of the grounds for the First Resolution and the reasons for the passing of the First Resolution;
  - (iii) the Member, or his or her representative, must be given an opportunity to be heard; and
  - (iv) the Members Present must vote by secret ballot on the question whether the First Resolution should be confirmed or revoked.
- (h) If at the general meeting:
  - (i) a majority of Members Present and voting, vote in favour of the confirmation of the First Resolution, the First Resolution will stand confirmed; and
  - (ii) in any other case, the First Resolution will be revoked.
- (i) No member is entitled to vote at any general meeting called in accordance with clause 7.3(f) unless all amounts then due and payable to the Company by that Member have been paid.
- (j) If the First Resolution is confirmed by Members, the Member concerned will immediately cease to be entitled to exercise any rights or privileges as a Member and, in the case of a resolution to expel the Member concerned, that Member will be immediately expelled.

## **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 one-third 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 Subject to this clause 25, the Company will have a minimum of three Directors, each of who will be appointed in accordance with this clause and the Membership rights set out in clause 6.
- 25.2 Subject to this clause 25, the Company may by resolution passed in general meeting:
- (a) appoint a person to be a Director;
  - (b) remove a Director from office;
  - (c) appoint another person in a Director's place;
  - (d) fix the maximum number of Directors and increase or reduce that number; and
  - (e) determine any rotation and retirement system for Directors.
- 25.3 The various terms of Existing Directors and Current Chairperson will be as set out in this clause 25.3, as follows:
- (a) The Current Chairperson will retire at the 2015 annual general meeting of the Company and, subject to compliance with the eligibility criteria in clause 27.4, will be eligible for re-appointment in accordance with clause 27.
  - (b) At the annual general meeting of the Company in 2013 three of the Existing Directors will retire, to be replaced by the following Directors:
    - (i) two representatives from the Company's academic Members, to be appointed by the Members at that meeting in accordance with clause 25.7; and
    - (ii) the chair of NACCHO in accordance with clause 25.9.
  - (c) At the first Directors' meeting held after the annual general meeting of the Company in 2013, the Directors will select two Directors from the remaining Existing Directors, who will serve a further one year term, and who will then be eligible for re-appointment by Members at the 2014 annual general meeting of the Company in accordance with clause 25.2, and if re-appointed will hold office for a period of three years from then in accordance with clause 25.4. If any of these Directors are not re-appointed by the members, they will be replaced by new Director(s) appointed in accordance with clause 25.2. The remaining Existing Directors will continue to serve as Directors for an additional one year term; and
  - (d) After the completion of the additional one year term of the remaining Existing Directors, those remaining Existing Directors will be eligible for re-appointment by Members at the 2015 annual general meeting of the Company in accordance with clause 25.2, and if reappointed will hold office for a period of three years from then in accordance with clause 25.4. If any such Existing Director is not reappointed by the Members, they will be replaced by new Director(s) in accordance with clause 25.2.

