CONSTITUTION

OF

ABORIGINAL FAMILY SUPPORT SERVICES LIMITED

TABLE OF CONTENTS

1. PREAMBLE 4
2. NAME 4
3. DEFINITIONS AND INTERPRETATION 4
4. ABOUT 6
5. REPLACEABLE RULES 6
6. ACT 7
7. ACNC ACT (IF APPLICABLE) 7
8. OBJECTS AND GUIDING PRINCIPLES 7
9. POWERS 8
10. CORPORATE STATUS 9
11. TAXATION STATUS 9
12. PROPERTY 9
13. MEMBERSHIP 9
14. BOARD OF DIRECTORS 16
15. REMUNERATION OF DIRECTORS 23
16. EXPENSES OF DIRECTORS 24
17. D&O INSURANCE 25
18. INDEMNITY 25
19. CHIEF EXECUTIVE 26
20. CHAIRPERSON 26
21. OTHER OFFICERS 29
22. MEETINGS OF THE BOARD 33
23. GENERAL MEETINGS 36
24. MEMBERSHIP OF OTHER BOARDS AND THE ESTABLISHMENT OF SUB-COMMITTEES 43
25. FINANCIAL REPORTING 44
26. BANK ACCOUNT OPERATION 44
27. MANAGEMENT REPORTS 44
28. NON-COMPETE 44
29. RELATED PARTY TRANSACTIONS 44
30. DIRECTOR'S RIGHT OF ACCESS 45
31. MEMBER'S RIGHT OF ACCESS 45
32. CIRCUMSTANCES NOT PROVIDED FOR 46
33. REGISTERED OFFICE 46
34. THE SEAL 46

35. MAKING AND EXECUTION OF CONTRACTS.....46
36. ANNUAL FINANCIAL REPORTS 46
37. DISPUTE RESOLUTION 46
38. NOTICES 48
39. BY-LAWS OF THE COMPANY 48
40. WINDING UP 49
41. AMENDMENT OF THE CONSTITUTION.....50

1. PREAMBLE

Aboriginal Family Support Services Limited is committed to walking alongside Aboriginal communities, children, and families, ensuring the safety, wellbeing, and empowerment of our children. We believe that fostering a safe and nurturing environment for our future generations is essential for the growth and healing of our communities. Our actions are grounded in the values of People, Culture, Integrity, and Sustainability, which guide every decision, service, and relationship we build.

We stand firm in our dedication to respecting and honouring Aboriginal traditions and wisdom, while advocating for self-determination and the rights of Aboriginal communities to shape their own future. Through partnership and collaboration, we empower families and communities to take control of their own decisions, fostering a sense of autonomy and pride. Together, we will continue to strive toward meaningful change and lasting impact, championing the rights and dignity of Aboriginal children and families.

2. NAME

The name of the Company is 'Aboriginal Family Support Services Limited'.

3. DEFINITIONS AND INTERPRETATION

3.1. Definitions

In this Constitution:

Aboriginal person means an individual who:

(a) is of the Aboriginal race of Australia;

(b) is recognised by the Aboriginal community from which he or she originated as an Aboriginal person; and

(c) identifies as being of the Aboriginal race of Australia,

and acknowledged by the Directors to have that above status based on such evidence as the Directors may require;

Act means the *Corporations Act 2001* (Cth) and any successor Act;

Annual General Meeting means a meeting of the Members of the Company held once each year at which the Company's accounts are presented to the Members and other business is conducted;

Associate Member has the meaning given to it in clause 13.4.3;

Board means the board of Directors of the Company;

Business Day means a day other than a Saturday, Sunday or official public holiday in the place where an obligation is to be performed, a right to be exercised or a notice is to be received as the case may be;

Caregiver means a person who is registered as either a foster carer, kinship carer or other carer who is registered with the Company;

Chairperson means the chairperson of the Company as appointed in accordance with clause 20;

Company means Aboriginal Family Support Services Limited;

Constitution means this document together with any schedules and annexures;

Deputy Chairperson means the deputy chairperson of the Company as appointed in accordance with clause 20;

Director means a person who has been appointed to the Board in accordance with this Constitution;

Full Member has the meaning given to it in clause 13.4.2;

General Meeting means a meeting of the Members and includes any Annual General Meeting;

Member means a member of the Company*;*

Public Officer means the public officer of the Company appointed in accordance with clause 21;

Replaceable Rule means any provision of those sections and sub-sections of the Act which are designated under section 141 as "replaceable rules" and so capable of being displaced or modified by a company's constitution.

Secretary means the secretary of the Company appointed in accordance with clause 21;

Special General Meeting means a meeting held by the Members in accordance with this Constitution, other than an Annual General Meeting;

Special Resolution means a resolution that must be passed by a majority of 75% of those voting on the resolution.

Treasurer means the treasurer of the Company appointed in accordance with clause 21;

3.2. Interpretation

In this Constitution, unless it is stated to the contrary:

3.2.1. the singular includes the plural and conversely;

3.2.2. a reference to one gender includes all genders;

3.2.3. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

3.2.4. a reference to a clause, schedule or annexure is a reference to a clause of, a schedule annexure to, this Constitution;

3.2.5. a reference to writing include any method of representing or reproducing words, figures, drawings, or symbols in a visible form;

3.2.6. a reference to legislation or to a provision of legislation include a modification or reenactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

3.2.7. a reference to conduct includes, an omission, statement, or undertaking, whether or not in writing;

3.2.8. a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case maybe, jointly and severally;

3.2.9. a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

3.2.10. the meaning of general words is not limited by specific examples introduced by “including”, or “for example”, or similar expressions;

3.2.11. references to agree, approve or consent are references to agreement, approval or consent (as the case maybe) in writing;

3.2.12. any term defined in the Act shall have the same meaning in this Constitution;

3.2.13. in the event of any ambiguity in this Constitution, the interpretation that is most consistent with the Preamble shall be preferred; and

3.2.14. headings do not affect the interpretation of this Constitution.

4. ABOUT[1]

This document is the Constitution of the Company.

5. REPLACEABLE RULES[2]

[1] By section 140(1), the constitution takes effect as a contract between the company, its member(s) and director(s) and secretary.

[2] Section 134 states that a company's internal management may be governed by replaceable rules, by a constitution or by a combination of both. By section 135(2), a constitution can displace or modify a replaceable rule. Section 141 sets out a table of the replaceable rules which are replaced by this Constitution.

This Constitution displaces all the Replaceable Rules.

6. ACT[3]

Despite any other provision in this Constitution:

6.1. if the Act prohibits a thing being done, the thing may not be done;

6.2. if the Act requires a thing to be done, authority is given for that thing;

6.3. if a provision of this Constitution is or becomes inconsistent with the Act (other than a Replaceable Rule), that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

7. ACNC ACT[4] (IF APPLICABLE)

Where at the time the Company is registered under the *Australian Charities and Not-for-profits Commission Act 2012* (**ACNC Act**):

7.1. if the ACNC Act prohibits a thing being done, the thing may not be done;

7.2. if the ACNC Act requires a thing to be done, authority is given for that thing;

7.3. if a provision of this Constitution is or becomes inconsistent with the ACNC Act, that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

8. OBJECTS AND GUIDING PRINCIPLES

8.1. The objects of the Company are to:

8.1.1. identify Aboriginal children and young people at risk, and to assist and provide support wherever possible;

8.1.2. strengthen and build capacity in Aboriginal family groups;

8.1.3. recruit suitable Caregivers;

8.1.4. identify and provide suitable and appropriate placements for Aboriginal children and young people, including those at risk;

8.1.5. provide support and services to:

a. Aboriginal children and young people;

[3] The Act contains many mandatory rules regulating the affairs of companies. Those rules are not reproduced or, in the main, signposted in this document. The rules of the common law and principles of equity also apply and are not now reproduced or signposted.

[4] Part 1.6 of Chapter 1 of the *Corporations Act 2001* modifies the application of the *Corporations Act 2001* to a company registered under the ACNC Act. See also section 45B if a 'small company limited by guarantee'.

b. Aboriginal families;

c. families caring for Aboriginal children and young people; and

d. older Aboriginal people and those Aboriginal people requiring care;

8.1.6. advocate for culturally relevant legislation and government policy on the wellbeing of Aboriginal children, Aboriginal young people, Aboriginal older people and Aboriginal families;

8.1.7. support Aboriginal people in independent living;

8.1.8. provide culturally inclusive advice and advocacy for and in relation to Aboriginal children and young people;

8.1.9. provide aged care services to Aboriginal people;

8.1.10. advocate for the social and emotional wellbeing of Aboriginal people; and

8.1.11. do all such other lawful acts as may be incidental or conductive to the carrying out of the objects and purposes of the Company.

8.2. All of the above services are to also be provided to Torres Strait Islander / Zenadth people.

8.3. The Company will be guided by the following principles:

8.3.1. to work towards the elimination of the separation of Aboriginal children from the wider Aboriginal community;

8.3.2. the reunification of Aboriginal families is a primary goal where possible and appropriate;

8.3.3. enhancing a sense of belonging to an Aboriginal community is to always be a primary consideration; and

8.3.4. Preferencing Aboriginal and/or Torres Strait Islander / Zenadth (as applicable) voices in undertaking the Company's objects.

