

Moorundi Aboriginal Community Controlled Health Service Limited

# Constitution

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## Preamble

Moorundi Aboriginal Community Controlled Health Service Limited (**MACCHS** or **Company**) is an incorporated, Aboriginal Community Controlled body providing the Aboriginal community in our identified catchment area including the Hills, Mallee, Southern Fleurieu and Kangaroo Island areas with comprehensive primary health care. MACCHS is a member of both the Aboriginal Health Council of South Australia Ltd (**AHCSA**) and the National Aboriginal Community Controlled Health Organisation (**NACCHO**).

MACCHS began its life on 14<sup>th</sup> November 2013 as an incorporated association. MACCHS' goal is to promote the holistic and culturally appropriate provision of healthcare to Aboriginal people in a comprehensive primary context, across the Hills Mallee Southern Fleurieu and Kangaroo Island region.

MACCHS' mission is to strengthen community participation and ownership of Aboriginal health in a way that values cultural diversity, community history and knowledge, and community strength. It is MACCHS' role to promote discussions and developments of Aboriginal health policy, to advocate on behalf of Aboriginal people and communities, to coordinate healthcare with governments, and to ensure that an Aboriginal voice is heard in the development of all health policy within the Hills Mallee Southern Fleurieu and Kangaroo Island region. Its role is also to promote healthcare practices that are able to prevent the need for Aboriginal people to receive healthcare in hospital settings, preferring instead culturally appropriate health care settings.

MACCHS fulfils its objectives through the work of its staff and Members, each of whom bring to the Company unique and specialised knowledge and skills. MACCHS is committed to increasing and improving the skills and abilities of its staff and Board, and entrenching strong governance and integrity in everything it does.

### 1. Name

The name of the company is 'Moorundi Aboriginal Community Controlled Health Service Limited' (**MACCHS** or **Company**).

### 2. Definitions

In this Constitution:

- 2.1. **Aboriginal** means a person of Aboriginal and/or Torres Strait Islander descent, who is recognised by the Aboriginal and/or Torres Strait Islander community from which they originated as an Aboriginal and/or Torres Strait Islander person and who identifies as an Aboriginal and/or Torres Strait Islander person.
- 2.2. **Aboriginal Community Controlled Health Service** means an incorporated Aboriginal organisation, initiated by a local Aboriginal community, based in a local Aboriginal community, governed by an Aboriginal body which is elected by the local Aboriginal community and delivering a holistic and culturally appropriate health service to the Community which controls it. (Definition drawn from the NACCHO Constitution 2010);
- 2.3. **Aboriginal Health** (or related expression) encapsulates physical, emotional, spiritual and cultural health and wellbeing;

- 2.4. **Act** means the *Corporations Act 2001* (Cth) and any successor Act;
- 2.5. **Annual General Meeting or AGM** 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;
- 2.6. **Associate member** means a member of the Company as defined in the Constitution who is not entitled to vote;
- 2.7. **Board** means the Board of Directors of the Company;
- 2.8. **Business Day** means a day other than a Saturday, Sunday, or a public holiday in South Australia;
- 2.9. **Calendar year** means a year from 1 January to 31 December;
- 2.10. **Catchment Area** is inclusive of the statistical local areas of Adelaide Hills – North, Adelaide Hills – balance, Alexandria – coastal, Alexandria – Strathalbyn, Kangaroo Island, Karoonda East Murray, Mid Murray, Mount Barker – Central, Mount Barker – balance, Murray Bridge, Southern Mallee, the Coorong, Victor Harbor, Yankalilla and UC Murray Mallee. Main towns captured within these local areas include Gumeracha, Kersbrook, Birdwood, Woodside, Oakbank, Lobethal, Goolwa, Port Elliot, Strathalbyn, Kingscote, Karoonda, Mannum, Mount Pleasant, Mount Barker, Echunga, Meadows, Nairne, Murray Bridge, Lameroo, Pinnaroo, Tailem Bend, Meningie, Victor Harbor, Normanville and Yankalilla (see Schedule 1 – Catchment Area);
- 2.11. **Chairperson** means the chairperson of the Company;
- 2.12. **Chief Executive Officer or CEO** means the person appointed by the Board to manage the operational functions of the Company and reports to the Board.
- 2.13. **Company** means the Moorundi Aboriginal Community Controlled Health Service Limited;
- 2.14. **Constitution** means this document;
- 2.15. **Deputy Chairperson** means the deputy chairperson of the Company;
- 2.16. **Director** means a person who has been elected or appointed to the Board by a Member in accordance with this Constitution;
- 2.17. **Executive** means the executive committee of the Company, as elected by the Board, and consists of the: Chairperson, Deputy Chairperson, Secretary, Treasurer and one non-office bearing person;
- 2.18. **Full member** means a member of the Company as defined in the Constitution who is entitled to vote;
- 2.19. **Member** means a member of the Company;
- 2.20. **Month** means a calendar month;