- 25.4 A Director will hold office for a period of three years, with the Director's term expiring at the close of the third annual general meeting following their appointment, and with each Director being eligible for re-appointment by Members for no more than two consecutive terms.
- 25.5 Persons eligible for nomination and appointment as a Director must be skilled in one or more of the following areas:
- (a) Aboriginal and Torres Strait Islander health;
  - (b) corporate governance;
  - (c) research and development/technology transfer;
  - (d) education/capacity development;
  - (e) finance;
  - (f) business development/legal/marketing; and
  - (g) public/private investment and sectoral experience.
- 25.6 The Directors must, at the very least, comprise a majority of Aboriginal and Torres Strait Islander persons, with at least one Aboriginal person and one Torres Strait Islander person, and will at all times include:
- (a) two representatives from the Company's academic Members;
  - (b) the chair of NACCHO.
- 25.7 Persons to be appointed to the positions referred to in clause 25.6(a) must first be nominated by the vice-chancellor, or their equivalent, of their relevant university or academic institute employer, and their nomination will then be put before the Members who will then decide whether to appoint them, in accordance with clause 25.2. The Directors will comprise no more than two such representatives at any one time. If there are more than two academic Members so nominated, the Members will appoint the two representatives from amongst those nominated academic Members.
- 25.8 In the event that an academic Member Director ceases their employment with the academic Member that nominated them, their position as a Director will become vacant, to be filled in accordance with clauses 25.6(a) and 26.
- 25.9 The appointed position as a Director held by the chair of NACCHO is an automatic and permanent appointment irrespective of clauses 25.1, 25.3, 25.4 and 25.10. In the event that the person ceases to hold the position of chair of NACCHO, the person will also cease their position as a Director, which will remain vacant until the position of the chair of NACCHO is filled, at which time, the person filling that position will automatically be appointed as a Director.
- 25.10 The appointment of Directors (excluding Existing Directors, who retire in accordance with clause 25.3 but are to be considered for re-appointment, and excluding Directors referred to in clause 25.6) will take place in the following manner:
- (a) any person wishing to serve as a Director must be nominated by an existing Member or a Director;
  - (b) the written nomination, signed by the nominee and the nominator, must be lodged with the Secretary at least one month before the annual general meeting at which the appointment is to take place;

- (c) a list of the candidates' names, in alphabetical order, each with the nominator's name, will be posted on the website of the Company in a conspicuous place and circulated to members at least fourteen days immediately preceding the annual general meeting at which the appointment is to take place;
- (d) if the number of candidates standing for appointment exceeds the number of vacancies, balloting lists will be prepared containing the names of the candidates in alphabetical order and each Member Present (excluding the candidates) at the annual general meeting will be entitled to vote for any number of candidates not exceeding the number vacancies to be filled; and
- (e) if insufficient candidates are nominated, the Directors may fill the remaining vacancy or vacancies as they think fit.

## **26 Filling Vacancies**

---

- 26.1 The Directors may appoint a person to be a Director or Independent chairperson at any time either to fill a casual vacancy or as an addition to the Existing Directors, taking into account the requirements of clause 25 and the overall operation and management of the Company, but the total number of Directors must not exceed any maximum number fixed in accordance with clause 25.2(d).
- 26.2 In the event of an appointment in accordance with clause 26.1, the person so appointed may continue in office up to and including the conclusion of the annual general meeting next following the date of the appointment.

## **27 Independent Chairperson**

---

- 27.1 The Independent chairperson of the Company will be appointed by the Members at an annual general meeting.
- 27.2 The appointment of the Independent chairperson will take place in the following manner:
- (a) the Directors will call for nominations for the position of Independent chairperson not less than three months before the annual general meeting at which the term of the then current Independent chairperson is due to expire;
  - (b) any person wishing to serve as the Independent chairperson must be nominated by an existing Member or a Director;
  - (c) the written nomination, signed by the nominee and the nominator, must be lodged with the Secretary at least one month before the annual general meeting at which the appointment is to take place;
  - (d) the Directors will then review the nominations, to ensure that each nominee is Independent; and
  - (e) a list of candidates' names, in alphabetical order, each with the nominator's name, will be posted on the website of the Company in a conspicuous place and circulated to Members at least fourteen days immediately preceding the annual general meeting at which the appointment is to take place.

- 27.3 The Independent chairperson will hold such office for a period of three years, with the Independent chairperson's term expiring at the close of the third annual general meeting following their appointment. The Independent chairperson will be eligible for re-appointment by the Members for no more than two consecutive terms.
- 27.4 In the event the position of Independent chairperson is to be filled, to be eligible to be appointed, the person must be Independent, have corporate governance experience and must be an Aboriginal or Torres Strait Islander person.
- 27.5 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 been elected, elect a Director to be chairperson of the meeting.
- 27.6 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;
  - (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;
  - (h) the term for which the person was appointed or elected expires.