9. POWERS

9.1. Subject to the Act, the Company has the rights, powers and privileges of a natural person.

9.2. Without limiting clause 9.1, the Company has the following powers:

9.2.1. the power to confer, cooperate and/or be affiliated with, or be a member of, any other association, company, body or

society, having objects the same as, or similar to, those of the Company; and

9.2.2. the power to do all such other things and acts as are incidental or conducive to, or convenient for the attaining of, the objects and guiding principles of the Company.

10. CORPORATE STATUS

The Company is a company limited by guarantee.

11. TAXATION STATUS

The Company may do all things necessary consistent with its objects:

11.1. for the income and gains of the Company to be exempt from income tax;

11.2. to be endorsed as a deductible gift recipient under the *Income Tax Assessment Act 1997*; and

11.3. for the Company to qualify for any concession under any tax law of Australia or of any State or Territory of Australia.

12. PROPERTY

The income, property and funds of the Company shall be used and applied solely towards the promotion of the Company's objects, and no part thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, ex gratia payment or otherwise by way of providing pecuniary benefit to Members, providing that nothing herein contained shall prevent payment in good faith of remuneration or other benefits to or reimbursements or expenses incurred by any office bearer or employee of the Company or any Director or Member of the Company in return for services or goods actually rendered to the Company and as authorised by the Board.

13. MEMBERSHIP

13.1. Liability

The Liability of the Members is limited as set out in clause 13.2.

13.2. Guarantee

13.2.1.

13.2.2. If the Company is wound up and the property of the Company is insufficient to meet its liabilities, then the Members will each contribute an amount not exceeding $10 to meet the deficiency.

13.2.3. A reference to a Member in this clause 13.2 includes a person who was a Full Member within one year of the Company being wound up.

13.3. Classes of Membership

13.3.1. The Company will have two classes of Members:

a. Full Members; and

b. Associate Members.

13.3.2. Full Members shall be entitled to attend, speak and vote at meetings of Members, and to stand for election or appointment to the Board.

13.3.3. Associate Members shall be entitled to attend and speak at meetings of Members, but will have no voting rights, and will not be entitled to be elected or appointed to the Board.

13.4. Membership eligibility

13.4.1. Membership of the Company is only available to individuals.

13.4.2. To be eligible as a Full Member, an individual must:

a. be an Aboriginal person;

b. be at least 18 years of age;

c. support and understand the Company's objectives; and

d. have normal residency in South Australia.

13.4.3. To be eligible as an Associate Member, an individual must:

a. be at least 18 years of age;

b. support and understand the Company's objectives;

c. have normal residency in South Australia;

d. be actively caring for an Aboriginal person and/or be a person of Torres Strait Islander / Zenadth descent; and

e. be a Caregiver.

13.4.4. A person must not be appointed as a Member:

a. if they have ever been convicted of:

i. a sexual offence; or

ii. an offence against children;

b. within 120 months of the later of:

i. being found guilty (whether or not convicted) of an offence of:

A. assault (including sexual assault);

B. domestic violence;

C. dishonesty offences (including fraud); or

D. trafficking in a commercial quantity of illicit drugs; or

ii. the conclusion of any term of custodial sentence related to any of the offences listed in clause 13.4.4(b)(i).

c. if, in the reasonable opinion of the Board, that person has acted or omitted to act in a manner that is prejudicial to the Company;

d. if they are an employee of the Company;

e. if they have been an employee of the Company in the preceding 12 months; or

f. if they have been an employee of the Company who was removed for or found guilty of or resigned from employment in the investigation of their misconduct or poor performance review in the preceding five years.

13.4.5. Upon the Board's request, a Member or membership applicant must provide the Board with a copy of a criminal history check not more than 12 months old.

13.5. Change of membership class

13.5.1. The Board may convert a Full Member to Associate Member by so notifying the Member if in the opinion of a majority of the Directors events or circumstances have occurred such that the Member would not be entitled to be a Full Member if they were to make application to be a Full Member.

13.5.2. An Associate Member may become a Full Member if:

a. they make an application to become a Full Member;

b. the Board is satisfied the applicant is entitled to be a Full Member– however, the Board need not give any reason for rejecting an application; and

c. the Board notifies the decision to the Member.

13.5.3. A Member dissatisfied with a decision of the Board in relation to themselves under this clause may appeal the decision to a General Meeting under clause 13.11.

13.6. Register of Members[5]

13.6.1. In addition to the information the Act requires,[6] the register of Members kept by the Company under sections 168 and 169 must contain the following information about each Member:

a. the nominated representative of the Member;

b. whether a Full Member or Associate Member;

c. the date and summary reason/s why the Member's membership was cancelled (if applicable); and

d. the date the Member resigned (if applicable).

13.6.2. The register of Members may also state an electronic address to which notices from the Company may be sent to the Member.

13.6.3. From time to time, as the Board sees fit, the register of Members must be audited to ensure the accuracy of the information recorded, and the continued eligibility of recorded individuals for membership.

13.6.4. Members are entitled to inspect the register of Members during business hours by giving not less than 2 Business Days' notice of their intention to make such an inspection.

13.6.5. A register of Members must be kept at the registered office of the Company.

13.7. Membership is not transferrable

Membership of the Company is personal to the Member and incapable of transfer.

13.8. Membership Applications

13.8.1. Applications to become a Full Member and Associate Member must be made in writing and be addressed to the Chief

[5] The register may be kept on computer (see section 1306). If the Company has more than 50 members the Company must include in the register an up to date index of members' names which is convenient to use and allows a member's entry in the register to be readily found. A separate index need not be included if the register itself is kept in a form that operates effectively as an index.
A register of members must also show the name and details of each person who stopped being a member of the Company within the last 7 years and the date on which they stopped being a member. The Company may keep these entries separately from the rest of the register.

[6] Section 169(1) requires the register of members contain the member's name and address and the date on which the entry of the member's name in the register is made.

Executive of the Company, specifying the type of membership sought, and confirming eligibility for that membership.

13.8.2. Applications for membership shall be considered by the Board in the order in which they are received.

13.8.3. The Board may reject an application for membership, notwithstanding the applicant meeting the eligibility requirements specified in clause 13.4.

13.8.4. The Board must not consider applications for memberships received after a meeting of Members has been called until after that meeting has occurred.

13.8.5. Successful membership applications must be noted on the register of Members within 14 days of the application being approved by the Board.

13.9. Suspension of Membership

13.9.1. Upon notice from the Board, a Member will be suspended for a period of three months with immediate effect if they:

a. cease to meet the membership criteria;

b. breach any Company by-law adopted by the Board at the time;

c. engage in behaviour or activity that harms or may harm the Company (including harming its reputation); or

d. violate this Constitution.

13.9.2. Suspension of a Member shall continue until a resolution is passed by the Board ending the suspension, or until the suspended Member's membership of the Company is terminated.

13.9.3. A suspended Member is not entitled to attend meetings of Members without written invitation by the Board.

13.9.4. A suspended Member is not entitled to vote at meetings of Members and shall not be included in any calculation for the quorum for such a meeting.

13.9.5. A Director who is also a Member who has been suspended is not entitled to attend or vote at meetings of the Board.

13.10. Termination of Membership

13.10.1. A Member may resign from membership of the Company at any time by giving notice in writing to the Board to that effect. Upon

delivery of such notice the Member shall immediately cease to be a Member.

13.10.2. A Member shall cease to be a Member in the event of their death or permanent incapacity, as adjudged by an appropriate medical practitioner.

13.10.3. The Members may resolve to terminate the membership of a person if:

a. the Board confirms that the person has ceased to be eligible for membership in accordance with clause 13.4;

b. that person is guilty of a willful, material breach of this Constitution or any by-law adopted by the Board at the time of the act;

c. that person has acted in a manner that the Board reasonably considers brings the Company into disrepute or prejudices the interests of the Company; or

d. that person breaches any cultural protocols.

13.10.4. A vote to terminate the membership of an individual (**Affected Member**) must be passed by ordinary resolution of the Members.

13.10.5. The Affected Member must be given a minimum of 21 days' notice of the meeting of Members considering the termination of their membership.

13.10.6. An Affected Member must be given the opportunity to be heard by the Members, either in writing, or if the Board deems it appropriate, in person at the meeting of Members.

13.10.7. The Members must be given an opportunity to consider the termination of the Affected Member's membership in absence of the Affected Member.

13.11. Appeals to a General Meeting

13.11.1. An applicant or Member (as applicable) dissatisfied with a decision of the Board to:

a. reject that person's membership application;

b. vary that member's class of membership;

c. suspend their membership; or

d. terminate their membership;

may appeal the decision to the next General Meeting by giving notice of appeal to the Company within 10 Business Days of being notified of the Board's decision.

