



HealingFoundation

Strong Spirit • Strong Culture • Strong People

CONSTITUTION OF

**The Aboriginal and Torres Strait Islander
Healing Foundation Limited**

UPDATED October 2016

CONTENTS

1. PRELIMINARY.....	5
1.1 NAME OF THE COMPANY	5
1.2 OBJECTS OF THE COMPANY.....	5
1.3 NOT FOR PROFIT	5
1.4 REPLACEABLE RULES.....	5
1.5 DEFINITIONS	5
1.6 RULES FOR INTERPRETING THIS DOCUMENT	6
1.7 COMPANY'S POWERS	6
2. MEMBERSHIP.....	7
2.1 MEMBERSHIP.....	7
2.2 LIMITED LIABILITY OF MEMBERS.....	7
2.3 CESSATION OF MEMBERSHIP.....	7
3. MEETINGS OF MEMBERS.....	7
3.1 ANNUAL GENERAL MEETING	7
3.2 CALLING MEETINGS OF MEMBERS	7
3.3 NOTICE OF MEETING	8
3.4 SHORT NOTICE	8
3.5 FRESH NOTICE.....	8
3.6 TECHNOLOGY.....	8
3.7 ACCIDENTAL OMISSION	8
4. PROCEEDINGS AT MEETINGS OF MEMBERS.....	8
4.1 MEMBER PRESENT AT MEETING.....	8
4.2 QUORUM	8
4.3 QUORUM NOT PRESENT	9
4.4 CHAIRING MEETINGS OF MEMBERS.....	9
4.5 ATTENDANCE AT GENERAL MEETINGS	9
4.6 ADJOURNMENT	9
4.7 BUSINESS AT ADJOURNED MEETINGS	9
4.8 REPRESENTATION AT MEETINGS.....	9
4.9 AUTHORITY OF A PROXY OR ATTORNEY.....	10
5. ENTITLEMENT TO VOTE.....	11
5.1 NUMBER OF VOTES.....	11
5.2 CASTING VOTE OF CHAIRPERSON.....	11
5.3 DECISION ON RIGHT TO VOTE.....	11
6. HOW VOTE IS CARRIED OUT.....	11
6.1 METHOD OF VOTING	11
6.2 DEMAND FOR A POLL	11
6.3 WHEN AND HOW POLLS MUST BE TAKEN	11
7. PATRONS	12

8. DIRECTORS.....	12
8.1 NUMBER OF DIRECTORS.....	12
8.2 APPOINTMENT BY THE BOARD.....	12
8.3 INDEPENDENT SELECTION PANEL.....	12
8.4 ONE THIRD OF DIRECTORS TO RETIRE EVERY THREE YEARS.....	13
8.5 TERM OF OFFICE.....	13
8.6 LIMIT ON TERM OF OFFICE.....	13
8.7 TIME OF RETIREMENTS AND REAPPOINTMENTS.....	13
8.8 CHAIRPERSON AND DEPUTY CHAIRPERSON.....	14
8.9 NOT USED.....	14
8.10 CESSATION OF DIRECTOR’S APPOINTMENT.....	14
8.11 REMOVAL FROM OFFICE.....	14
8.12 TOO FEW DIRECTORS.....	14
9. POWERS OF THE BOARD	14
9.1 POWERS GENERALLY.....	14
9.2 EXERCISE OF POWERS.....	14
10. EXECUTING NEGOTIABLE INSTRUMENTS	15
11. CHIEF EXECUTIVE	15
11.1 APPOINTMENT AND POWERS OF THE CHIEF EXECUTIVE.....	15
11.2 TERMINATION OF APPOINTMENT OF CHIEF EXECUTIVE.....	15
12. DELEGATION OF BOARD POWERS.....	15
12.1 DELEGATION TO COMMITTEE OR ATTORNEY.....	15
12.2 TERMS OF DELEGATION.....	15
12.3 POWERS OF ATTORNEY.....	15
12.4 PROCEEDINGS OF COMMITTEES.....	15
13. DIRECTOR’S DUTIES AND INTERESTS	16
13.1 COMPLIANCE WITH LAW.....	16
13.2 SCOPE OF DIRECTORS’ DUTIES.....	16
13.3 DECLARATION OF INTERESTS.....	16
13.4 DIRECTOR INTERESTED IN AGREEMENT.....	16
13.5 AGREEMENT WITH THIRD PARTIES.....	16
13.6 OBLIGATION OF SECRECY.....	16
14. REMUNERATION	17
14.1 DIRECTORS’ REMUNERATION.....	17
14.2 REMUNERATION FOR SERVICES RENDERED.....	17
15. DIRECTORS’ AND OFFICERS’ INDEMNITY AND INSURANCE.....	17
15.1 INDEMNITY.....	17
15.2 INSURANCE.....	17
15.3 FORMER OFFICERS.....	17



