



# **CONSTITUTION**

of the

# **BOURKE ABORIGINAL HEALTH SERVICE LIMITED**

**A Public Company Limited by Guarantee not having a share capital**

**Incorporated under  
Commonwealth *Corporations Act* provisions**

**on the  
18<sup>th</sup> October 1987**

**Australian Company Number  
003 392 667**

**Incorporated under  
Commonwealth *Corporations Act* provisions  
by the  
Australian Securities & Investments Commission  
on the  
18<sup>th</sup> October 1987**

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## CONSTITUTION

### BOURKE ABORIGINAL HEALTH SERVICE LIMITED

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## **PART 1 - PRELIMINARY**

### **Name**

The name of the Company shall be the *Bourke Aboriginal Health Service Limited*, which may, for the purposes of this document and the internal purposes of the Company, be cited by the abbreviated name *Bourke Aboriginal Health Service Ltd*.

The Company shall:

- pursue charitable purposes only, as delineated in its Aims and Objectives, and shall apply its income in promoting those purposes;
- prohibit making distributions to its members and paying fees to its directors;
- require Directors to approve all other payments the company makes to Directors; and shall
- notify the ASIC if any of the above are not complied with or are removed by way of any amendment to the *Constitution*.

### **Short Title**

**1.2** The *Constitution* for the *Bourke Aboriginal Health Service Limited* may, for the purposes of this document and the internal purposes of the Company, be cited as the '*Constitution*'.

### **Definitions**

**1.3** In this *Constitution*, unless the context otherwise requires:

**“Aboriginal”** means a member of the Aboriginal race of Australia who identifies as an Aboriginal person and who is accepted by the Aboriginal community as an Aboriginal person.

**“Aboriginal Community Controlled Health Committee” (ACCHC)** means an incorporated body having Rules preventing the distribution of property to individual members of the organisation which is initiated in, elected and governed by a local Aboriginal community with the objective of establishing a Local Aboriginal Community Controlled Health Service as defined by the NACCHO definition of Community Control in Health Services.

**“Aboriginal Community Controlled Health Service” (ACCHS)** means an incorporated Aboriginal community controlled organisation, having Rules preventing the distribution of property to individual members of the organisation, which is governed by an Aboriginal board of management elected by a local Aboriginal community membership and provides culturally appropriate primary health care and health related services to the Community which it serves.

**“Aboriginal Community Control in Health Services”** means, consistent with the NACCHO definition for *“Aboriginal Community Control in Health Services”* as provided in *Schedule 6* of the *Constitution*, the following:

The term *Aboriginal Community control* has its genesis in Aboriginal peoples' right to self-determination.

Self determination is defined in United Nations and Human Rights Instruments as a peoples' right to their own cultural, economic, social and political institutions and to which their right to land, territorial security and control over resources is viewed as inseparable.

*Aboriginal Community control* means the empowering of a Community through the adoption of appropriate organisational structures which enable all Aboriginal people in the local Community the opportunity to be represented as members and to be involved in the decision making process and, therefore, the right to participate and contribute to the goals, structure and operations of its services.

The process of *Aboriginal Community control* in the area of health means that an Aboriginal health service is independent and autonomous and is controlled by the local Aboriginal Community it serves in order to provide culturally appropriate health care to meet its health needs as defined by that Community.

*Aboriginal Community control* is central to achieving and maintaining cultural well-being and is therefore essential to the philosophy and operations of Aboriginal health care services.

*Aboriginal Community control* is also about responsibility and accountability to the Community having regard for local cultural perceptions and imperatives.

The essence of *Aboriginal Community control*, in this context, distinguishes it from all other methods of control by the coming together of minds and experiences, harnessing talent and diverse abilities from within the local Aboriginal Community towards regaining and maintaining its well-being.

**“Aboriginal health”** means not just the physical well-being of an individual but refers to the social, emotional and cultural well-being of the whole Community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well-being of their Community. It is a whole of life view and includes the cyclical concept of life-death-life.