13.11.2. If a Member gives notice under clause 13.11.1 then:

a. the relevant decision of the Board in relation to that Member is of no effect pending that next General Meeting;

b. the Board's decision being appealed must be an item of business at the next General Meeting (which could be an Annual General Meeting) to be called following receipt of the appeal; and

c. the decision being appealed must be confirmed or overturned at the next General Meeting, and if a motion to overturn the decision is put and fails at the General Meeting the decision is taken to be confirmed and takes immediate effect.

13.11.3. If an applicant or Member appeals a decision, the Board may reverse its original decision at any time before notice if given for the General Meeting at which the appeal would have been put to a vote.

13.12. Death of a member

A person ceases to be a Member if the person dies.

13.13. Honorary Life Members

13.13.1. The Members may, by resolution at a meeting of Members, bestow Honorary Life Membership to recognise a special contribution made by a Full Member.

13.13.2. Honorary Life Members are:

a. not entitled to vote on any matter by virtue of their Honorary Life Membership; and

b. entitled to attend and speak at meetings of Members.

13.14. Membership Fees

The Board may not impose fees for membership of the Company.

13.15. Obligations and Rights of Members

13.15.1. Each Member has such rights and obligations as are set out in the Act.

13.15.2. By applying for membership of the Company, each Member agrees to:

a. comply with the provisions of the Act and this Constitution;

b. comply with any by-law or code of conduct adopted by the Company;

c. treat other Members and the Board with respect and dignity; and

d. notify the Company within 28 days if they are no longer eligible for membership of the Company.

13.15.3. Members do not have the right to share in the profits of the Company or take part in the distribution of the Company's assets if it is wound up.

13.16. Contact details of members

13.16.1. Every Member agrees to promptly (and at least within 28 days of the change) notify the Board of any change in their mailing or electronic address, and any such change must be promptly entered on the register of Members.

13.16.2. The latest mailing or electronic address in the register of Members is taken to be the Member's registered address for all purposes.

14. BOARD OF DIRECTORS

14.1. Number of Directors

14.1.1. To comply with section 201A(2), the Company must have at least 3 Directors.

14.1.2. The Company may have a maximum of 7 Directors at any one time.

14.1.3. Should the Company have less than 5 Directors at any one time, the Board must take active steps to fill vacant positions until the Company has at least 5 Directors.

14.2. Composition of the Board

14.2.1. The management of the affairs of the Company shall be under the control of the Board which will act in accordance with the objects and guiding principles of the Company.

14.2.2. The Board shall be comprised of Directors who must:

a. be a natural person;

b. be a Full Member; and

c. not be disqualified from being a director by operation of law, or this Constitution.

14.2.3. A person cannot be on the Board, at the Board's discretion, if the current Board reasonably determines that:

a. they are an employee in a management role of a funding body of the Company or a competitor organisation of the Company, or are on the board of a competitor organisation or they are a Direct Family Member of any such person; or

b. they have been a director of an organisation within the last five years, that became insolvent or was shut down due to an inability to remain operational for whatever reason.

For the purpose of this clause 14.2.3 **Direct Family Member** means a spouse (including a de-facto spouse), child (including step-children and adopted children), sibling, or parent (including step-parent, guardian or adoptor).

14.2.4. The Board must not be comprised of more than two Directors who work as Caregivers.

14.2.5. The Company must aim to appoint persons to the Board who represent certain regional areas that are serviced by the Company.

14.2.6. At all times, a Director must have:

a. a national police clearance not more than 24 months old;

b. a working with children check not more than 60 months old;

c. a working with vulnerable people check not more than 60 months old; and

d. any other check or clearance as required by the Board from time to time.

14.2.7. A candidate for appointment as a Director need not have such clearances set out in clause 14.2.6, but must have submitted an application to obtain a clearance within 20 Business Days after taking office, failing which they vacate office.

14.2.8. A Director must have completed a corporate governance training course of a kind approved by the Board. A candidate for appointment as a Director need not have completed such

course, but must complete such course within 180 Business Days after taking office, failing which they vacate office.

14.2.9. Directors must complete a corporate governance training course of a kind approved by the Board, and any other training as determined by the Board to be completed, at least once every 24 months.

14.2.10. Any person elected as a Director must, within 30 days of being elected or appointed to office, and there after once every 12 months on request by the Chief Executive or the Board, provide evidence of either:

a. having received:

i. all vaccinations recommended or required by the Australian Technical Advisory Group on Immunisations for persons of their age and demographic; and

ii. any other vaccinations reasonably required by the Board to be taken by Directors by policy; or

b. a medical exemption signed by an appropriately qualified medical professional on grounds other than anxiety or hesitancy to take the relevant vaccine.

(**Vaccine Status**)

14.2.11. The Board may require a Director to prove their compliance with the requirements of clauses 14.2.6 to 14.2.10 or any other matter relevant to their eligibility to be a Director (**Director Compliance**) by notice in writing (**Evidence Request**).

14.2.12. A Director who fails to provide the requested evidence in response to an Evidence Request, or evidence of having made an application to correct any deficiency in their Director Compliance, within 30 days of receiving an Evidence Request shall cease to hold office.

14.3. Powers of the Board

Subject to this Constitution, the Board shall have the following functions, powers and responsibilities:

14.3.1. to determine policy with respect to and to operate and manage the Company in all facilities as are owned and operated by the Company;

14.3.2. to manage the affairs of the Company;

14.3.3. to keep minutes and deal with correspondence of the Company;

14.3.4. to raise or borrow money for the sole purposes of the Company and to secure repayment thereof in such manner as the Board thinks fit or to secure the repayment or performance of any debt, liability, contract, guarantee, indemnity, or other engagement entered into by the Board on behalf of the Company in any way and to secure any of the Company's obligations under such arrangement by way of mortgage or charge over any or all of the Company's property including a general security agreement over all its real and personal property;

14.3.5. to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;

14.3.6. to conduct overdraft accounts;

14.3.7. to enter into any arrangement for the purpose of managing financial risks relating to risks arising from changes in foreign currency exchange rates, interest rates or discount rates subject to such transactions not being used for speculative purposes;

14.3.8. subject to this Constitution, to make regulations for the proper management of the Company which regulations shall be binding on the Board, employees and Members;

14.3.9. to delegate the carrying out of such powers and duties of the Board as the Board may determine to such sub-committees as the Board may determine; and

14.3.10. to do all such other things as are within the powers of the Company that are not vested in the Members in general meeting.

14.4. Delegation Of Powers[7]

14.4.1. As section 198D allows, the Board may delegate any of its powers to one or more Directors, a Board sub-committee (including a fluctuating body of persons) or the Chief Executive.[8]

14.4.2. A delegation of powers by the Board:

a. may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;

b. may be concurrent with, or to the exclusion of, the exercise by the Board of those powers.

[7] Section 190 may make directors liable for the exercise of a power by their delegate.
[8] The delegation must be recorded in the company's minute book.

14.4.3. A delegate must exercise the powers delegated in accordance with any directions given by the Board.[9] Such directions may include that a decision, or kind/s of decision, of the delegate is not effective unless approved by a resolution of the Board.

14.4.4. At any time, the Board may modify or revoke a delegation.

14.4.5. A committee may be comprised of such persons from within or outside the Company as the Board may think appropriate.

14.4.6. The Board should appoint the members of any committees annually, or as desired to fill any casual vacancy.

14.4.7. The Board may remove any person from a committee for just cause.

14.5. Director Portfolios

Without limiting clause 14.4, the Board may vest in a particular Director or Directors an area of responsibility, such as, for example, community engagement or liaison with other Indigenous organisations in a particular field.

14.6. Term Limit of Directors

14.6.1. A Director is to be appointed for a term of office of:

a. if it is their first appointment to the Board, 36 months;

b. If it is not their first appointment to the Board, 24months[10],

or the AGM next held after those 36 or 24 months expire (as the case may be), whichever is the later (unless they vacate the office in the meantime).

14.6.2. A Director having served for at least 84 consecutive months (being terms of 3 plus 2 plus 2 years) may not be appointed as a Director unless either:

a. no other eligible person nominates for that office;

b. 12 months have elapsed since the person was last a Director; or

c. the Board resolves by 75% of all Directors eligible to vote to accept the Director's nomination to serve one further term. If appointed, once the Director serves this

[9] Section 198D(2).
[10] Whether by reappointment to a consecutive term or a subsequent appointment, which is not consecutive to that Member's previous appointment(s).

further term[11] they may not be reappointed unless subparagraphs a or b apply.

14.7. Vacating office

14.7.1. If a Director fails to comply with the requirements referred to in clauses 14.2.5 to 14.2.10, or if the Board believes that a Director has failed to comply with those requirements, the Director shall be given written notice of that fact. If the Director does not rectify their non-compliance within 10 Business Days and provide evidence of that compliance to the Board in a reasonably acceptable form, they shall immediately vacate office.

14.7.2. A Director shall continue to be considered a Director of the Company until such time as:

a. their terms expire;

b. they die or are incapacitated;

c. they resign by notice in writing to the Chief Executive; or

d. the person is disqualified from being a Director by operation of law or removed from their position as Director by a provision of this Constitution.