- 2.21. **Moorundi** is the traditional name for the Murray River near Murray Bridge. This is the preferred spelling of the name and is not to be confused with 'Moorundie' which is the name given to Edward John Eyre's settlement on the Murray River in the mid-1800's or with the Wildlife Park and Scientific Reserve;
- 2.22. **Ngarrindjeri nation, Ngarrindjeri peoples** (or related expression) means those people, Ngarrindjeri and others, who hold in common the body of traditional law and custom governing the area who are related by means of a traditional principle of descent to apical ancestors;
- 2.23. **Ngarrindjeri lands** means the land and water described in the Ngarrindjeri and others Native Title Claim SCD2017/002. Geographically the traditional lands extend from Mannum downstream through Murray Bridge and Victor Harbor and along the coast through Goolwa to Cape Jervis including Lake Alexandrina and Lake Albert;
- 2.24. **Secretary** means the person elected to the Executive in the role of secretary of the Company;
- 2.25. **Special circumstances** means when the Board has the ability to accept an application for membership where any/some of the requirements of clauses 7.5 and/or 7.6 have not been met and the Board votes unanimously to accept the application. In order to make that determination the Board must be satisfied, on the balance of probabilities, that the applicant is an Aboriginal person.
- 2.26. **Special General Meeting** means a meeting held by the Members in accordance with this Constitution, other than an Annual General Meeting;
- 2.27. **Special Resolution** means a resolution that requires three-quarters majority vote to pass the resolution, and in the case of a meeting of members, requires 21 days' notice;
- 2.28. **Traditional owners** (or related expression) means those people who hold in common the body of traditional law and custom governing a designated area who are related by means of a traditional principle of descent to apical ancestors.
- 2.29. **Treasurer** means the treasurer of the Company;
- 2.30. **Year** means a financial year from July 1 to June 30.

### 3. **Objects**

The objects of the Company are:

- 3.1. to provide a diverse range of services and programs dedicated to improving the health and wellbeing of Aboriginal people living principally in our identified Catchment Area including the Hills, Mallee, Southern Fleurieu and Kangaroo Island;

- 3.2. to work cooperatively with other Aboriginal organisations, allied health services, state and federal departments and health and wellbeing service providers, to respond to and assist with delivering services to traditional, rural and urban Aboriginal people as their circumstances warrant;
- 3.3. to reduce the incidence of premature death and chronic disease amongst the Aboriginal community within our identified Catchment area through promotion and delivery of our preventative care model;
- 3.4. to promote healthy lifestyle choices amongst Aboriginal people and the broader Aboriginal Community within our identified Catchment area who utilise our health and wellbeing services;
- 3.5. to advocate for dedicated and culturally appropriate health and wellbeing service responses to the Aboriginal community of the region from mainstream services; and
- 3.6. to undertake or to do other things or activities that are necessary, incidental or conducive to the advancement of these objects.

#### **4. Guiding Principles**

The Company will be guided by the following principles:

- 4.1. the Company's work is guided and underpinned by a deep and abiding respect for the inalienable right of Aboriginal communities to determine and control the composition, operation and delivery of the health services in their community;
- 4.2. the Company defines Aboriginal health as inclusive of physical, cultural, spiritual health as well as social and emotional wellbeing of an individual, and the community as a whole;
- 4.3. the Company will strive to govern, manage and deliver health and wellbeing services in culturally appropriate ways whilst working within the laws applicable to it;
- 4.4. the Company is committed to governing with integrity and transparency, and ensuring the stability and succession of the governance of the Company;
- 4.5. the Company acknowledges the diversity of Aboriginal populations and communities within our identified Catchment Area and will strive to ensure that all communities are able to exercise their rights to self-determination and participation in decision making processes. The Company will develop appropriate strategies to meet this obligation;
- 4.6. all Members and Directors will strive to treat each other, the Company's staff, the Company's partners, the Aboriginal community and wider community with courtesy and respect at all times.

#### **5. Powers**

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

- 5.2. Without limiting clause 5.2, the Company has the following powers:
- 5.2.1. the power to confer, cooperate and/or be affiliated with, or be a member of, any other association, body or society, having objects the same as, or similar to, those of the Company; and
  - 5.2.2. 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.

## **6. Property**

The income, property and funds of the Company shall be used and applied solely towards the promotion of the objects of the Company, 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 of expenses incurred by any Director, officer or employee of the Company or any Member of the Company in return for services or goods actually rendered to the Company and as authorised by the Board.

## **7. Membership**

### **7.1 Liability**

The Liability of the Members is limited as set out in this clause 7.

### **7.2 Guarantee**

- 7.2.1. The Company is a company limited by guarantee.
- 7.2.2. 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.
- 7.2.3. A reference to a Member in this clause 7.2 includes a person who was a Member within one year of the Company being wound up.
- 7.2.4. For the purposes of clause 7.2, only liabilities incurred by the Company when the Member was a Member are taken into account.

### **7.3 Winding up or dissolution**

In the event of the Company being wound up or dissolved, the assets that remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to an organisation with similar purposes which is not carried on for the profit or gain of its individual Members.

### **7.4 Members of the Company**

- 7.4.1. the members of the Company are the Members as at the date this Constitution was adopted; and

7.4.2. any individual that is admitted as a Member of the Company by the Directors in accordance with the Constitution.

## 7.5 **Membership types**

7.5.1 Full membership of the Company is open to:

- (a) people of the Ngarrindjeri nation; or
- (b) descendants in Aboriginal land right claims where the claim falls, partly or wholly, within the Catchment area; or
- (c) current residents who have been resident in the Hills, Mallee, Southern Fleurieu or Kangaroo Island region, South Australia for at least 3 months at the time of lodging a membership application,

who:

- (d) are of Aboriginal descent (as defined in clause 2.1);
- (e) subscribe to the objects of the Company;
- (f) are aged 18 years or over at the time of lodging a membership application;
- (g) are not made ineligible by clause 7.5.2, or 7.5.4; and
- (h) are accepted as Members by the Board.