**“Aboriginal health related services”** mean those services covered by the Aboriginal holistic definition of health including, but not restricted to, such services as health promotions and disease prevention services, substance misuse, men's and women's health, specialised services to children and the aged, services for people with disabilities, mental health services, dental care, clinical and hospital services and those services addressing, as well as seeking the amelioration of, poverty within Aboriginal communities.

**“Aboriginal Religion”** means that body of spiritual beliefs, practices, rituals, customs, lore, laws and cultural traditions which have existed in Aboriginal communities since the origins of Aboriginal habitation in Australia.

**“Act”** unless the context otherwise implies, means the provisions of the Commonwealth *Corporations Act* or any Act, Code, Regulation or other Statutory Instrument in substitution of the *Corporations Act*.

**“Active Member”** means a person who has been accepted as a member by the Board of Directors; who has paid any levy or membership fee as

determined from time to time by the members and who regularly attends meetings of the Organisation.

“**AH&MRC**” is the acronym for the Aboriginal Health & Medical Research Council of New South Wales.

“**alter**” or similar word or expression used in relation to a *Clause* amendment, includes add to, substitute, and rescind.

“**Alternate Director**” means a person who has been appointed by a Director and approved by the Board of Directors to act as a Director for specified period due to the inability of a Director to act as Director, consistent with the provisions of Section 201K of the *Corporations Act* or a person whom the Board has appointed to act as an Alternate Director to make up a quorum for the Board of Directors (Section 201H) but the person so appointed cannot assume office until the *Consent to Act as a Director* form is signed. The appointing director or the Board, respectively, may terminate the alternate director’s appointment at any time.

“**AMS**” is the acronym for an Aboriginal Medical Service that in practice is synonymous with an Aboriginal Community Controlled Health Service (ACCHS) and the nomenclature under which many ACCHSs operate.

“**ASIC**” is the acronym for the Australian Securities & Investments Commission.

“**Associate Member**” is a person elected as an Associate Member by the Board of Directors. An Associate Member has attendance and speaking rights to all General Meetings of the Organisation and can be invited to attend and provide advice to the Board of Directors but has no voting rights nor can be elected to the position of a Director of the Company.

“**Auditor**” means the registered company auditor or auditors or firm or firms of auditors for the time being of the Company appointed pursuant to the provisions of the *Constitution* and the *Corporations Act*.

“**Board of Directors**” means the committee of management or governing Board of Directors of the Company or any number of directors assembled at a meeting of the board transacting business in accordance with this *Constitution*, being not less than a quorum or a majority, as the case may be and which may for the purposes of this document and the internal purposes of the Company be cited as the ‘**Board**’.

“**Chairperson, Honorary**” means the Chairperson of the Board of Directors of the Company who is elected by the Board.

“**Charitable Institution**” means, with regard to the Company, that set forth in the provisions of *Regulations* of the *Corporations Law* - a charitable, religious and educational institution being an institution which is not carried on for the purposes of profit or gain to individual members and which is not empowered to make any distribution, whether in money, property or otherwise, to individual members.



**“Chief Executive Officer”** means the appointed principal executive officer of the Company who has administrative responsibility for the running of the Organisation; serves and is answerable to the Board of Directors; implements policies and administrative procedures approved by the Board of Directors and co-ordinates activities consistent with the Aims and Objectives of the Organisation.

**“community”** when preceded by the word Aboriginal, or **“Community”** when not preceded and used with the upper case, mean the Aboriginal community within Australia or, depending on the context, individual local Aboriginal communities.

**“Company”** means the *Bourke Aboriginal Health Service Limited*, which may for the purposes of this document, and the internal purposes of the Company, be cited as the “Organisation”.

**“Constitution”** means the registered *Constitution*, as amended from time to time, of the company *Bourke Aboriginal Health Service Limited* and reference to particular *Clauses* has a corresponding meaning.