14.8. Suspension of Directors

14.8.1. The Board may suspend a Director immediately from their role if:

a. they breach any by-law or code of conduct endorsed by the Board;

b. they take any action which could reasonably be seen to damage the reputation, objects or purposes of the Company;

c. they fail to attend three consecutive meetings, or 75% of meetings they are due to attend within a 12 month period without reasonable excuse; or

d. the Board passes an ordinary resolution that they be suspended.

14.8.2. Failure to attend the majority of the duration of a meeting will be considered a failure to attend a meeting for the purposes of clause 14.8.1.c.

[11] such that they have served at least 108 consecutive months

14.8.3. The Secretary must notify the Director of the suspension within seven days of the suspension coming into effect.

14.8.4. The suspension of a Director shall continue until the Board passes a resolution reinstating the Director or 3 months has passed since the date of suspension (whichever occurs first).

14.8.5. A suspended Director is not entitled to attend or speak at meetings of the Board or at a meeting of Members other than in accordance with a process set out in this Constitution, unless invited to do so by the Board.

14.9. Removal of Directors

14.9.1. Under section 203D, the Company has statutory power to remove any Director by resolution. In addition, the Company may by resolution remove any Director from office, provided that the Director is afforded natural justice in relation to such removal.[12]

14.9.2. The Board may not remove a Director unless permitted to do so by the Corporations Act.[13]

14.10. Review of decision to suspend a Director or Executive officer

14.10.1. A Director who has been suspended from their position as Director or office bearing role, as the case may be, (**Affected Director**) may by written notice to the Secretary within seven days of the suspension, request a review of their suspension by the Members of the Company.

14.10.2. The decision must be reviewed by the Members at the next meeting of Members to be called after receipt of the notice of appeal from the Affected Director, at which the Members may confirm the suspension, revoke the suspension or remove the Director from their position on the Board.

15. REMUNERATION OF DIRECTORS

15.1. The Directors are to be paid the remuneration (if any) the Board Remuneration Committee determines by resolution.[14]

15.2. Remuneration is only to be paid for Board Meetings and is not payable for any meetings or duties undertaken as part of a sub-committee unless recommended by the Board Remuneration Committee and approved by a Special Resolution of the Board.

15.3. Remuneration is only to be paid if there are sufficient, uncommitted funds of the Company.

15.4. The Board Remuneration Committee shall be comprised of at least one Director, the Chief Executive (if any) and two individuals who are skilled in the area of finance and/or human resources, who shall consult relevant benchmarking guides in determining remuneration rates for Directors (if any).

15.5. A determination by the Board under this clause may, for example:

---

[12] Notice of the intention to move the resolution must be given to the Company at least 2 months before the meeting is to be held unless the Company calls a meeting after the notice of intention is given as per section 203D(2). The Company must give the director a copy of the notice as soon as practicable after it is received and the director is entitled to put their case to members by giving a written statement for circulation or speaking to the motion at the meeting.

[13] Section 203E.

[14] Under general law, a director has no right to demand remuneration. In this context, remuneration means directors' fees, not wages or salaries paid to employees who happen to also be directors. The fixing of wages and salaries is usually a matter solely for the directors. The members may be entitled to require disclosure of the directors' remuneration under section 202B.

15.5.1. stipulate remuneration be payable per attendance by a Director at Board meetings, up to a maximum amount per Director per 12 months;

15.5.2. differentiate between remuneration to the Chairperson and / or Deputy Chairperson, as against other Directors;

15.5.3. differentiate between remuneration to Directors with specialist skills, experience or expertise, or who are performing duties in excess of those expected of other Directors, as against other Directors;

15.5.4. be conditional upon the Company having sufficient funds on hand to pay the remuneration when due.

15.6. Any remuneration of the Directors accrues from day-to-day.

15.7. Where remuneration is based on meeting attendance, a Director must attend and actively participate in at least 85% of the relevant meeting to receive remuneration.

15.8. Remuneration will never be paid for meetings that do not proceed due to lack of quorum (though travel expenses may be reimbursed).

15.9. The Board must disclose to Members at each AGM the remuneration paid to each Director.

15.10. The Members may, by ordinary resolution, set a cap on the maximum amount that the Board in aggregate may be paid in any 12 month period. Such cap shall continue until revoked or amended by the Members, but shall increase by the annual increase in the Australian All Groups Consumer Price Index on 1 July each year.

15.11. For the avoidance of doubt, a Director does not have to accept remuneration payable to them under this clause 15. Such remuneration funds not accepted must be applied to the furtherance of the Company’s objects.

16. EXPENSES OF DIRECTORS

The Company may pay a Director's travelling and other expenses that they properly incur with prior approval of the Board:

16.1. in attending any Board meetings, meetings of committees, or General Meetings;

16.2. in connection with the Company's business.

17. D&O INSURANCE

Subject to section 199B,[15] the Company may pay a premium for a contract insuring a person who is or has been a Director against a liability incurred as a Director.

18. INDEMNITY[16]

18.1. To the extent permitted by law, and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person:

18.1.2. as an officer of the Company; and

18.1.3. to a person other than the Company or a related body corporate of the Company,

unless the liability arises out of conduct on the part of the officer which:

18.1.4. involves a lack of good faith;

18.1.5. involves a willful breach of the law or dishonesty; or

18.1.6. is contrary to the Company's express instructions.

18.2. To the extent permitted by law and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company indemnifies every officer of the Company against any liability for costs and expenses incurred by the person as an officer of the Company:

18.2.1. in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

18.2.2. in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act.

18.3. Unless the Board otherwise determines, this clause ceases to apply in favour of a person who does not to the satisfaction of the Board cooperate with the Company in investigating, defending or resolving the matter to which this clause would otherwise apply.

[15] Section 199B prevents the Company from insuring an officer or auditor of the Company against liability (other than one for legal costs) arising out of conduct involving a wilful breach of duty in relation to the company, or a contravention of section 182 or 183 (relating to unlawful use of position or information obtained for personal gain).

[16] Section 199A limits the indemnity a company may afford an officer. Section 199B limits the company's paying insurance premiums for an officer.

18.4. The Company may execute a documentary indemnity (not inconsistent with applicable law or this clause) in any form in favour of a person who is or has been an officer of the Company.

18.5. In this clause, officer means:

18.5.1. a Director,

18.5.2. a Secretary;

18.5.3. a senior manager (as defined in the Act);[17] and

18.5.4. any employees of the Company as determined by the Board.

19. CHIEF EXECUTIVE

19.1. The Board must appoint an individual to the office of Chief Executive of the Company for the period, and on the terms (including as to remuneration), as the Board sees fit.

19.2. A Chief Executive must not be a Director. If a Chief Executive is appointed as a Director, the Chief Executive vacates the office of Chief Executive and vice versa.

19.3. The Board may revoke or vary an appointment of a Chief Executive, subject to any agreement made between the Chief Executive and the Company.

19.4. The Board may modify or revoke a delegation of powers to the Chief Executive, subject to any agreement made between the Chief Executive and the Company.

19.5. The Chief Executive may attend and speak at Board meetings at all times except during discussions regarding the Chief Executive's performance, discipline or remuneration, or where the Chief Executive otherwise has a conflict of interest in relation to the matter under discussion.

19.6. The Chief Executive shall be responsible for conveying communications relevant to the strategy or operations of the Company, and employment matters between the Board and staff of the Company, unless the Chief Executive determines it appropriate for Directors and staff members to communicate directly.

19.7. If the position of Chief Executive is not filled at any one time, the Board must make reasonable efforts to fill the position as soon as reasonably practicable.

20. CHAIRPERSON

[17] A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the Company's business, or who has the capacity to affect significantly the financial standing of the Company.

There must be a Chairperson and a Deputy Chairperson, unless the Company is in the process of seeking a new Chairperson and/or Deputy Chairperson.

20.1. Qualification for a Chairperson / Deputy Chairperson

20.1.1. Only a Director who has served at least one full term may be appointed as Chairperson. The Board may however appoint a Director who has not yet served a full term if at least 75% of all Directors eligible to vote resolve to do so.

20.1.2. Only a Director may be appointed as Deputy Chairperson.

20.2. Appointment of a Chairperson / Deputy Chairperson

20.2.1. Subject to clause 20.1, a Chairperson and Deputy Chairperson are each to be appointed by the Board from within the Directors. A Director is only eligible to be appointed as Chairperson or Deputy Chairperson if they have been serving as a Director for a period of 12 months immediately prior to their nomination. If more than one person nominates for the office of Chairperson or Deputy Chairperson (as applicable), the Directors may:

a. request the nominees speak on behalf of themselves as to their suitability for the office;

b. decide the appointment by secret ballot of the Directors.

20.2.2. If a resolution to appoint a Chairperson and Deputy Chairperson between 2 or more candidates results in a tied vote, those with the highest equal vote/s may decide the matter by the drawing of lots between themselves or by withdrawing their own candidacy or, with approval of the Board, come to some ad hoc arrangement as regards the office being contested.