7.5.2 Full membership is not open to:

- (a) individuals who are currently employed by the Company; or
- (b) individuals who have been employed by the Company in the 12 month period preceding their application for membership.

7.5.3 Associate membership of the Company is open to individuals who would be eligible for full membership but are either:

- (a) employees of the Company;
- (b) aged 16 years or over but not yet 18 years at the time of lodging a membership application;
- (c) do not reside in the region; and/or
- (d) have ceased to reside in the region for more than 12 months.

7.5.4 Membership of any kind is not open to individuals whose employment with the Company ended as a result of work performance issues or disciplinary action (including those who resigned as a result of such issues or action) within the 2 years preceding the date of their membership application.

7.6 **Application for membership**

7.6.1. Individuals applying for Full or Associate membership of the Company must do so in writing on the prescribed form providing evidence, where required by the Board, acting reasonably, that they are eligible for membership under the Constitution.

7.6.2. Applications for membership:

- (a) must be considered and endorsed by the Board and recorded in the minutes of the meeting before an individual will be deemed to be a member.
- (b) received after a general meeting has been called may only be approved by the Board after that general meeting has been held.
- (c) will not be considered from the floor during a general meeting.

7.6.3. The Board:

- (a) retains the discretionary right to not accept any application for membership.
- (b) has the ability to accept an application for membership in special circumstances.
- (c) retains the right to apply a membership fee and to alter that fee, at any time

7.6.4. All applicants for membership will receive written advice on the outcome of the application.

7.6.5. An applicant who has had their membership application rejected by the Board under this clause may, by written notice (**Review Notice**) to the Secretary within seven days of the rejected application, request a review of the decision by the Members of the Company.

7.6.6. Upon receipt of a Review Notice:

- (a) the Secretary will accept written submissions made by the applicant as to why they should become a Member, which are to be forwarded to the Secretary within seven days of the Review Notice being received;
- (b) the Board may, within 18 days of receiving written submissions reverse its decision;
- (c) if the Board has not reversed its decision the Company must call a meeting of the Members to consider the rejected application within 21 days of the Board affirming its decision;

- (d) the Members, at their discretion, may provide the applicant with an opportunity to be heard at the meeting of Members, in addition to any written submissions put forward by the applicant;
- (e) the Members must consider the review requisition in absence of the applicant.

7.6.7. The Members may, by resolution, following a review allow the applicant to become a member.

## **7.7 Members' rights**

7.7.1. Full members of the Company have the right to:

- (a) receive notices of general meeting of the Company;
- (b) speak at general meetings of the Company; and
- (c) vote at general meetings of the Company.

7.7.2. Associate members of the Company have the right to:

- (a) receive notices of general meeting of the Company; and
- (b) speak at general meetings of the Company.

## **7.8 Membership not transferable**

Membership of the Company and the associated rights cannot be transferred or sold in any manner whatsoever.

## **7.9 When does a person cease to be a Member**

A person will cease to be a Member if:

- 7.9.1. they resign by providing written notice to the Board to that effect;
- 7.9.2. they cease to be eligible for membership under the Constitution;
- 7.9.3. they are expelled by the Board or the members in accordance with the Constitution;
- 7.9.4. they are ineligible to be a member by operation of law.

A Full member will automatically become an Associate member if:

- 7.9.5. they sign a contract of employment with the Company; or
- 7.9.6. they reside outside of the region for more than 12 months.

A person who has resigned from membership or had their class of membership changed may re-apply for membership in the usual way.

**7.10 Suspension, Cancellation and Expulsion of a member**

- 7.10.1. Membership of the Company may be cancelled by the Board:
- (a) if there is evidence that the individual was not eligible for membership at the time that the application for membership was endorsed by the Board.
  - (b) if the Member cannot, after reasonable efforts have been made, be located and/or contacted at the residential or electronic address(es) provided to the Company recorded on the register of members.
- 7.10.2. A Member may be expelled by the Board:
- (a) subject to giving a Member an opportunity to be heard or to make a written submission, by a Special Resolution to expel a Member for breaching a code of conduct endorsed by a special resolution of the Board or behavior detrimental to the interests of the Company.
- 7.10.3. Particulars of the charge shall be communicated to the Member at least one month before the meeting of the Board at which the matter will be determined.
- 7.10.4. The determination of the Board shall be communicated to the Member, and in the event of an adverse determination the Member shall, subject to clause 7.10.6, cease to be a Member 14 days after the Board has communicated its determination to the Member.
- 7.10.5. It shall be open to a Member to appeal to the Company at a general meeting against the expulsion. The intention to appeal shall be communicated to the Secretary within 14 days after the determination of the Board has been communicated to the Member.
- 7.10.6. In the event of an appeal under 7.10.5, the appellant's membership of the Company shall not be terminated unless the determination of the Board to expel the member is upheld by the members of the Company at a general meeting after the appellant has been heard by the members of the Company, and in such an event membership will be terminated at the date of the general meeting at which the determination of the Board is upheld.
- 7.10.7. During the period of time between the advice to the Member from the Board of the particulars of the charge and the general meeting at which an appeal (if one is lodged) is heard, the Member status of that member is suspended and all rights and responsibilities pertaining to them are also suspended until the outcome of the appeal is determined.

7.10.8. An individual Member who dies or otherwise becomes unable due to incapacity, to fulfill their roles and responsibilities as a member may have their membership suspended or cancelled by a Special Resolution of the Board.