16. BOARD MEETINGS	18
16.1 CONVENING BOARD MEETINGS	18
16.2 NOTICE OF BOARD MEETING.....	18
16.3 USE OF TECHNOLOGY	18
16.4 CHAIRING BOARD MEETINGS	18
16.5 QUORUM	18
16.6 MAJORITY DECISIONS.....	18
16.7 PROCEDURAL RULES	18
16.8 WRITTEN RESOLUTION	18
16.9 VALID PROCEEDINGS.....	19
17. COMPANY SECRETARY.....	19
17.1 APPOINTMENT AND REMOVAL OF SECRETARY	19
17.2 TERMS AND CONDITIONS OF OFFICE.....	19
17.3 REMOVAL FROM OFFICE	19
18. MINUTES	19
18.1 MINUTES MUST BE KEPT	19
18.2 MINUTES AS EVIDENCE.....	19
18.3 AVAILABILITY OF MINUTES TO MEMBERS.....	19
19. COMPANY SEALS.....	20
19.1 COMMON SEAL.....	20
19.2 USE OF SEALS.....	20
19.3 FIXING SEALS TO DOCUMENTS.....	20
20. ACCOUNTS AND AUDIT	20
20.1 COMPANY MUST KEEP ACCOUNTS.....	20
20.2 FINANCIAL REPORTING	20
20.3 AUDIT.....	20
20.4 CONCLUSIVE REPORTS.....	20
21. REGISTER OF MEMBERS	21
22. WINDING UP.....	21
23. NOTICES.....	21
23.1 NOTICES BY THE COMPANY	21
23.2 OVERSEAS MEMBERS.....	21
23.3 WHEN NOTICE IS GIVEN.....	22
23.4 COUNTING DAYS.....	22
24. ESTABLISHMENT AND OPERATION OF GIFT ACCOUNT	22
24.1 MAINTAINING A GIFT ACCOUNT.....	22
24.2 LIMITS ON USE OF GIFT ACCOUNT	22
24.3 WINDING UP OR REVOCATION OF DEDUCTIBLE GIFT RECIPIENT ENDORSEMENT.....	22
24.4 RECEIPTS	22
25. ALTERING THIS CONSTITUTION	23
25.1 CHARITABLE	23
25.2 NOTICE TO COMMISSIONER	23
26. APPLICATION OF THE ACT	23

PRELIMINARY

1.1 NAME OF THE COMPANY

The name of the Company is Aboriginal and Torres Strait Islander Healing Foundation Limited.

1.2 OBJECTS OF THE COMPANY

The Company is established for the public charitable purpose of promoting the prevention and control of the broad range of diseases prevalent in Aboriginal and Torres Strait Islander people including trauma, addictions and other physical and mental conditions, through, but not limited to:

- (a) education to communities;
- (b) providing support to healing initiatives;
- (c) providing information regarding appropriate Aboriginal and Torres Strait Islander healing professionals;
- (d) training health professionals (including training for preventing and treating traumatic stress syndromes caused by the after effects of colonization, social dysfunction and Stolen Generations and other policies); and
- (e) research and evaluation to provide quality assessment, improved practices and learning dissemination.

1.3 NOT FOR PROFIT

- (a) The Company's income and property must be applied solely towards promoting the Company's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any Member or Director.
- (c) This rule 1.3 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any Director to the extent permitted by law and this constitution.

1.4 REPLACEABLE RULES

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this document.

1.5 DEFINITIONS

The following definitions apply to this document.

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

'Auditor' means the auditor of the Company.

'Board' means the Directors acting collectively under this document.

'Business Day' means a day on which banks are open for business in Canberra excluding a Saturday, Sunday or a public holiday in Canberra.

'Chief Executive' means a chief executive appointed under rule 11.1.

'Commissioner' means the Commissioner of Taxation for the purposes of the ITAA 97.

'Company' means the Aboriginal and Torres Strait Islander Healing Foundation Limited.

'Deductible Contribution' means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the principal purpose of the Company.

'Director' means a person, who is, for the time being, a Director of the Company.

'Gift' means a gift of money or property as described in item 1 of the table in section 30-15 of the ITAA 97 for the principal purpose of the Company.

'ITAA 97' means the Income Tax Assessment Act 1997 (Cth).

'Member' means a person whose name is entered in the Register as a member of the Company.