20.2.3. A Chairperson and Deputy Chairperson are each to be appointed for a term of 36 months (unless removed from office earlier under clause 20.3.1.b, or if their term as a Director expires and they are not re-appointed or re-elected) or at the end of the third AGM after their appointment to the office, whichever is the later.

20.2.4. A Chairperson or Deputy Chairperson having served 2 consecutive terms may not be appointed the same office in which they served, unless either:

a. no other Director nominates for that office upon the Chairperson or Deputy Chairperson having served 2 consecutive terms vacating that office;

b. 12 months have elapsed since the person held the same office; or

c. at least 75% of directors eligible to vote on the resolution vote to reappoint that Director to the applicable position for one further term. After the Chairperson or Deputy Chairperson has served this further term[18] they may not be reappointed unless subparagraphs 14.6.2.a or 14.6.2.b apply.

20.2.5. For this purpose, a period of service as chair or deputy chair of the Company prior to adoption of this clause is counted as holding office as Chairperson or Deputy Chairperson as applicable.

20.2.6. To avoid doubt, this provision does not prevent a Chairperson having served 2 consecutive terms being appointed as a Deputy Chairperson, and vice versa.

20.2.7. A Chairperson or Deputy Chairperson remains liable to vacate the office of Director as would any other Director.

20.2.8. If at any time a casual vacancy exists in the office of Chairperson or Deputy Chairperson, the Board must appoint promptly a Director to the office vacated.

20.2.9. If at any time no Director is willing to hold office as Chairperson or Deputy Chairperson, the functions of the office are assumed by the Board.

20.3. Vacating the office of Chairperson / Deputy Chairperson

20.3.1. A Chairperson or Deputy Chairperson vacates the office if and when:

a. they give written notice of resignation of the office to the other Directors or the Secretary;

b. removed by resolution of the Board after being afforded natural justice;[19] or

c. they cease to be a Director (disregarding a retirement as a Director and reappointment as a Director at the same General Meeting).

20.3.2. A Chairperson or Deputy Chairperson vacating office does not cease to be a Director for that reason.

20.4. Appeal Against Removal of a Chairperson / Deputy Chairperson

20.4.1. A Chairperson or Deputy Chairperson removed from that office by the Board may appeal the removal to a General Meeting under clause 13.11, with necessary changes, provided that the

[18] such that they have served a total of 3 consecutive terms
[19] Section 195 would usually prevent the person being present for consideration or voting as a director on that resolution.

appeal is supported by the signatures of at least 20 Full Members.

20.4.2. At such General Meeting, the Company may overturn the removal.

20.5. Functions of the Chairperson / Deputy Chairperson

20.5.1. The primary duty of the Chairperson is to ensure the successful functioning of the Company and the Board. They shall endeavor to assist in the achievements of the object and purposes of the Company.

20.5.2. The Chairperson shall:

a. uphold the rules of the Company

b. preside at meetings of the Board and general meetings of the Company

c. represent and act, subject to the instruction of the Board or the Members of the Company, on behalf of the Company in the interval between meetings;

d. subject to clause 20.5.2c, work together with the Chief Executive to determine which of the Chairperson or Chief Executive shall act as spokesperson for the Company in dealings with government or the media from time to time.

20.5.3. The Deputy Chairperson shall:

a. act as the deputy of the Chairperson and shall take his or her place when the Chairperson is absent or unable to undertake the duties of his or her office; and

b. at the request of the Chairperson, chair meetings of the Board or General Meetings if the Chairperson withdraws from the meeting or is for some other reason unable to continue in the chair during a meeting.

21. OTHER OFFICERS

21.1. Election of Other Officers

The Board shall select the Secretary, Treasurer, Public Officer and Auditor (**Other Officers**) at the first Board meeting held after the Annual General Meeting (unless the role is not vacant or due to be vacated at that meeting), on the terms and conditions (including as to remuneration) that the Board determines.

21.2. Terms of Other Officers

Other Officers shall hold office for a period of 2 years, or until the first Board meeting held after the expiring of that 2 year period, whichever is later.

21.3. Secretary

21.3.1. At all times, the Company must have at least one Secretary who shall be the Chief Executive or the Chief Executive's delegate (unless there is no Chief Executive employed by the Company, in which case it will be a person determined by the Directors).[20]

21.3.2. An individual may only be appointed as a Secretary after giving the Company a signed consent to act as a secretary.[21]

21.3.3. A Secretary must ensure the Company does not contravene any provisions of the Act specified in section 188(1).[22]

21.3.4. The Secretary shall:

a. maintain the register of Members;

b. maintain a file of all applications for membership received by the Company; and

c. maintain a record of the financial status of all Members.

21.3.5. The Secretary shall also:

a. ensure that a proper notice for all meetings is given by the Directors in accordance with this Constitution;

b. maintain the Company's minute books and ensure the minutes of the proceedings of the Board and of Members are entered into the minute book within one month after the relevant meetings;

c. prepare an agenda, in consultation with the Chairperson and the Directors prior to each meeting;

d. conduct any official correspondence to and from the Company on behalf of the Company and regularly inform the Board of any such correspondence; and

e. keep the Company's common seal in safe custody.

21.4. Treasurer

[20] Section 204A(2).
[21] The Company must keep the consent. See section 204C.
[22] It is important that a Secretary is aware of section 188 and the other sections referred to in section 188(1) as it is a civil penalty provision and there are penalties for non-compliance with obligations under the Act. The contents of that section have not been reproduced within this Constitution but can be covered in governance training.

21.4.1. At any time, the Board may appoint a person as Treasurer or chief financial officer of the Company with such functions, powers and duties as may be agreed between the Company and the person.

21.4.2. A person appointed under this clause is subject to such directions as the Board may give to the person.

21.4.3. The Treasurer shall:

a. ensure proper accounts and records of all transactions relating to the affairs of the Company are maintained;

b. ensure all money received is deposited (no later then three working days following the receipt or as soon as possible thereafter) in the Company's bank account;

c. submit to each meeting of the Board a brief report written in conjunction with the manager, administrative services or other employee or agency responsible for the Company's finances. This report shall reflect the financial status of the Company for the proceeding period;

d. assist the Auditor of the Company by providing full and free access to financial records in the Treasurer's possession or those held by persons administering the Company's finances; and

e. submit a Treasurer's report so as to inform the Members of the financial status of the Company at each Annual General Meeting.

21.5. Public Officer

21.5.1. A Public Officer or similar corporate representative a law requires of the Company may be appointed by the Board from time to time, and absent other appointment the Chief Executive has that role. The Public Officer is subject to removal by the Board.

21.5.2. A Public Officer or similar corporate representative has those functions and powers required by the law for which appointed by the Board.

21.6. Auditor

21.6.1. At all times after 1 month after the Company's registration under the Act, the Company must have an auditor unless exempted under section 301(3).

21.6.2. At each Annual General Meeting, the Members shall appoint a person to be auditor of the Company (the current auditor may be re-elected). Applications for the auditor role will be undertaken through a tender process.

21.6.3. Notwithstanding clause 21.6.2, where a long-term engagement with an auditor has been established, the Members may vote to continue that engagement, provided that a tender is held for the position of auditor not less than once every five years.

21.6.4. The auditor shall not be an officer, business partner, spouse, employer or employee of an officer; an employee; or business partner, spouse or employee of an employee of the Company.

21.6.5. The auditor shall hold office until the next Annual General Meeting and is eligible for re-appointment.

21.6.6. If an appointment is not made at an Annual General Meeting, the Board shall appoint an auditor for the current financial year.

21.6.7. The auditor, including a retiring auditor, is entitled to attend all meetings of Members.

22. MEETINGS OF THE BOARD

22.1. Any Director may call a Board meeting.

22.2. The Secretary must call a Board meeting, if requested by a Director in writing.

22.3. Scheduled Board meetings are to be determined by the Board in or about November of the previous calendar year, it being expected the Board would meet (in person or by the use of technology) at least four times per calendar year. A scheduled meeting may be cancelled with unanimous consent of Directors in office if there is insufficient business for that meeting.

22.4. Notice of a Board Meeting

22.4.1. A person calling a Board meeting must give to each Director individually a notice of meeting that:

a. sets out the place, date and time for the Board meeting (and, if the Board meeting is to be held in 2 or more places, the technology that will be used to facilitate this (unless the Directors present at the meeting all otherwise agree));[23]

b. states the general nature of the Board meeting's business;

c. is accompanied by relevant information so far as reasonably available (if not already given to the Director); and

d. is given at least 5 Business Days before the Board meeting (or such other period as all the Directors entitled to vote at the Board meeting agree otherwise and the matter to be discussed at such meeting is of an urgent nature).

22.4.2. Attendance by a Director at a Board meeting waives any objection such Director might have for a failure to give notice of that Board meeting.

22.5. Chair of Board Meeting

22.5.1. The chair of a Board meeting must be, in descending order of priority:

a. the Chairperson if present and willing to chair the Board Meeting;

[23] It being presumed that a Board meeting would be held in-person, at the Company's principal business office, and at a time convenient to most Directors.

b. the Deputy Chairperson if present and willing to chair the Board Meeting; or

c. a Director elected by the Directors present at the Board.