#### **7.11 Register of members**

The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

7.11.1. for each current member:

- (a) name;
- (b) address;
- (c) any alternative address nominated by the member for the service of notices;
- (d) the date the member was entered on to the register;
- (e) membership type (full or associate); and
- (f) if applicable, the date of and reason(s) for resignation, suspension, cancellation, termination or ending of membership.

7.11.2. From time to time, as the Board sees fit, the register of members shall be audited to ensure the accuracy of the information held, the continued eligibility of the individuals for membership and the ongoing commitment of members to the objects of the Company.

7.11.3. All members named in the register of members will be informed of any and all general meetings and from time to time receive other correspondence from the Company.

### **8. The Board**

#### **8.1 Transitional arrangements**

8.1.1. The first Board of the Company shall be the Directors of MACCHS Inc on the date when the Company is incorporated.

8.1.2. Half of the first Board will hold office for a period of one year, whilst the other half will hold office for two years. The Board will draw lots to determine the length of their terms in office.

8.1.3. All members of the first Board can stand for nomination and election to the Board as long as they remain eligible for Board Membership under the Constitution and under the Act.

8.1.4. The first Board will nominate and elect the Office Bearers who will remain in office until the first Annual General Meeting.

## 8.2 Powers and Duties

8.2.1. The affairs of the Company shall be governed and controlled by a Board which in addition to any powers and authorities conferred by the Constitution may exercise all such powers and do all such things as are within the objects of the Company, which are not required by the Act or by the Constitution to be done by the Company in a general meeting.

8.2.2. The Board:

- (a) is accountable for the governance and control of the funds, property and other resources of the Company;
- (b) has authority to interpret the meaning of the Constitution and any other matter relating to the affairs of the Company on which the Constitution are silent as long as the interpretation is not contrary to the meaning or spirit of the preamble, or the Act;
- (c) has authority to establish sub-committees that may be comprised of Board members, Full members, Associate members, employees of the Company, other community members or other persons with requisite skills, knowledge and abilities to advance or manage a specified task, topic or area;
- (d) has authority to appoint from amongst its own, or from amongst the membership or employees of the Company, representatives or other governing bodies, committees or working groups; and
- (e) shall appoint a Public Officer as required by section 252 of the *Income Tax Assessment Act 1936* (Cth).

## 8.3 Composition of the Board

8.3.1. To be eligible to be a Board member, a person must:

- (a) be an Aboriginal person;
- (b) be a Full member of the Company;
- (c) not have been guilty of a dishonesty offence, an offence against a minor, or a criminal offence with a potential maximum sentence of more than 24 months imprisonment;
- (d) have completed a national police clearance in the 12 months prior to their election or appointment, or have given an undertaking to undergo a national police clearance within one month of their election or appointment; and
- (e) have completed corporate governance training (the **training**) for Board members within 2 years prior to their

election or appointment, or have given an undertaking to complete such training within 3 months of their election or appointment. It is at the discretion of the Board to consider the appropriateness of the training.

- 8.3.2. The Board shall be comprised of a: Chairperson, Deputy Chairperson, Treasurer, Secretary and 5 other non-office bearing Board members. In addition, the Board may co-opt up to 2 non-voting advisory directors on such terms as the Board thinks fit to provide needed skills on the Board, notwithstanding these non-voting advisory directors do not meet the criteria in clause 8.3.1.
- 8.3.3. The general membership shall be advised of the particular skills, knowledge, ability and aptitude required of Board Members as part of the nomination and election process.
- 8.3.4. Specifically, the Company shall seek Board Members who:
- (a) have experience in the governance, management, planning or delivery of Aboriginal health services;
  - (b) have experience in the governance, management, planning or delivery of other Aboriginal and not-for-profit services;
  - (c) have a professional background in health;
  - (d) understand the health needs of the Aboriginal community in the region;
  - (e) can contribute to the development of culturally appropriate health services and programs;
  - (f) have skills, knowledge and experience in Aboriginal cultural matters, finance, HR/IR, physical resources management, strategic planning, marketing and promotion or any other relevant field;
  - (g) can commit to attending and participating in scheduled meetings;
  - (h) are actively and positively involved in the region with the Aboriginal community;
  - (i) are respected by the general membership and the wider community and can represent the Company with cultural integrity.
- 8.3.5. In the event of there being more than two Family Members nominated for a position on the Board, only the family member with the most votes will be elected to the Board unless no other nominee exists.
- 8.3.6. For the purpose of clause 8.3 **Family member(s)** means:

- (a) Parents and children related biologically or by legal adoption;
- (b) Siblings related biologically or by legal adoption;
- (c) Spouses (whether married or de facto). In the case of de facto, spouses who have been in a de facto relationship for a period of 1 year or more.

#### **8.4 Nomination and appointment to the Board**

- 8.4.1. Current members of the Board may appoint 4 members of the incoming Board, the remaining 5 members shall be elected to the Board by the Full members at a duly convened general meeting.
- 8.4.2. Nominations for appointment to the Board may be via self-nomination or nomination by another Full member, shall be in writing, and must be received 5 days before the relevant general meeting.
- 8.4.3. The nominated Full member does not have to be present at the general meeting where the election is to take place but must have indicated that they accept the nomination and declared prior to the meeting that they are eligible to accept the nomination.
- 8.4.4. All Full members nominated for a position on the Board must declare and provide evidence, where required, that they are eligible to accept a position on a Board of a Company under the Constitution and under the Act prior to the election process.