**“Delegate”** means one of two elected representatives who represents the Organisation at Extra-ordinary General Meetings and Annual General Meetings of the AH&MRC and NACCHO.

**“Director”** means a person who has been elected by members at an Annual General Meeting or an Extra-ordinary General Meeting of the Corporation to be a director on the Board of Directors, or who has been appointed by the Board of Directors by way of casual vacancy to be a director consistent with the provisions of *The Corporations Act*, and who has signed the *Consent to Act as a Director* form required by the Australian Securities & Investments Commission.

**“Extra-ordinary General Meeting”** means a general meeting of the Company, other than an Annual General Meeting, called for a specific purpose or purposes.

**“Financial Year”** means the financial year of the Company as specified in *Clause 7.7*.

**“may”** or a similar word or expression, used in relation to a power of the Board of Directors indicates that the power may be exercised or not at the Board’s discretion.

**“Member”** means a member of the Organisation:

- Who has attained the age of 18 years;
- Who is an Aboriginal person;
- Who resides within the boundaries of the *Bourke Shire*;
- For whom a nomination form has been forwarded to the Board in the manner prescribed in the Constitution;
- Whose application has been considered and accepted by the Board of Directors and has been deemed to meet the criteria for membership of the Organisation by the Board of Directors;

- Whose name has been included in the *Register of Members* by the Board;
- who has paid any levy or membership fees as determined from time to time by the Company; and
- who has assumed their responsibilities to attend meetings of the Company.

**“Month”** means calendar month.

**“NACCHO”** is the acronym for the *National Aboriginal Community Controlled Health Organisation*.

**“Office Bearer”** means a Director of the Company who has been elected by the membership at an Annual General Meeting of the organisation, or who has been appointed by the Board of Directors as provided for within this Constitution, to be the Chairperson or Deputy Chairperson.

**“prescribed”** means prescribed by or under the provisions of the *Corporations Act* by Regulation.

**“Primary Health Care”** is essential, integrated care based upon practical, scientifically sound and socially acceptable procedures and technology made accessible to Communities as close as possible to where they live through their full participation in the spirit of self-reliance and self-determination. The provision of this calibre of health care requires an intimate knowledge of the community and its health problems, with the community itself providing the most effective and appropriate way to address its main health problems, including promotive, preventative, curative and rehabilitative services. (Adapted from the W.H.O. Alma-Ata Declaration 1978)

Primary health care is the first level of contact of individuals, families and the community with the health care system and in Aboriginal communities this is usually through an ACCHS or satellite Aboriginal community health clinic that it services.

Primary health care, within the holistic health provision of an ACCHS, provides the sound structure to address all aspects of health care arising from social, emotional and physical factors. It incorporates numerous health-related disciplines and services, subject to its level of operation, available resources and funding. In addition to the provision of medical care, with its clinical services treating diseases and its management of chronic illness, it includes such services as environmental health, pharmaceuticals, counselling, preventive medicine, health education and promotion, rehabilitative services, antenatal and postnatal care, maternal and child care, programs and necessary support services to address the effects of socio-somatic illness and other services provided in a holistic context mentioned in *Schedule 1* of the *AH&MRC Constitution* (inserted with permission as *Schedule 7* of the *Constitution*) and included in the NACCHO definition for ‘Aboriginal Health Related Services’.

Primary Health Care is all inclusive, integrated health care and refers to the quality of health services. It is a comprehensive approach to health in accordance with the Aboriginal holistic definition of health and arises out of

the practical experience within the Aboriginal community itself having to provide effective and culturally appropriate health services to its communities.

**“Regulation”** means Regulation or subsequent Regulation under the *Corporations Act*.

**“shall”** or a similar word or expression, used in relation to a power of the Board of Directors, indicates that the power must be exercised, subject to the *Corporations Act* or the *Clause* of this *Constitution* granting the power.