'Ordinary resolution' means a resolution of Members other than a special resolution.

'Register' means the register of Members kept as required by sections 168 and 169 of the Act.

'Secretary' means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

'Special resolution' has the meaning given by section 9 of the Act.

1.6 RULES FOR INTERPRETING THIS DOCUMENT

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) a singular word includes the plural, and vice versa.
- (c) a word which suggests one gender includes the other genders.
- (d) if a word is defined, another part of speech has a corresponding meaning.
- (e) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) the word 'agreement' includes an undertaking or other binding agreement or understanding, whether or not in writing.
- (g) a power to do something includes a power, exercisable in the like circumstances to revoke or undo it.
- (h) a reference to a power is also a reference to authority or discretion.
- (i) a reference to something being 'written' or 'in writing' includes that thing being represented or reproduced in any mode in a visible form.
- (j) words (other than those defined in rule 1.5) which are defined by the Law have the same meaning in this document.
- (k) a reference to a Part or section is a reference to a Part or section of the Act.

1.7 COMPANY'S POWERS

The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out its objects in rule 1.2; and
- (b) do all things incidental or convenient in relation to the exercise of power under rule 1.7(a).

2. MEMBERSHIP

2.1 MEMBERSHIP

Subject to rule 2.3, the Members of the Company are

- (a) the persons who consent to be the initial members of the Company; and
- (b) the Directors.

2.2 LIMITED LIABILITY OF MEMBERS

Each Member of the Company undertakes to contribute to the assets of the Company (up to an amount not exceeding 50 dollars) in the event of its being wound up while a Member of the Company, or within one year after ceasing to be a Member, for payment of the debts and liabilities of the Company including costs, charges and expenses of the winding up.

2.3 CESSATION OF MEMBERSHIP

A person immediately ceases to be a Member of the Company if the Member:

- (a) dies;
- (b) resigns from the Company by giving notice in writing to the Board;
- (c) ceases to be a Director;
- (d) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health; or
- (e) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors.

3. MEETINGS OF MEMBERS

3.1 ANNUAL GENERAL MEETING

The Company must hold an annual general meeting at least once in each calendar year and within five months after the end of the financial year.

3.2 CALLING MEETINGS OF MEMBERS

- (a) A general meeting may only be called:
 - (i) by a Directors' resolution; or
 - (ii) by Members in accordance with the Act; or
 - (iii) as otherwise provided in the Act.
- (b) The Directors may change the venue for, postpone or cancel a general meeting if:
 - (i) they consider that the meeting has become unnecessary;
 - (ii) the venue would be unreasonable or impractical; or
 - (iii) a change is necessary in the interests of conducting the meeting efficiently.

3.3 NOTICE OF MEETING

- (a) Subject to rules 3.4 and 3.5, at least 21 days' written notice of a meeting of Members must be given individually to:
 - (i) each Member (whether or not the Member is entitled to vote at the meeting);
 - (ii) each Director; and
 - (iii) the Auditor.
- (b) The notice of meeting must contain the following information subject to section 249L of the Act:
 - (i) the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) if a special resolution is to be proposed at the meeting- state the resolution; and
 - (iv) if a Member is entitled to appoint a proxy- a statement that the Member has a right to appoint a proxy.
- (c) The notice of meeting must be given in accordance with rule 23 and subject to section 249J(3) of the Act.

3.4 SHORT NOTICE

Subject to sections 249H(3) and 249H(4) of the Act:

- (a) if a meeting of Members is the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95 percent of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

3.5 FRESH NOTICE

If a meeting of Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

3.6 TECHNOLOGY

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

3.7 ACCIDENTAL OMISSION

The accidental omission to give notice to, or the non-receipt of notice by any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

4. PROCEEDINGS AT MEETINGS OF MEMBERS

4.1 MEMBER PRESENT AT MEETING

If a Member has appointed an attorney or proxy to act at a meeting of Members, that Member is taken to be present at a meeting at which the attorney or proxy is present.

4.2 QUORUM

The quorum for a meeting of Members is one half of the total number of current members, plus one member, being present. A Member is treated as present at a meeting held by audio or audio-visual communication if the Member is able to hear and be heard by all others attending.

4.3 QUORUM NOT PRESENT

If a quorum is not present within 30 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D of the Act, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, within 30 minutes from the time appointed, the Members present shall form a quorum.