#### **8.5 Board Member Term of Office**

- 8.5.1. Other than as dictated by clause 8.1, Board Members are appointed for a term of two years and may be reappointed in accordance with clause 8.4 at the end of their term with the maximum number of three consecutive terms as long as they remain eligible for full membership and Board membership under the Constitution and the Act.

#### **8.6 Filling vacancies on the Board**

- 8.6.1. The Board may invite and appoint a person, from amongst the full members, to fill a vacancy that has arisen for whatever reason. Once appointed, the term of appointment is for the remainder of the term of the Director whose vacancy has been filled.
- 8.6.2. The Board shall not carry more than three vacancies for a period greater than two months.
- 8.6.3. If the Board is unable to identify suitable full members from the list of registered members to fill a vacancy it may determine to:
  - (a) Carry the vacancy/vacancies (no more than three) until the next annual general meeting.

- (b) Call a Special General Meeting for the purposes of electing Board members.
- (c) Waive the membership criteria (with the exception of the Aboriginality, employment and Section 30 of the Act related criteria) for suitable people who are not Full members and who are not eligible for membership to enable them to become registered members and then be co-opted to fill a temporary vacancy.

8.6.4. Board vacancies filled through clause 8.6.3(c) are only for the remainder of the term of the Director whose vacancy has been filled. Board members co-opted under 8.6.3(c) will not be eligible to stand for nomination or election to the Board unless, during their temporary period of appointment, they have become eligible and have applied for membership and are eligible for board membership.

## **8.7 Office bearers and terms of appointment**

- 8.7.1. Office bearers are to be appointed for a term of office of two years, for a maximum of three consecutive terms in any one office, unless no other nominations are received for that Office following the Office bearer serving the maximum number of terms.
- 8.7.2. An Office bearer who has completed the maximum number of terms in one position can be nominated and elected to that same office after standing down for one full term of two years.
- 8.7.3. An Office bearer having served the maximum number of terms in one office may be nominated and elected to another office.
- 8.7.4. Board Members may request that those nominated for an Office bearer's position, speak on behalf of themselves as to their suitability for the office.
- 8.7.5. A simple majority of votes is required to determine the outcome of an election.
- 8.7.6. The Board may determine to use legitimate processes to resolve a tied vote such as, but not limited to:
  - (a) secret ballot;
  - (b) open discussion regarding the nominee's skill, knowledge and ability to fill the Office;
  - (c) agreement to a temporary, fixed term appointment at which time the appointment will be reviewed; or
  - (d) agreement for the Office to be shared.

8.7.7. An appointment to an Office bearer's position does not preclude a Board Member from having to stand for nomination and election to the Board by the general membership when their term of appointment expires subject to clause 8.4.

8.7.8. The term of office for an Office bearer does not supersede a term of office for a Board Member.

## **8.8 Proceeding of the Board**

8.8.1. The Board shall convene (in person, electronically or via telecommunication) for the dispatch of business at least 8 times during the year.

8.8.2. A quorum for a meeting of the Board shall be a natural majority of the total current number of members of the Board currently in office.

8.8.3. Questions, motions or ordinary resolutions arising at any meeting of the Board shall be decided by a majority of votes by a show of hands unless the Chairperson or two Board members request a secret ballot.

8.8.4. Each Board member has one vote.

8.8.5. In the event of a tied vote at a Board meeting the Chairperson will in the first instance set aside the voting process and invite Board members to speak for and against the motion and then hold another vote.

8.8.6. If after the subsequent vote, the vote is still tied, the Chairperson will have the casting vote.

8.8.7. The Board meetings shall be chaired by the Chairperson. In the absence of the Chairperson or in the event that they decline the chair, the meeting shall be chaired by the Deputy Chairperson. In the absence of both or where both decline the chair, the Board members present may elect a Board member to chair the meeting.

8.8.8. In the event that a matter under consideration, discussion or for decision before the Board concerns a Board member that Board member will be required to leave the meeting for the duration of the item.

8.8.9. The Secretary will ensure that proper minutes are recorded each and every time the Board convenes and that they are presented for endorsement the next time it convenes.

8.8.10. The Treasurer will ensure that proper financial reports are tabled each time the Board convenes.

8.8.11. The Board shall observe proper meeting procedures.

**8.9 Conflict of interest and voting on contracts**

- 8.9.1. A member of the Board having a direct or indirect pecuniary interest in a contract or proposed contract with the Company must disclose the nature and extent of that interest to the Board and shall not vote with respect to that contract or proposed contract. This shall be reflected in the minutes of that meeting.
- 8.9.2. In the event of there being a conflict of interest for a Board member in the discharge of their duties and obligations as a Board member, this shall be declared and recorded in the minutes. The other Board members will discuss and determine if the conflict of interest is sufficient for the Board member to be asked to not participate in the discussion, not vote or to not be present during the discussion and decision making process.
- 8.9.3. The Secretary will maintain a register of standing conflicts of interest.