22.5.2. If during a Board Meeting the chair is unwilling or unable to chair any part of the proceedings, the chair may withdraw during that part of the proceedings and may nominate any Director present to act as chair during that part of the proceedings. At the conclusion of the relevant part of the proceedings, the acting chair must withdraw and the initial chair resume the chair of the Board Meeting.

22.6. Quorum of a Board Meeting

22.6.1. Unless the Board otherwise determines, the quorum for a Board meeting is a majority in number of Directors then in office (excluding any Director granted a leave of absence by resolution of the Board).

22.6.2. A quorum must be present at all times during the Board meeting.

22.6.3. Except as section 195(1A) may allow, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be counted in assessing the minimum number of Directors necessary to constitute a quorum while such matter is being considered.

22.7. Declaration of Material Personal Interest[24]

22.7.1. A Director's material personal interest in a matter that relates to the affairs of the Company must be notified to the other Directors if section 191 so requires.[25]

22.7.2. The Secretary must maintain a register of standing conflicts of interest, and have that register available at each Board meeting.[26]

22.8. Declaration of special interests

22.8.1. Upon appointment to the Board, a Director must notify the other Directors of their special interests (if any).

22.8.2. The Secretary must maintain a register of special interests, and have that register available at each Board meeting.

22.9. Voting at a Board Meeting

[24] Sections 191-194 of the Act do not apply to Companies registered under the ACNC Act to which the ACNC Governance Standards instead apply.
[25] Section 191(1) sets out the circumstances of mandatory disclosure of interests, subject to exceptions in section 191(2).
[26] Section 192 allows a director to give to the other directors a standing notice of personal interest.

22.9.1. Except as section 195(1A) may allow, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered or vote on the matter. Directors with a conflict of interest of this kind must leave the room for such discussions and voting unless invited by the other members of the Board to answer questions relating to the topic under discussion, but must then leave the room after that questioning has concluded.

22.9.2. Subject to clause 22.9.1:

a. each Director has 1 vote;

b. a resolution of the Directors must be passed by a majority of the votes cast by Directors on the resolution;

c. the chair of a Board meeting has a casting vote if necessary in addition to the vote they have as a Director.

22.9.3. For the avoidance of doubt, a Director shall not vote by proxy at a Board meeting.

22.10. Director's Interests

Subject to section 208[27] and clause 29, a Director and an entity in which a Director has a personal interest may in any capacity:

22.10.1. enter into any contract or arrangement with the Company;

22.10.2. be appointed to and hold any office or place of profit under the Company, other than the office of Auditor; and

22.10.3. act in a professional capacity, other than as Auditor, for the Company,

and may receive and retain for their own benefit any remuneration, profits or benefits as if they were not a Director.

Note: The making of a contract may however, result in the Director ceasing to meet requirements of a Full Member and so vacating the office of Director.

22.11. Circulating Resolutions of Directors

22.11.1. The Directors may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution (and being not less than the number required for a quorum at a Board meeting) either:

[27] Section 208 states that in order for the Company to give a financial benefit to a related party the Company must obtain the approval of Members as set out in sections 217-221 and give the benefit within 15 months after approval or the giving of the benefit must fall within an exception set out in sections 210-216.

a. sign a document containing a statement that they are in favour of the resolution set out in the document; and / or

b. if the proposed resolution is stated in, or attached to, correspondence in the form of electronic communication as approved by the Board sent to the Director, the Director sends a reply communication to the sender agreeing to that resolution, which reply communication states or has attached the text of the resolution.

22.11.2. The resolution must be provided to the Directors by the Chairperson, Secretary or their nominee.

22.11.3. All Directors must ensure that each other Director is included in all correspondence relating to the resolution.

22.11.4. The resolution is passed when the last Director required to make up a majority signs, or sends the reply communication, unless clause 22.11.5 applies.

22.11.5. If, by close of business the day after the resolution is presented, three Directors request in writing (including by email) that the resolution that is being proposed be passed at a meeting prior to the resolution being passed by a majority of Directors, it must only be passed at a meeting of Directors (held in person or by the use of technology).

22.11.6. 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. Separate electronic communications may be sent for agreement of Directors if the wording of the resolution is identical in each email.

22.11.7. A document or electronic communication referred to in this clause must be sent to every Director who is entitled to vote on the resolution.

23. GENERAL MEETINGS

23.1. Annual General Meetings

23.1.1. The Annual General Meeting shall be held by no later than 30 November in each year or such longer period as ASIC may allow under section 250P[28], and shall:

a. consider and receive the minutes of the last Annual General Meeting and any Special General Meeting(s) held since the last Annual General Meeting;

[28] Section 323D(1) has a special rule for the first financial year of a company, otherwise AGMs must be held by 30 November each year.

b. consider and receive the reports of the Chairperson, Treasurer and Chief Executive of the Company;

c. consider and receive the accounts of the Company and auditor's report; and

d. when necessary, elect Directors following the expiry of any Director's Term.

23.1.2. Notice of the Annual General Meeting shall be given to all Members of the Company in writing, not less than 21 days before the meeting is due to be held.

23.2. Special General Meetings

23.2.1. A Special General Meeting of the Company shall be called by resolution to this effect by the Board or within 30 days of receipt of a request made by no less than 10% of Members of the Company, made in writing to the Secretary stating the purpose for which such a meeting is to be called.

23.2.2. Written notice of any Special General Meeting shall be given to all Members no less than 21 days prior to the meeting outlining the purpose of the meeting, the location and time of the meeting, and why it was called.

23.2.3. Special General Meetings may consider any matter deemed appropriate by the Board in addition to the original purpose of that meeting, provided that those matters have been included in the notice of meeting.

23.3. Quorum

23.3.1. The quorum for a General Meeting shall be half their number plus one, rounded up to the nearest full number, or 5, whichever is less.

23.3.2. No business will be transacted at any meeting unless a quorum is present, including by the use of technology, at the time the meeting proceeds to business.

23.3.3. If within 15 minutes of the time appointed for a meeting (or such longer time as the present Members determine) a quorum is not present, such meeting shall be adjourned to the date, time and place the Board specifies. If the Board does not specify, the meeting is adjourned as follows:

a. where the date is not specified — the same day in the next week; and

b. where the time is not specified — the same time; and

c. where the place is not specified — the same place.

23.3.4. Those present at such an adjourned meeting shall constitute a quorum, provided that notice of the original meeting had been provided to all persons entitled to attend the meeting.

23.3.5. If no quorum is present at the resumed General Meeting within 30 minutes after the time for the meeting, the General Meeting is dissolved.

23.4. Rescheduling General Meetings

23.4.1. The Board may agree by ordinary resolution to reschedule a General Meeting if there is a legitimate reason to do so.

23.4.2. Upon agreeing to reschedule a General Meeting, the Board must, if reasonably practicable, send notice to all Members setting out:

a. the fact that the meeting has been rescheduled;

b. the new date and time of the rescheduled meeting; and

c. the new location (if any) of the rescheduled meeting.

23.5. Voting at General Meetings

23.5.1. Voting at General Meetings shall be conducted by show of hands, unless:

a. the matter voted on relates to the election of an Office Bearer;

b. the matter relates to the suspension or removal of a Member, Director or Office Bearer; or

c. a resolution is passed by the meeting for voting to be by secret ballot, in which case the method of voting shall be by secret ballot in the manner the Chairperson directs, subject to any vote being secret and verified by scrutineers.

23.5.2. At a General Meeting, each Full Member has one vote, both on a show of hands and a poll. Associate Members do not have a vote.

23.5.3. The chair of a General Meeting has a casting vote, and also a vote in their capacity as a Full Member.

23.5.4. A vote the Act requires the Company to disregard must not be counted.

23.5.5. A challenge to a right to vote at a General Meeting:

a. may only be made at the General Meeting; and

b. must be determined by the chair, whose decision is final.

23.5.6. On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

23.5.7. A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

23.5.8. A poll on the election of a chair or on the question of an adjournment must be taken immediately.

23.5.9. The validity of a resolution is not affected by the failure of an attorney or proxy of a Full Member to vote in accordance with the instructions of the Member.

23.6. Voting by attorney

Subject to the other provisions of this Constitution and the terms of the appointment, an attorney of a Member may attend and speak for the Member at a General Meeting, and if acting for a Full Member vote for that Full Member.

23.7. Voting by proxy

23.7.1. A Member may appoint a person as their proxy to attend and speak, and, in case of a Full Member vote for the Full Member, at a General Meeting.[29]

23.7.2. A proxy can only vote on behalf of one Full Member at any one meeting.

23.7.3. The Board or the chair of a General Meeting may in any particular case allow an appointment of a proxy as valid even if it contains only some of the information required by section 250A(1) such as the member's name and address, the Company's name, the proxy's name or name of the office held by the proxy and the meeting/s at which the appointment may be used.30

23.7.4. An appointment that does not contain the proxy's name or the name of the office held by the proxy is valid and taken to be in favour of the chair of the General Meeting.