4.4 CHAIRING MEETINGS OF MEMBERS

- (a) If the Board has appointed a Chairperson or Deputy Chairperson to chair Board meetings in accordance with rule 8.8, the Chairperson will or, in his/her absence, a Deputy Chairperson will, chair meetings of Members.
- (b) If:
 - (i) there is no Chairperson or no Deputy Chairperson; or
 - (ii) the Chairperson or Deputy Chairperson is not present at the time for which a meeting of Members is called or is not willing to chair the meeting,
 the Members present must elect a Member or Director present to chair the meeting.

4.5 ATTENDANCE AT GENERAL MEETINGS

- (a) Every Member has the right to attend all meetings of Members whether or not entitled to vote.
- (b) Every Director has the right to attend and speak at all meetings of Members.
- (c) The Auditor has the right to attend any meeting of Members of the Company and to speak on any part of the business of the meeting which concerns the Auditor in the capacity of Auditor.

4.6 ADJOURNMENT

The chairperson of a meeting of Members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

4.7 BUSINESS AT ADJOURNED MEETINGS

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

4.8 REPRESENTATION AT MEETINGS

- (a) Subject to this constitution, each Member entitled to vote at a meeting of Members may vote:
 - (i) in person;
 - (ii) by one proxy; or
 - (iii) by one attorney.
- (b) A proxy or attorney must be a Member of the Company.
- (c) A proxy or attorney may be appointed for all meetings of Members, or for any number of meetings, or for a particular meeting.

4.9 AUTHORITY OF A PROXY OR ATTORNEY

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney is to be taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution; and
 - (ii) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given.
- (b) Even though the instrument (appointing a proxy or attorney) may refer to specific resolutions and may direct the proxy or attorney on how to vote on those resolutions, unless otherwise provided, it is taken to confer authority:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (iii) to act generally at the meeting.
- (c) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (d) Subject to rule 4.9(e), an instrument appointing a proxy or attorney need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed, or a certified copy of the authority, are:
 - (i) received at the registered office of the Company, a fax number at the Company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (ii) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (iii) in the case of a poll, produced when the poll is taken.
- (f) The Directors may waive all or any of the requirements of rules 4.9(d) or 4.9(e) and in particular, may, on production of other evidence to prove the valid appointment or a proxy or attorney required by the Directors, accept:
 - (i) an oral appointment of a proxy or attorney;
 - (ii) an appointment of a proxy or attorney which is not signed in the manner required by rule 4.9(d); and
 - (iii) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or a power of attorney or other authority under which the instrument is signed.
- (g) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the revocation of the instrument or the authority under which the instrument was executed, if no written notice of the revocation has been received by the Company by the time and at one of the places at which the instrument appointing the proxy or attorney must be deposited, tabled or produced under rule 4.9(e).
- (h) The appointment of a proxy or attorney is revoked by the appointer attending and taking part in the general meeting.

5. ENTITLEMENT TO VOTE

5.1 NUMBER OF VOTES

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting every Member present has one vote.
- (b) A proxy or attorney is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member in his or her own right.
- (c) An objection to the qualification of a person to vote at a general meeting must be:
 - (i) raised before or at the meeting at which the vote objected to is given or tendered; and
 - (ii) referred to the chairperson of the meeting, whose decision is final.
- (d) A vote not disallowed by the chairperson of a meeting under rule 5.1(c) is valid for all purposes.

5.2 CASTING VOTE OF CHAIRPERSON

The chairperson of a meeting of Members appointed under rule 4.4 has a casting vote at that meeting.

5.3 DECISION ON RIGHT TO VOTE

A Member or Director may challenge a person's right to vote at a meeting of Members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairperson, whose decision is final.

6. HOW VOTE IS CARRIED OUT

6.1 METHOD OF VOTING

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 6.2 either before or on declaration of the result of the vote on a show of hands.
- (b) Unless a poll is demanded in accordance with the Act, the chairperson's declaration of a decision on a show on hands is final.

6.2 DEMAND FOR A POLL

- (a) A poll may be demanded at a meeting of Members on any resolution (except a resolution concerning the election of the Chairperson) by:
 - (i) at least three (3) Members present in person and entitled to vote on the resolution; or
 - (ii) the chairperson.
- (b) The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

6.3 WHEN AND HOW POLLS MUST BE TAKEN

On the proper demand for a poll:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and in the manner that the Chairperson of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place that the Chairperson of the meeting directs; and
- (c) the result of the poll is the resolution of the meeting at which the poll was demanded.

7. PATRONS

The Board may from time to time in its discretion appoint a Patron or Patrons of the Company who may (but need not) be Members

8. DIRECTORS

8.1 NUMBER OF DIRECTORS

Until otherwise determined by the Directors, the number of Directors shall be not less than four (4) and not more than eleven (11).