**8.10 When does a person cease being a Board member**

- 8.10.1 The office of a Board member (including a Board member who is also an Office bearer) shall become vacant by disqualification if a Board member:
- (a) resigns from the position in writing to the Board;
  - (b) completes their term of office and is not reelected or reappointed;
  - (c) is disqualified from being a Board member under the Act or its Constitution;
  - (d) is suspended, cancelled or expelled as a member under the Constitution;
  - (e) is no longer eligible for membership under the Constitution;
  - (f) is found to have conducted themselves in a manner that is detrimental to the reputation of the Company;
  - (g) is found to have conducted themselves in a manner contrary to the objects of the Company;
  - (h) is found to have misrepresented themselves or the Company for their own benefit;
  - (i) is found to have conducted themselves in a manner that disrespects their position, the position of other Board Members, the standing of the Board or fails to follow any codes, policies and procedures of the Board or Company;
  - (j) is subject to a no confidence vote that is supported by a Special resolution of members;

- (k) is absent without apology for more than three consecutive meetings or four meetings in a twelve month period;
  - (l) dies or is otherwise unable or incapable of exercising the duties required of the role and/or accepting accountability for the operations and viability of the Company.
- 8.10.2 A written and signed requisition of at least 10% of the full membership is required to lodge a request for a no confidence vote in the Board in its entirety or an individual Board member to take place at a special general meeting or an annual general meeting.
- 8.10.3 Pursuant to 8.10.2 any such formal motion must be in the form a Special resolution.
- 8.10.4 Pursuant to 8.10.1 or 8.10.2 the Board or an individual Board member has a right of reply and must be afforded natural justice in the proceedings.
- 8.10.5 In the event that the general membership lodges a request for a no confidence vote in:
  - (a) an individual Board Member - the remaining Board Members shall determine if that Board Member is to stand down until the outcome of the no confidence vote is known or if they may carry on with their Board duties and retain all rights and responsibilities.
  - (b) the entire Board - the Board will remain in operation in a caretaker capacity until the outcome of the vote is known.
- 8.10.6 During the caretaker period, the Board may not approve new membership applications.
- 8.10.7 If the vote of no confidence is upheld, the Board members are to immediately stand down and a chair elected by the members shall preside over voting to elect an interim Board of five persons who will govern the Association in a caretaker capacity until a general meeting is held where nominations for the Board and elections shall take place for the entire nine Board positions.
- 8.10.8 Pursuant to 8.10.5(b), the interim Board of five:
  - (a) does not have to be nominated from amongst the Company's membership and may include persons who would not ordinarily be eligible for membership of the Company or of the Board (but they still must meet the requirements for Board membership under the Act); and
  - (b) shall hold a general meeting at which elections will take place, within three months of their original appointment.

8.10.9 Any consideration and determination regarding the removal of a Board Member must also address the matter of expulsion as a Full member as well.

8.10.10 A removed Board Member who:

- (a) remains a member of the Company after disqualification may re-nominate for the Board at a subsequent general meeting at which an election is to take place subject to their continued eligibility to be on the Board of a Company under the Constitution and under the Act.
- (b) is also an expelled member of the Company may not reapply for membership nor have their membership application considered or endorsed by the Board for two years even if they are otherwise eligible for membership under the Constitution.

## 9. **Executive Committee**

### 9.1 **Composition of the Executive**

9.1.1 The Company shall have an Executive Committee comprised of the Chairperson, Deputy Chairperson, Treasurer, Secretary and one non-office bearing Executive member who must each be a current Director of the Company.

9.1.2 The Executive has the delegated authority of the Board except for decisions with respect to:

- (a) determining the governance policies of the Company and endorsing key management policies;
- (b) electing members of the Executive;
- (c) setting membership fees;
- (d) approving membership of new Members;
- (e) suspending or expelling Members;
- (f) approving the annual budget of the Company;
- (g) accepting audited reports; and
- (h) determining plans for amalgamation or winding up of the Company.

### 9.2 **Election of the Executive**

9.2.1 The Chairperson and Deputy Chairperson are to be elected by the Members from the Directors at the Annual General Meeting of the Company for a term of two years, or until the second Annual General Meeting after their election, whichever is later.

9.2.2 Each other Executive officer is to be elected by the Board by a resolution at their first meeting of each calendar year in which the positions are due for election.

9.2.3 In the event of a casual vacancy on the Executive, the Board may by passing a resolution elect a Director to fill that casual vacancy until the next Annual General Meeting of the Company.

9.2.4 In the event of a casual vacancy in the position of Chairperson, the Deputy Chairperson shall fill that role until such time as the Board fills the casual vacancy.

### **9.3 Roles of the Executive officers**

Each Executive officer shall have those duties that are normally fulfilled by a person in the position of that Executive officer in comparable organisations, together with any duties specified by by-laws.

### **9.4 Resignation or disqualification of Executive officers**

9.4.1 Executive officers shall remain in office until the first to occur of:

- (a) their term expires;
- (b) they resign from their position by notice in writing provided to the Secretary of the Company;
- (c) they are no longer a Full member;
- (d) they die or are incapacitated;
- (e) they are removed from their position as an Executive officer in accordance with a provision of this Constitution.

### **9.5 Suspension of Executive officers**

9.5.1 An Executive officer will be suspended from their position on the Executive with immediate effect if:

- (a) they are suspended as a Director of the Company; or
- (b) the Board passes a resolution suspending the Executive Officer from their position on the Executive.

9.5.2 Upon an Executive officer being suspended, the Board may replace that officer with another Director in that position on the Executive for the duration of their suspension.

9.5.3 The suspension of an Executive officer shall continue until:

- (a) the Executive officer is reinstated as a Director of the Company (if this was the reason for their suspension as an Executive officer); or
- (b) a resolution is passed by the Board ending their suspension.

**9.6 Removal of Executive officers**

9.6.1 An Executive officer may be removed by a Special resolution of the Board provided that:

- (a) the reasons for the proposed removal of the Executive officer have been communicated to the Executive officer no later than 14 days before the Board meeting considering the removal is to be held;
- (b) the Executive officer in question is given a reasonable opportunity to be heard either in person or in writing, at the Board's discretion, at the Board meeting;
- (c) the Board has been given an opportunity to consider the removal of the Executive officer in absence of the Executive officer; and
- (d) the resolution is passed by a majority of Directors present in person at the meeting of the Board considering the removal.