## **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) of director's fees where the amount payable is approved by the Members of the Company and is no more than would be reasonable in the circumstances;
  - (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

---

<b>Aboriginal and Torres Strait Islander Organisation</b>	means an incorporated organisation: <ul style="list-style-type: none"><li>(a) which has at least 51% of its members being Aboriginal and Torres Strait Islander people;</li><li>(b) which has at least 51% of its governing board being Aboriginal and Torres Strait Islander people;</li><li>(c) whose principal purpose and activities are related specifically to Aboriginal and Torres Strait Islander people.</li></ul>
<b>Alliance</b>	means the collaborative alliances referred to under clause 4.1(a).
<b>Alliance Participant</b>	means a person who is a participant in an Alliance.
<b>Alternate Director</b>	means a person appointed as an alternate director under clause 34.
<b>Auditor</b>	means the Company's auditor.
<b>CEO</b>	means the person appointed as chief executive officer under clause 40.1.
<b>Company</b>	means the National Institute for Aboriginal and Torres Strait Islander Health Research Limited.
<b>Constitution</b>	means the constitution of the Company as amended from time to time.
<b>Cooperative Research Centres</b>	means all past cooperative research centres for Aboriginal health, which centres were first established in 1997 pursuant to the Commonwealth of Australia's Cooperative Research Centres program.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
<b>Current Chairperson</b>	means the chairperson of the Company as at 1 October 2013.
<b>Director</b>	includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director.
<b>Directors</b>	means all or some of the Directors acting as a board.
<b>Existing Directors</b>	refers to the Directors of the Company, other than the Current Chairperson, as at 1 October 2013.
<b>Financial Year</b>	means the period of 12 months beginning on 1 July of any year and ending on 30 June of the succeeding year provided 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.
<b>Founding Members</b>	means the original Members of the Company, each of whom was integral to the establishment of the Company, being the organisations that consented to becoming a Member in the application for registration of the Company under the Corporations Act, as set out in Schedule 2 to this Constitution.
<b>Gift Fund Account</b>	means the gift fund account established under Rule 49.
<b>GST Act</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or any replacement or other relevant legislation and regulations.
<b>GST Amount</b>	means GST as defined in the GST Act.
<b>Independent</b>	means not having any financial or pecuniary interest in the Company and not being a director, officer or, employee (or their equivalents) of a Member.
<b>ITAA</b>	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
<b>Member</b>	means a member registered in the Register of the Company as a member of the Company and includes: <ul style="list-style-type: none"> <li>(a) Founding Members; and</li> <li>(b) each member of any other class of membership established by the Directors in accordance with clause 6.10</li> </ul>
<b>Membership</b>	means the contractual rights of a person to membership of the Company, being the rights attaching to the class of membership conferred on that person or organisation.
<b>Membership Year</b>	means each period of 12 Months commencing on 1 July each year and ending on the next ensuing 30 June.
<b>Month</b>	means calendar month.
<b>NACCHO</b>	means the National Aboriginal Community Controlled Health Organisation ABN 89 078 949 710, registered as a company limited by guarantee under the Corporations Act.
<b>Nominee</b>	means, in respect of a Member who is not a natural person, the natural person referred to in clause 6.4 and nominated in accordance with clause 6.12, who is authorised to exercise all the rights of that Member under this Constitution.

<b>Present</b>	means, when used in relation to a Member at a meeting, present in person or by proxy, attorney, or representative.
<b>Register</b>	means the register of Members of the Company.
<b>Representative</b>	means a person appointed as such under clause 9.
<b>Seal</b>	means the Company's common seal (if any).
<b>Secretary</b>	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.
<b>Subscription</b>	means any annual subscription fee payable by Members pursuant to clause 6.11
<b>Tax Invoice</b>	has the same meaning as in the GST Act, including any applicable legislative determinations and public rulings issued through the Australian Taxation Office.

## **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.

### **Original Constitution subscribed to by:**

Central Australian Aboriginal Congress Inc

Danila Dilba Health Service

The University of Melbourne

Flinders University

Menzies School of Health Research

Charles Darwin University

The Council of the Queensland Institute of Medical Research

Australian Institute of Aboriginal and Torres Strait Islander Studies