8.2 APPOINTMENT BY THE BOARD

- (a) At the Directors meeting immediately following each Annual General Meeting (commencing 2017), the Board will appoint or re-appoint Directors to fill vacancies from retirement of Directors under rule 8.3(c) having consideration to the recommendations of the Independent Selection Panel established under rule 8.3.
- (b) The Directors may appoint any individual as a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided:
 - (i) the number of Directors does not exceed the maximum number fixed under rule 8.1; and
 - (ii) before appointing the Director, that individual signs a consent to act as a Director.
- (c) A Director appointed to fill a casual vacancy will hold office until the end of the Directors meeting immediately following the next Annual General Meeting, at which time the Director may be appointed on a permanent basis. If the Director is not appointed on a permanent basis at that Directors meeting then his or her appointment will cease.
- (d) The Board shall endeavour to ensure representation from the Stolen Generations and that gender, age and regional diversity are represented on the Board.

8.3 INDEPENDENT SELECTION PANEL

- (a) The Board must appoint an Independent Selection Panel ('the Panel') at least six (6) months prior to every third Annual General Meeting (commencing 2017).
- (b) The Panel must call for public nominations to join the Board and selection of Directors must consider the following criteria in recommending candidates to become Directors:
 - (i) commitment to healing and traditional and/or western knowledge in relation to healing;
 - (ii) personal support from community with the ability to rise above community and organisational politics;
 - (iii) individual professionalism and integrity;
 - (iv) financial management, governance and legal skills;
 - (v) ability to work with communities, governments, businesses and philanthropic organisations;
 - (vi) demonstrated respect for the diversity of Aboriginal and Torres Strait Islander people;
 - (vii) the need for representation from the Stolen Generations;
 - (viii) an appropriate balance of gender and age on the Board;
 - (ix) regional diversity, where practicable, on the Board; and
- (x) if considering Directors for re-appointment, their past Board performance.
- (c) The Panel will, at least one month before every third Annual General Meeting (commencing 2017), create and maintain, based on the criteria at rule 8.3 (b) above, a 'merit list' (the Merit List") of potential directors. The Merit List may then be used to fill vacancies, both casual and permanent, on the Board. A new Merit List must be created before every third Annual General Meeting (commencing 2017).

8.4 ONE THIRD OF DIRECTORS TO RETIRE EVERY THREE YEARS

- (a) At the Directors meeting immediately following every Annual General Meeting (commencing 2017):
- (i) where the total number of Directors (not including any Directors who are filling a casual vacancy) is a number divisible by three – one third of the Directors (not including any Directors who are filling a casual vacancy); and
 - (ii) where the total number of Directors (not including any Directors who are filling a casual vacancy) is not a number divisible by three – then the nearest whole number (rounded down) to one third of the Directors (not including any Directors who are filling a casual vacancy),

must retire from office and, subject to any limit on the term of the office of Directors under rule 8.6, are eligible for re-appointment;

- (b) Those Directors to retire under rule 8.4(a) are those Directors who:
- (i) first, wish to retire and not offer themselves for re-appointment; and
 - (ii) otherwise, have served for the longest time in office since their last appointment and, as far as necessary to obtain the number required for retirement where those Directors were appointed on the same day, are as agreed among the Directors or as decided by lot if agreement cannot be reached.
- (c) Rule 8.4, as now in force, or as previously in force, will not apply until the Directors meeting immediately following the 2017 Annual General Meeting, to any Directors who hold office at the close of the 2014 Annual General Meeting.

8.5 TERM OF OFFICE

- (a) Subject to this constitution, Directors are appointed for a term of three (3) years.

8.6 LIMIT ON TERM OF OFFICE

- (a) Subject to rules 8.6(b) and (c), Directors are limited to two (2) terms of office that is, for a period of no more than six (6) years. A Director may retire during their seventh year of office if the timing of the relevant Board meeting described in rule 8.3(c) occurs in their seventh year of office.
- (b) Rule 8.6(a) will not apply:
- I. to Directors who hold office at the 2013 Annual General Meeting, until the close of the 2018 Annual General Meeting of the Company; or
 - II. to a Director who is appointed as either Chairperson or Deputy Chairperson, in which case, that person may serve up to two (2) further terms, from the date of their appointment, to a maximum total of four (4) terms of office, that is, for a period of no more than twelve (12) years.
- (c) The Board may, if it is satisfied that it would be in the best interests of the Company to do so, extend the maximum period that a Director may hold office to no more than nine (9) years.