9.6.2 Removal of an Executive officer does not automatically remove a Director from their position as Director of the Company.

**10 Review of decision to suspend or remove a Director or Executive officer**

10.1 A Director or Executive officer who has been suspended or removed from their position as Director or Executive officer, as the case may be, (the **Affected Director**) may by written notice to the Secretary endorsed with the signatures of no less than 20 Full members, within seven days of the suspension or removal, request a review of their suspension or removal by the Members of the Company, unless they have been removed due to operation of law.

10.2 Upon receipt of a written notice containing the request for a review of a suspension or removal:

- 10.2.1 the Affected Director is entitled to make written submissions to the Members as to why their suspension should be ended or why they should be reinstated as a Director, which are to be forwarded to the Secretary within 14 days of the request to review the suspension or removal is made;
- 10.2.2 the Company must call a meeting of the Members to consider the suspension or removal within 21 days of receiving such notice;
- 10.2.3 the Company may, at the discretion of the Members, provide the Affected Director with an opportunity to be heard at the meeting of Members; and
- 10.2.4 the Members must consider the review request in absence of the Affected Director.

10.3 The Members may, by resolution, following a review reverse the decision to suspend or remove a Director or Executive officer.

## **11 General Meetings**

### **11.1 Annual General Meetings**

11.1.1. The Board shall call Annual General Meetings in accordance with the Act and the Constitution. The first Annual General Meeting shall be held within 18 months of the incorporation date of the Company. Subsequent AGM's will be called within 5 months of the end of the financial year.

11.1.2. The order of business at the Annual General Meeting will be:

- (a) the confirmation of the minutes of the previous Annual General Meeting and of any general meeting held since;
- (b) the consideration of the accounts and reports of the Board and the auditor's report;
- (c) the nomination and election of Board members as vacancies arise;
- (d) the appointment of an auditor;
- (e) the answering of questions from members on the management of the Company; and
- (f) any other business requiring consideration by the Company at a general meeting.

### **11.2 Special General Meetings**

11.2.1. The Board may call a Special General Meeting of the Company at any time.

11.2.2. Upon a requisition in writing of not less than 10% of the total number of full members of the Company, the Board shall within one month of the receipt of the requisition, call a Special General Meeting for the purpose specified in the requisition, to be held within three months of the meeting being called.

11.2.3. Every requisition for a Special General Meeting shall state the purpose of the meeting.

11.2.4. If a Special General Meeting is not called within one month, as required by 11.2.2 above, the requisitionists, or at least 50% of their number, may call a Special General Meeting. Such a meeting shall be convened in the same manner as nearly as practicable as a meeting convened by the Board, and for this purpose the Board shall ensure that the requisitionists are supplied free of charge with particulars of the members entitled to receive a notice of the meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the Company.

### **11.3 Notice of General Meetings**

- 11.3.1. Subject to 11.3.2, at least 14 days' notice of any general meeting shall be given to members. The notice shall set out where and when the meeting will be held and particulars of the nature and order of the business to be transacted at the meeting.
- 11.3.2. Notice of a meeting at which a special resolution is to be proposed, shall be given at least 21 days prior to the date of the meeting.
- 11.3.3. A notice may be given by the Company to any Member by serving the member with the notice personally or by sending it by post or electronically to the residential, postal or electronic address appearing in the register of members.
- 11.3.4. Where a notice is sent by post:
  - (a) the service is effected by properly addressing, prepaying and posting a letter or packet containing the notice; and
  - (b) unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in the ordinary course of post.

### **11.4 Proceedings at General Meetings**

- 11.4.1. Twenty Full members or 20% of Full members, whichever is fewer, present personally or by means of technology, shall constitute a quorum for the transaction of business at any general meeting except for a special general meeting called pursuant to 11.2.2.
- 11.4.2. If within 1 hour after the time appointed for the meeting a quorum of members is not present, a meeting convened upon the requisition of members shall lapse. In any other case, the meeting will be postponed until the same time the following week, and then the Full members present shall form a quorum, as long as there are at least ten Full members present.
- 11.4.3. Subject to 11.4.4, the Chairperson shall preside as Chairperson at a general meeting of the Company.
- 11.4.4. If the Chairperson is not present within 30 minutes after the time appointed for holding the meeting, or he or she is present but declines to take or retires from the Chair or if the matter for consideration before the members is regarding the Chair, the Deputy Chairperson may chair the meeting or the members may choose a Board member or other Full member to Chair that meeting.
- 11.4.5. A member of the Board or any Member present at a general meeting may table a motion to appoint an independent person to Chair part or all of a general meeting.

## 11.5 **Voting at General Meetings**

### 11.5.1. Subject to the Constitution:

- (a) every Full member of the Company has only one vote at a meeting of the Company.
- (b) a question for decision at a general meeting, other than a special resolution, must be determined by a majority of Full members who vote in person, at that meeting.

11.5.2. Unless a secret ballot is demanded by the Chairperson of the meeting, or at least five members, a question for decision at a general meeting must be determined by a show of hands.

11.5.3. If a secret ballot is demanded, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.

11.5.4. A secret ballot demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other secret ballot may be conducted at any time before the close of the meeting.

## 11.6 **Special and Ordinary Resolutions**

11.6.1. A general meeting where a special resolution is to be proposed requires 21 days written notice to be given to members specifying the intention to propose the resolution as a special resolution.