[29] Section 249X gives a member of a public company a statutory right to appoint a proxy. By section 250B, the appointment (and any relevant power of attorney) must be received by the company at least 48 hours before the meeting, or adjourned meeting. A fax to the company may be sufficient, under section 250B(3).

[30] See section 250A(2). By section 250A(3) an undated appointment is taken to be date on the day it is given to the Company. By section 250A(6) the appointment need not be witnessed.

23.7.5. An appointment of a proxy is not effective if the documents section 250B requires are not received by the Company at least 48 hours before the General Meeting or resumption of the General Meeting as applicable.

23.7.6. A proxy present and entitled to vote must vote in any way specified in the appointment.[31]

23.7.7. Unless the Company has received written notice of the matter before the start or resumption of the General Meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

a. the Member revokes the proxy's appointment;32 or

b. the Member revokes the authority under which the proxy was appointed by an attorney of the Member.

23.7.8. Subject to section 249Y(1)(b), section 250BB and any contrary express terms of an appointment, a proxy of a Full Member may vote:

a. on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and

b. on any procedural motion put to the meeting.

23.8. Chairing of General Meetings

23.8.1. Subject to this clause 23.8, meetings shall be chaired by the Chairperson.

23.8.2. Where the Chairperson holds a conflict of interest in relation to a matter, or is otherwise unavailable, the Deputy Chairperson shall chair the meeting where the Chairperson is unavailable or for those matters that are subject to the conflict of interest.

23.8.3. Where the Deputy Chairperson also holds a conflict of interest in relation to a matter, or is otherwise unavailable, the meeting shall elect a Full Member to chair the part of the meeting dealing with that matter.

23.8.4. The Chairperson may nominate a third party to chair a section of the meeting where the Chairperson considers that person to have particular expertise that is required for the discussion of a particular matter.

[31] See also section 249Y(1) as to the rights of a proxy, subject to section 250BB if the proxy appointment specifies the way the proxy is to vote on a particular resolution.

[32] A later appointment may revoke an earlier one, under section 250A(7).

23.8.5. If during a General Meeting the chair is unwilling to chair any part of the proceedings, the chair may withdraw during that part of the proceedings and may nominate any Full Member present to act as chair during that part of the proceedings. At the conclusion of the relevant part of the proceedings, the acting chair must withdraw and the initial chair resume the chair of the General Meeting.

23.8.6. The chair of a General Meeting has conduct of the General Meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.

23.8.7. The chair of a General Meeting may determine immediately before or during the General Meeting that persons attending the General Meeting should:

a. be only the Directors, the Secretary, the Auditor, the Members and persons attending as an attorney or proxy of a Member;

b. comply with any identification or security measures, including personal searches, as the chair considers appropriate;

c. not possess a mobile phone, camera, recording or broadcasting device except as permitted by the chair; or

d. not possess any placard, banner or other article the chair considers may be dangerous, offensive or liable to cause disruption.

23.8.8. The chair may refuse a person admission to, or require a person to leave and not return to, a General Meeting if the person fails to comply with a determination of the chair authorised by this clause.

23.8.9. Subject to the above, a Director, the Secretary, the Auditor, any Member and any person attending as an attorney or proxy of a Member is each entitled to attend and be heard at any General Meeting.

23.8.10. The chair's determination on a procedural matter is final.

23.11. Use of technology

23.11.1. If approved by the Board in each case, Members may participate in meetings through the use of any form of audio or audio visual technology approved by the Board, provided that it allows for that person to both hear what is occurring at the meeting, and to make contributions to the meeting.

23.11.2. Participation through the use of technology will be counted towards the calculation of a quorum for that meeting.

23.11.3. A member seeking to attend a meeting through the use of technology will be entitled to vote, and count for the purposes of quorum, on the question of whether or not their use of technology should be approved.

23.12. Minutes

23.12.1. Proper minutes of all proceedings of meetings of the Company shall be prepared and kept by the Secretary of the Company, or an alternative person or persons nominated by the Chief Executive.

23.12.2. The minutes must be confirmed by the Members of the Company at the next subsequent meeting.

23.12.3. Minutes shall be signed by the Chairperson or acting Chairperson once they have been confirmed.

23.12.4. Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting have duly occurred as minuted, and that all appointments made at a meeting are valid.

23.13. Conflicts of interest

23.13.1. At each meeting, every person present shall declare any conflicts of interest that exist in relation to the business of that meeting. Where a conflict of interest is identified in relation to a matter, the relevant persons shall absent themselves from the meeting during the discussion of that matter, and shall not be entitled to vote upon that matter.

23.13.2. For the avoidance of doubt, a conflict of interest will arise whereby a person is either;

a. employed by a current or imminently potential funder of the Company; or

b. engaged as a contractor in a 12 month period by a current or imminently potential funder of the Company; or

c. a current or imminently potential funder of the Company.

23.14. Adjournment of a General Meeting

23.14.1. The chair must adjourn a General Meeting if Full Members present with a majority of votes at the General Meeting agree or

direct that the chair must do so. The chair may adjourn a General Meeting with the meeting's consent on a show of hands.

23.14.2. A poll cannot be demanded on a resolution concerning the adjournment of a General Meeting except by the chair.[33]

23.14.3. Only unfinished business is to be transacted at a General Meeting resumed after an adjournment.

23.15. BUSINESS OF A GENERAL MEETING

A General Meeting is not competent to deliberate upon or vote upon a motion for a resolution not set out in the notice of meeting, except:

23.15.1. a motion for a procedural resolution, for example to appoint a chair, demand a vote by poll, or to adjourn;

23.15.2. as the Act (in particular section 250R) may allow or require;[34] or

23.15.3. as the chair of the General Meeting may allow as being within the general nature of the meeting's business as set out in the notice of meeting.

For the avoidance of doubt, this provision does not prevent a motion to amend a resolution set out in the notice of meeting.

24. MEMBERSHIP OF OTHER BOARDS AND THE ESTABLISHMENT OF SUB-COMMITTEES

24.1. The Board may establish sub-committees and standing committees for such purposes, and with such powers and terms of reference as it determines from time to time.

24.2. Sub-committee and standing committee members do not need to be Directors of the Company.

24.3. Members of sub-committees shall not be entitled to vote on any determination of the sub-committee unless they are a Director of the Company.

24.4. No decision of a sub-committee will come into effect until approved by a resolution of the Board.

---

[33] Section 250K(2) allows the constitution to exclude a poll on an adjournment.

[34] Section 250R states that the business of an AGM may include any of the following, even if not referred to in the notice of meeting:

(a) the consideration of the annual financial report, directors' report and auditor's report;
(b) the election of directors;
(c) the appointment of the auditor;
(d) the fixing of the auditor's remuneration.

24.5. Members of standing committees may vote on matters that are within their terms of reference, provided that doing so would not conflict with any law, or any other provision of this Constitution.

25. FINANCIAL REPORTING

25.1. The financial year for the Company begins on 1 July in each year and ends on the following 30 June.

25.2. The Company must keep financial and other records as section 286 or other law requires and for the period of time section 286 or other law requires.[35]

26. BANK ACCOUNT OPERATION

A debiting of the Company's bank account (disregarding customary charges imposed by the bank) must be authorised by a direction (in hard copy or over the internet) signed or otherwise authorised by at least:

26.1. 1 of the Chairperson, Deputy Chairperson, Secretary or Chief Executive; plus

26.2. 1 other of the above persons, or 1 other person appointed by the Board for that purpose.

27. MANAGEMENT REPORTS

Not less frequently than once every two months, management must give to each Director individually a report of the Company's operations in the preceding month and that addresses or includes:

27.1. any matter that the Board has previously directed be included;

27.2. a statement of financial performance (including cash flows) of that preceding month and of the financial year up to the end of that preceding month showing the actual, budget and variance amounts; and

27.3. a copy of any information given by the Company to government.

28. NON-COMPETE

A Director (while in such role) must not, directly or indirectly, alone or with others and in any capacity, carry on or be interested in any business of the same nature as and competing with that of the Company except with prior consent of the Board.

29. RELATED PARTY TRANSACTIONS

[35] Section 286 requires a Company to keep written financial records that a) correctly record and explain its transactions, financial position and performance, and b) would enable true and fair financial statements to be prepared and audited.

The Company may not make a contract with a Member, or an entity a Member controls (within the meaning of section 50AA)[36] for any goods or services to be provided to the Company:

29.1. for expenditure by the Company of more than $5,000.00 (before GST) (counting any series of related contracts as one); or

29.2. if the contract lasts or may be extended to more than total 12 months,

except with prior consent of the Board.

30. DIRECTOR'S RIGHT OF ACCESS

30.1. A Director may inspect and take copies:

30.1.2. of the financial records of the Company as section 290(1) allows;[37] and

30.1.3. of the books of the Company (other than financial records) as section 198F(1) allows.[38]

30.2. A person who ceased to be a Director may inspect and take copies of the books (including financial records) of the Company:

30.2.1. as section 198F(2) allows; and / or

30.2.2. as a contract made between the person and the Company may allow; and / or

30.2.3. as a resolution of the Board may in any particular case allow.