8.7 TIME OF RETIREMENTS AND REAPPOINTMENTS

- (a) A Director's retirement under rule 8.4(a) takes effect at the end of the relevant Board meeting, unless the Director is re-appointed at that meeting.
- (b) Where a Director is appointed other than at a Directors Meeting following an Annual General Meeting, that Director's date to be reappointed, or to retire (dependant on whether the Director is completing his or her first or second term of office), regardless of the actual date of the expiry of his or her term of office, will be, subject to rule 8.6, the date of the Directors meeting immediately following the Annual General Meeting in the year in which the Director's term of office would have otherwise expired.
- (c) A Director whose first term is to expire at a Directors Meeting following an Annual General Meeting will be automatically eligible to be reappointed as a Director for a second term at this meeting. The Board must therefore decide whether to reappoint for a second term any Director whose first term expires at a Directors Meeting following an Annual General Meeting.

8.8 CHAIRPERSON AND DEPUTY CHAIRPERSON

The Directors must elect a Chairperson of Directors and if they think fit one or more Deputy Chairpersons of Directors and determine the period or periods for which they are to hold office.

8.9 NOT USED

8.10 CESSATION OF DIRECTOR'S APPOINTMENT

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) is prohibited by the Act from holding office or continuing as a Director;
- (b) becomes insolvent under administration;
- (c) is removed from office pursuant to the Act;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (e) fails to attend Board meetings for a continuous period of six (6) months or fails to attend three (3) Board meetings in a 12 month period without leave of absence from the Board; or
- (f) resigns by notice in writing to the Company.

8.11 REMOVAL FROM OFFICE

Subject to this document, the Company by ordinary resolution may remove a Director from office.

8.12 TOO FEW DIRECTORS

If the number of Directors is reduced below the minimum required by rule 8.1 the continuing Directors may act as a Board only:

- (a) to appoint Directors up to that minimum number; and
- (b) in emergencies.

9. POWERS OF THE BOARD

9.1 POWERS GENERALLY

Except as otherwise required by the Act, any other applicable law or this document, the Board:

- (a) has power to manage the business and operation of the Company; and
- (b) may exercise every right, power or capacity of the Company which are not required to be exercised by the Company in general meeting, to the exclusion of the Company in general meeting.

9.2 EXERCISE OF POWERS

A power of the Board can be exercised only:

- (a) by resolution passed, or treated by rule 16.9 as passed, at a meeting of the Board; or
- (b) in accordance with the delegation of the power under rule 12.

10. EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile and/or electronic signatures if thought appropriate) by which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

11. CHIEF EXECUTIVE

11.1 APPOINTMENT AND POWERS OF THE CHIEF EXECUTIVE

- (a) The Board may appoint a person to be Chief Executive of the Company either for a specified term (but not for life) or without specifying a term.
- (b) The Board may delegate any of the powers of the Board to the Chief Executive:
 - (i) on the terms and subject to any restrictions the Board decides; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board.
- (c) The Board may revoke the delegation at any time.

11.2 TERMINATION OF APPOINTMENT OF CHIEF EXECUTIVE

Subject to any contract between the Company and the Chief Executive, the Board may terminate the appointment of the Chief Executive, whether or not the appointment was expressed to be for a specified term.

12. DELEGATION OF BOARD POWERS

12.1 DELEGATION TO COMMITTEE OR ATTORNEY

The Board may delegate any of its powers:

- (a) to a committee consisting of at least one Director and may also include people who are not Directors; or
- (b) to an attorney;

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 126(1) of the Act.

12.2 TERMS OF DELEGATION

- (a) A delegation of powers under rule 12.1 may be made:
 - (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

12.3 POWERS OF ATTORNEY

A power of attorney under rule 12.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

12.4 PROCEEDINGS OF COMMITTEES

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

13. DIRECTOR'S DUTIES AND INTERESTS

13.1 COMPLIANCE WITH LAW

Each Director must comply with the Act in relation to their duties and the exercise of their powers.

13.2 SCOPE OF DIRECTORS' DUTIES

A Director is not prohibited by reason of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the Auditor; or
- (b) entering into any agreement with the Company.

13.3 DECLARATION OF INTERESTS

A Director who:

- (a) is in any way interested in a contract or proposed contract with the Company; or
- (b) holds any office or possesses any property as a result of which duties or interests might be created which are directly or indirectly in conflict with the Director's duties or interests as a Director,

must declare the fact and the nature or the interest, or nature, character and extent of the conflict at the first Board meeting held after the relevant facts come to the Director's knowledge or after appointment as a Director whichever is the later.