11.6.2. A special resolution is passed only by a majority of not less than three-quarters of Full members of the Company, voting in person.

11.6.3. An ordinary resolution is passed by a simple majority (51% or more) of Full members of the Company, voting in person or by proxy.

## 11.7 **Proxies**

### 11.7.1. A Full member:

- (a) shall be entitled to appoint in writing a natural person who is also a Member of the Company to be their proxy and attend and vote at any general meeting of the Company.
- (b) must advise the Company in writing prior to the meeting that they have appointed a proxy and who that proxy is.
- (c) must instruct the proxy in writing on how they wish their vote to be cast.
- (d) may appoint the Chair of the meeting to be their proxy and cast their vote as directed in writing or at the chair's discretion.

11.7.2. If the Full member who had advised that they had appointed a proxy attends the meeting, the proxy nomination lapses.

11.7.3. An individual Full member who is not the Chair of the meeting may hold a maximum of three proxy votes.

## **12 Minutes**

12.1 Proper minutes of all proceedings of general meetings of the Company and of meetings of the Board shall be entered within one month after the relevant meeting in minute files kept in hard copy or electronically for that purpose.

12.2 The minutes kept pursuant to 12.1:

12.2.1. must be confirmed by the members of the Company or the members of the Board (as relevant) at a subsequent meeting; and

12.2.2. shall be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting at which the minutes are confirmed.

12.3 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 shall be deemed to have been duly held and that all appointments made at a meeting shall be deemed to be valid.

## **13 Financial reporting**

13.1 The first financial year of the Company shall be the period ending on the next 30 June following incorporation and thereafter a period of 12 months commencing on 1 July and ending on 30 June of each year.

13.2 The Company shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Company in accordance with the Act.

13.3 The accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report, shall be laid before members at the Annual General meeting.

## **14 Sub-Committees and Standing Committees**

14.1 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.

14.2 Sub-committee and standing committee members need not be Directors of the Company.

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

## **15 Appointment of an Auditor**

- 15.1 At each Annual General Meeting, the members shall appoint a person to be auditor of the Company.
- 15.2 The auditor shall not be an officer; business partner, spouse, employer or employee of an officer; an employee; or a business partner, spouse or employee of an employee of the Company.
- 15.3 The auditor shall hold office until the next Annual General Meeting and is eligible for re-appointment.
- 15.4 If an appointment is not made at an Annual General Meeting, the Board shall appoint an auditor for the current financial year.

## **16 Amendment of the Constitution**

- 16.1 This Constitution:
  - (a) may be altered by Special Resolution by the Members at a general meeting; and
  - (b) 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.
- 16.2 An alteration to the Constitution becomes effective from the time the alteration is passed.

## **17 By-laws of the Company**

- 17.1 The Board may draft by-laws to govern the management, procedure and operations of the Company.
- 17.2 By-laws and/or a by-law:
  - 17.2.1 will come into effect only when ratified by an ordinary resolution passed at a meeting of the Board;
  - 17.2.2 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;
  - 17.2.3 once ratified, is binding upon all Members, Directors and Executive officers of the Company;
  - 17.2.4 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(s) being beyond such powers, it shall to that extent be void and unenforceable;
  - 17.2.5 are to be distributed to Members following their ratification by the Board; and
  - 17.2.6 may be varied or cancelled by a resolution of members at a general meeting.

## 18 Winding up and loss of endorsement

### 18.1 Winding up

Subject to the Corporations Act and any other applicable Act, 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 that:

- 18.1.1 has objects or purposes similar to those of the Company;
- 18.1.2 by their constituent rules, prohibits the distribution of income and property amongst members to an extent at least as great as is imposed upon the company; and
- 18.1.3 that is or are endorsed as a deductible gift recipient for the purpose of any Commonwealth tax law.

18.2 The decision as to the charity or charities to be given the surplus assets must be made by 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 of South Australia to make this decision.

18.3 If the Company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of this clause, as decided by the directors.

18.4 For the purposes of this clause 18:

18.4.1 a **gift fund** means:

- 18.4.1.1 gifts of money or property received for the principal purpose of the company;
- 18.4.1.2 contributions made in relation to an eligible fundraising event held to raise funds for the principal purpose of the company; and
- 18.4.1.3 money received by the company because of such gifts and contributions.

18.4.2 **contributions** and **fund-raising event** have the same meaning as in Decision 30 of the *Income Tax Assessment Act 1997* (Cth).

## 19 Interpretation

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

- 19.1 the singular includes the plural and conversely;
- 19.2 a reference to one gender includes all genders;
- 19.3 if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- 19.4 a reference to a clause, schedule or annexure is a reference to a clause of, a schedule annexure to, this Constitution;
- 19.5 a reference to writing include any method of representing or reproducing words, figures, drawings, or symbols in a visible form;
- 19.6 a reference to legislation or to a provision of legislation include a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- 19.7 a reference to conduct includes, an omission, statement, or undertaking, whether or not in writing;
- 19.8 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;
- 19.9 a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- 19.10 the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- 19.11 references to agree, approve or consent are references to agreement, approval or consent (as the case maybe) in writing;
- 19.12 any term defined in the Act shall have the same meaning in this Constitution;
- 19.13 in the event of any ambiguity in this Constitution, the interpretation that is most consistent with the Preamble shall be preferred; and
- 19.14 headings do not affect the interpretation of this Constitution.

**Schedule 1**  
**Catchment Area**