31. MEMBER'S RIGHT OF ACCESS[39]

A Member has no right to inspect books of the Company except as may be authorised by:

31.1. a resolution of the Board;

31.2. a resolution passed at a General Meeting; or

31.3. the Act, other law, or by a court having jurisdiction to do so.

---

[36] Section 50AA sets out the circumstances in which one entity would be considered an associated entity of another entity. Where these circumstances occur clause 86 of this Constitution would apply.

[37] Directors have a right of access to the financial records at all reasonable times and may make copies of the records unless a court orders otherwise. A Director may apply to the Court for an order that another person may inspect the financial records on the director's behalf.

[38] Directors have a right to inspect the books of the company at all reasonable times for the purpose of a legal proceeding to which the person is a party, or that the person proposes in good faith to bring or that the person has reason to believe will be brought against them. This right continues for 7 years after the person ceases to be a director of the Company and includes a right to make copies. The Company cannot refuse access as set out in section 198F(4).

[39] Section 247A allows a member to apply to the Court for an order to inspect the books. By section 173(1), any person has a right to inspect the register of members, and register of debenture holders, but subject to section 177,which prohibits the information obtained from being used to contact or sent material to the person or disclose information of that kind knowing that the information is likely to be used to contact or send material to the person. By section 251B a member has a right to inspect the minutes of meetings of members and resolutions of members passed without a meeting.

PART A - OTHER MATTERS

32. CIRCUMSTANCES NOT PROVIDED FOR

In any circumstances in which this Constitution is silent, incapable of taking effect or being implemented according to its strict provisions, the Board may determine what action may be taken to ensure the effective administration and objects of the Company.

33. REGISTERED OFFICE

The registered office of the Company must be at the principal business office of the Secretary.

34. THE SEAL

34.1. The Company may have a common seal, which shall be kept by the Chief Executive, or if there is no Chief Executive, the Secretary.

34.2. If the Company has a common seal:[40]

34.1.2. the seal must be kept in the custody of the Secretary or other person approved by the Board;

34.1.3. the signatures of the 2 persons approved by the Board for that purpose shall attest the fixing of the seal to a document. Unless the Board otherwise determines, 1 of those persons must be the Chairperson or Deputy Chairperson.

34.3. The use of the seal will be recorded in a register kept for that purpose.

35. MAKING AND EXECUTION OF CONTRACTS

The Company may execute a document under the common seal (if any) or in any other way section 126[41] or 127[42] of the Act or any other law may permit.

36. ANNUAL FINANCIAL REPORTS

The Company must prepare and give to the Members such financial reports as the Act requires.

37. DISPUTE RESOLUTION

37.1. This clause applies to disputes between the Company, any Members (as such) or any Directors (as such) or any combination of them.

---

[40] Under section 123(1) a company may, but need not, have a common seal. If a company does have a common seal it must include the company name and its ACN (unless the ACN is included in the company name) or where the last 9 digits of the company's ABN are identical to its ACN the company may instead include its ABN.

[41] An individual may act on behalf of the company with express or implied authority to make, vary, ratify or discharge a contract or execute a document including a deed.

[42] This section requires that where a common seal is not used the document be signed by either 2 Directors or a Director and the Secretary. If a common seal is fixed to a document the fixing of the seal is to be witnessed by 2 Directors or a Director and the Secretary.

37.2. Provided that all parties to the dispute are comfortable in doing so, the parties to the dispute may meet promptly in-person at the registered office of the Company and discuss the matter in dispute, and, if possible, resolve the dispute within 10 Business Days (or as soon as is reasonably practicable) after the dispute comes to the attention of all of the parties. If any party is not reasonably comfortable to meet in this manner, then:

37.2.1. each of the parties to the dispute may, if they are comfortable in doing so, meet 'one-on-one' with the Chairperson (or the Deputy Chairperson if it is not reasonable or practicable for the Chairperson to do so) to discuss the dispute; and

37.2.2. the Chairperson (or Deputy Chairperson) may, to the extent that each of the parties to the Dispute consent, take such steps as the Chairperson believes fair and reasonable (to all parties) to resolve the dispute.

For the avoidance of doubt, any proposed resolution of the Chairperson (or Deputy Chairperson) will only take effect and bind the parties to it if the proposed resolution is agreed by all parties.

37.3. If the parties to the dispute are unable to resolve the dispute in accordance with clause 37.2, the parties to the dispute may submit in writing to the Board their submissions in relation to the dispute (including: relevant facts, reasons for any grievance, the cause of the dispute, and resolutions sought) (**Dispute Submissions**) within 10 Business Days (or as soon as is reasonably practicable) of the Board requesting them to do so, and:

37.3.1. the Board must review the Dispute Submissions received and undertake any further investigations the Board believes reasonable;

37.3.2. the Board must record all information received, relevant dates, participants, outcomes and any other relevant information.

37.3.3. the Board must issue a proposed resolution for the dispute to the parties.

For the avoidance of doubt, any proposed resolution of the Board will only take effect and bind the parties to it if the proposed resolution is agreed by all parties.

37.4. If the parties to the dispute are unable to resolve the dispute after following the processes as set out in clauses 37.2 and 37.3, those parties may choose to meet and discuss the dispute before an independent third person agreed to by those parties or appointed by the Law Society of South Australia.

37.5. All parties to a dispute (including the Chairperson and the Board) must:

37.5.1. regard the dispute, all information disclosed in the dispute, and all records made at any meeting in respect of the dispute (in any form) as confidential; and

37.5.2. in good faith, do such things and undertake such actions that will bring about a resolution to the dispute as promptly as is reasonably possible having regard to fairness to all parties.

37.6. A party to a dispute may bring with them to any meetings undertaken as part of the dispute. a support person. For the avoidance of doubt, a 'support person' does not include a person's legal representation, which may only attend with the consent of the other parties or, in respect of clause 37.4, with the consent of the independent third person.

38. NOTICES[43]

38.1. The Company may give to a Member or former Member a notice required under this Constitution or the Act to a contact address as provided by the Member (for example if the Member has provided their email address to the Company, they may receive notices via email). If a Member or former Member has provided multiple contact addresses, notice to one of those addresses is sufficient to constitute legitimate service.

38.2. A notice sent by post is taken to be given 5 Business Days after it is posted. A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.

38.3. A certificate in writing signed by a Director or Secretary that a notice or its envelope or wrapper was addressed, stamped and was posted is sufficient evidence of posting.

39. BY-LAWS OF THE COMPANY

39.1. The Board may draft by-laws to govern the management, procedure and operations of the Company.

39.2. By-laws will come into effect only when ratified by an ordinary resolution passed at a meeting of the Board.

39.3. A by-law may be varied by an ordinary resolution passed at a meeting of the Board, and will be effective from the time that the resolution is passed.

39.4. Once ratified, a by-law is binding upon all Members and Directors of the Company.

[43] Section 109X sets out the ways a person may give notice to the company including by post to the company's registered office, by personal deliver to a Director of the company, or to a liquidator, administrator or restructuring practitioner where one has been appointed.

39.5. A by-law may not authorise any action or policy that would be beyond the powers in respect of that action or policy granted by this Constitution or the Act, and in the event of a by-law being beyond such powers, it shall to that extent be void and unenforceable.

39.6. All by-laws are to be distributed to Members following their ratification by the Board.

40. WINDING UP

40.1. If at any time the Company was registered under the *Australian Charities and Not-for-profits Commission Act 2012* and the Company is wound up or its endorsement as a deductible gift recipient status revoked (whichever occurs first):

40.1.2. any surplus assets (including Gift Funds) received as a deductible gift must not be distributed to a Member or a former Member;

40.1.3. subject to the Act and any other applicable legislation, and any court order, any surplus assets (including Gift Funds) that remain after the Company is wound up must be distributed to one or more charities:

40.2. with charitable purpose(s) similar to, or inclusive of, the purpose/s in clause 8 to which income deductible gifts can be made, and

40.3. which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company;

40.3.1. the decision as to the charity or charities to be given the surplus assets (including Gift Funds) must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

40.4. If clause 40.1 does not apply and the Company is wound up, the liquidator may with the sanction of a special resolution of the Members:

40.4.1. divide among the Members in kind all or any of the surplus assets and for that purpose determine how the liquidator will carry out the division between the Members, but may not require a Member to accept anything in respect of which there is any liability; and / or

40.4.2. vest all or any of the surplus assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

40.5. In this clause, surplus assets mean any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

40.6. If the Company ceases to be a Deductible Gift Recipient for the purposes of the Income Tax Assessment Act 1997 (Cth), it must transfer any surplus Gift Funds to one or more charities:

40.6.1. with charitable purpose(s) similar to, or inclusive of, the purpose/s in clause 8, and

40.6.2. which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.

41. AMENDMENT OF THE CONSTITUTION

41.1. This Constitution may be altered by Special Resolution by the Members at a General Meeting.

41.2. The Constitution shall bind the Company and every Member to the same extent as if they had respectively signed and agreed to be bound individually by the document.

41.3. An alteration to the Constitution becomes effective from the time the alteration is passed.