13.4 DIRECTOR INTERESTED IN AGREEMENT

Each Director must comply with Division 2 of Part 2D.1 of the Act in relation to being present, or voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to the Act:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, whether the Company enters into an agreement or proposed agreement in which that Director has an interest;
- (b) the Company may enter into the agreement and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters involving the agreement; and
- (d) if disclosure under rule 13.3 is made before the agreement is entered into:
 - (i) the Director may retain benefits under the agreement even though the Director has an interest in the agreement; and
 - (ii) the Company cannot avoid the agreement merely because of the existence of the interest.

13.5 AGREEMENT WITH THIRD PARTIES

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure required by rule 13.3; or
- (b) is present at, or counted in the quorum for, a meeting that considers, votes on, or participates in the execution of, an agreement in breach of the Act.

13.6 OBLIGATION OF SECRECY

- (a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its accounts confidential unless required to disclose them:
 - (i) in the course of duties as an officer of the Company;
 - (ii) by the Board or the Company in a general meeting; or
 - (iii) by law.
- (b) A Director, Secretary, Auditor, committee member or other person engaged by the Company may be required to sign a confidentiality undertaking consistent with this rule 13.6. A Director or Secretary must do so if required by the Company.

14. REMUNERATION

14.1 DIRECTORS' REMUNERATION

Directors shall be entitled to be paid fees for their role as Directors provided that such fees are approved annually in advance by the Members at a properly constituted meeting of Members. In setting the fee amount each year, Members must take account of the estimated hours to perform the role of Director. No additional payment may be made to compensate for income for which an individual Director may have foregone to undertake the role of Director.

14.2 REMUNERATION FOR SERVICES RENDERED

Nothing in this Constitution prevents the payment in good faith of remuneration to any officers, or employees of the Company or to any Member of the Company in return for:

- (a) services rendered to the Company;
- (b) applied in the ordinary and usual way of business;
- (c) the payment of reasonable interest on money borrowed from any Director or Member of the Company or
- (d) reasonable rent for premises leased by any Director or Member to the Company.

15. DIRECTORS' AND OFFICERS' INDEMNITY AND INSURANCE

15.1 INDEMNITY

Subject to section 199A, the Company must, to the extent the person is not otherwise indemnified, indemnify every Director and other officer of the Company and its wholly owned subsidiaries against a liability:

- (a) incurred as officer to a person other than the Company or a related body corporate (including a liability incurred as a result of appointment or nomination of the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving lack of good faith; and
- (b) for costs and expenses incurred in defending civil or criminal proceedings in which judgment is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person.

15.2 INSURANCE

Subject to section 199B of the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person, including a Director.

15.3 FORMER OFFICERS

The indemnity in favour of officers under rule 15.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

16. BOARD MEETINGS

16.1 CONVENING BOARD MEETINGS

A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting.

16.2 NOTICE OF BOARD MEETING

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give the notice orally (including by telephone), in writing or by email,

but failure to give notice, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

16.3 USE OF TECHNOLOGY

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of Directors are present or, if an equal number of Directors are located in each of 2 or more places, at the place where the Chairperson of the meeting is located.

16.4 CHAIRING BOARD MEETINGS

The Chairperson of Directors, or in his or her absence, the Deputy Chairman is entitled to chair meetings of the Board. If there is no Chairperson or Deputy Chairperson or the Chairperson or Deputy Chairperson are not present within 15 minutes after the time for which a Board meeting is called or are unwilling to act, the Directors present must elect a Director to chair the meeting .

16.5 QUORUM

Unless the Board decides otherwise, the quorum for a Board meeting is one half of the total number of current Directors, plus one Director, being present. The quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D of the Act, the Board must resolve the basis on which Directors are treated as present.

16.6 MAJORITY DECISIONS

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution, the Chairperson has a second or casting vote.

16.7 PROCEDURAL RULES

The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.

16.8 WRITTEN RESOLUTION

- (a) If a majority of at least 75% of Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is treated as having been passed at a Board meeting at the time when the last Director making up the 75% majority signs.
- (b) Two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document.
- (c) A facsimile or electronic notification containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

16.9 VALID PROCEEDINGS

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of that person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

17. COMPANY SECRETARY

17.1 APPOINTMENT AND REMOVAL OF SECRETARY

The Board may appoint one or more individuals to be a Secretary of the Company either for a specified term or without specifying a term.

17.2 TERMS AND CONDITIONS OF OFFICE

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

17.3 REMOVAL FROM OFFICE

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

18. MINUTES

18.1 MINUTES MUST BE KEPT

The Board must cause minutes of:

- (a) proceedings and resolution of meetings of the Company's Members;
- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 12); and
- (d) resolutions passed by Directors without a meeting,

to be kept in accordance with section 251A of the Act.

18.2 MINUTES AS EVIDENCE

A minute recorded and signed in accordance with section 251A of the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

18.3 AVAILABILITY OF MINUTES TO MEMBERS

The Company must allow Members to inspect, and provide copies of the minute books for the meetings of Members in accordance with section 251B of the Act.

19. COMPANY SEALS

19.1 COMMON SEAL

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Act.

19.2 USE OF SEALS

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of the seal that does not comply with section 123 of the Act.

19.3 FIXING SEALS TO DOCUMENTS

The affixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by two Directors;
- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

20. ACCOUNTS AND AUDIT

20.1 COMPANY MUST KEEP ACCOUNTS

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the Auditor to inspect those records at all reasonable times.

20.2 FINANCIAL REPORTING

The Board must cause the Company to prepare a financial report and a Directors' report that comply with Part 2M.3 of the Act and must report to Members in accordance with section 314 of the Act no later than the deadline set by section 315 of the Act.

20.3 AUDIT

The Board must cause the Company's financial report for each financial year to be audited and obtain an Auditor's report. The eligibility, appointment, removal, remuneration rights and duties of the Auditor are regulated by the Act.

20.4 CONCLUSIVE REPORTS

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

21. REGISTER OF MEMBERS

The Company must maintain a register of Members. The register must contain the following information:

- (a) the name and address of each Member;
- (b) the date on which the entry of the Member's name in the register is made;
- (c) the name and details of each person who stopped being a Member of the Company within the last seven (7) years;
- (d) the date on which the person stopped being a Member; and
- (e) an index of Member's names where the Company has more than 50 Members (and the register itself is not kept in a form that operates effectively as an index).

22. WINDING UP

- (a) If, on the winding up or dissolution of the Company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to a fund, authority or institution:
 - (i) that is charitable at law;
 - (ii) whose constitution prohibits distributions or payments to its members and Directors (if any) to an extent at least as great as it outlined in rule 1.3(b); and
 - (iii) to which Gifts and Deductible Contributions can be deducted under Division 30 of the ITAA 97 due to it being characterized as a health promotion charity under item 1.1.6 of the table in section 30-20 of ITAA 97.
- (b) The identity of the fund, authority or institution referred to in rule 22(a) must be decided by the Directors, or if the Directors do not wish to decide or do not decide, it must be decided by the Members by ordinary resolution at or before the time of the winding up of the Company and, if the Members do not decide, by the Supreme Court of the state or territory in which the Company is registered.

23. NOTICES

23.1 NOTICES BY THE COMPANY

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by pre-paid mail to that person's address;
 - (iii) sent by fax to the fax number (if any) nominated by the at person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

23.2 OVERSEAS MEMBERS

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

23.3 WHEN NOTICE IS GIVEN

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message;
 - (i) by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a Business Day or on a day that is not a Business Day- on the next Business Day; and
- (b) if it is sent by mail, one Business Day after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that the notice was sent is conclusive evidence of service.

23.4 COUNTING DAYS

If a specified period must pass after notice is given before action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

24. ESTABLISHMENT AND OPERATION OF GIFT ACCOUNT

24.1 MAINTAINING A GIFT ACCOUNT

The Company must maintain a management account (Gift Account):

- (a) to identify and record Gifts and Deductible Contributions;
- (b) to identify and record any money received by the Company because of those Gifts and Deductible Contributions; and
- (c) that does not identify or record any other money or property.

24.2 LIMITS ON USE OF GIFT ACCOUNT

The Company must use the Gift Account only for its public charitable purpose in rule 1.2.

24.3 WINDING UP OR REVOCATION OF DEDUCTIBLE GIFT RECIPIENT ENDORSEMENT

- (a) At the first occurrence of:
 - (i) the winding up of the Company; or
 - (ii) the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97,
- (b) any surplus assets of the Gift Account must be transferred to an institution:
 - (i) which is charitable at law;
 - (ii) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 1.3(b); and
 - (iii) gifts to which are deductible under Division 30 of ITAA 97 on the basis that it is characterised as a health promotion charity under item 1.1.6 of the table in section 30-20 of ITAA 97.
- (c) The identity of the institution referred to in rule 24.3(b) must be decided by the Directors, or if the Directors do not wish to decide or do not decide, it must be decided by the Members by ordinary resolution at or before the time of winding up of the Company and, if the Members do not decide, by the Supreme Court of the state or territory in which the Company is registered.

24.4 RECEIPTS

Receipts for Gifts or Deductible Contributions must state the information required in the applicable provisions of section 30-228 of the ITAA 97.

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