**“Socio-somatic illness”** means those physical ailments, bodily disorders and psychological or mental conditions which impair the health of Aboriginal people and the well-being of Aboriginal communities resulting directly or indirectly from sociological disadvantage; economic deprivation; racism; assimilationist legislation, policies and practices, unemployment; lack of housing; dispossession, alienation from land, forced separation from parents, children, families and communities; and other traumas, which impinge and have impinged upon Aboriginal people since dispossession.

**“Special Resolution”** means a resolution which is passed by a majority of members, which comprises not less than 75% of members present and entitled to vote at an Extra-ordinary General Meeting or Annual General Meeting, and for which not less than twenty one (21) days’ written notice (or within any prescribed period for such written notice in any amendment to the *Corporations Act*), have been given which specified the intention to propose the resolution as a special resolution and is passed in accordance with the provisions of the *Corporations Act*.

**“Surplus Property”** means any property or interest in property of the Company, following the cancellation of its incorporation and subject to any trust affecting that property or any part of it, that remains after the satisfaction of any debts or liabilities of the former organisation and any costs, charges or expenses incurred in the winding up of the Company.

**“Torres Strait Islander”** means a member of the Torres Strait Islands race and their descendants who identifies as and is accepted by the Torres Strait Islander community as a Torres Strait Islander person.

## Interpretation

**1.4.1** In this *Constitution*, unless the context otherwise requires:

- (a) expressions used have the same meanings as those given to them by the *Corporations Act*;
- (b) words in the singular include the plural, and vice versa;
- (c) words importing a particular gender mean either gender or both genders;
- (d) words importing persons include companies, corporations, institutions, organisations, public bodies, firms and partnerships;
- (e) expressions referring to writing shall, unless the contrary intention appears, be construed as references to printing, lithography, photography, facsimile

transmission, electronic mail (Email) and other modes of representation or reproducing words in a visible form;

- (f) (i) a reference to a function includes a reference to a power, authority and duty;  
(ii) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty; and
- (g) the headings are inserted for convenience only and do not affect the construction of the *Constitution*.

**1.4.2** The provisions of the *Corporations Act* apply to and in respect of this *Constitution* in the same manner as those provisions would so apply if the *Constitution* were an instrument made under the *Corporations Act*.

**1.4.3** The Company is established for the purposes set out in the *Constitution*.

**1.4.4** AND IT IS HEREBY DECLARED that the interpretation of this *Clause* the powers conferred on the Company by any paragraph shall not be restricted by reference to any other or to the name of the Company or by the juxtaposition of two or more objectives and that, in the event of any ambiguity, this *Clause* and every other paragraph hereof shall be construed in such a way as to widen and not restrict the powers of the Company.

### **Effect of Constitution , the Corporations Act and Replaceable Rules of the Corporations Law**

**1.5.1** All replaceable rules of the *Corporations Act* are expressly excluded from this Constitution.

**1.5.2** This *Constitution* shall comply with the subscribed matters specified in the relevant Sections of the *Corporations Act* and such matters that may be prescribed.

### **Rules of Natural Justice Provisions**

**1.6.1** In the exercising of any power in adjudicating disputes between members or between members and the Company, in relation to rights conferred upon members by the *Constitution*, any decision made by the Company shall be invalid where, in proceedings relating to the dispute, the Rules of Natural Justice have not been complied with.

**1.6.2** In the exercising of any power in the decision making processes of the Company, in relation to rights conferred upon members by the *Constitution* any decision made by the Company shall be invalid where, in proceedings relating to the decision, the Rules of Natural Justice have not been complied with.

## **PART 2 - AIMS AND OBJECTIVES**

### **2.1. The Aims and Objectives of the Organisation are the NACCHO Principles relating to Aboriginal Health aims and objectives.**

The ethical principles and cultural imperatives enunciated in the following references provide the foundation for this organisation's Aims and Objectives for Aboriginal health.

- The NACCHO Manifesto and position papers;
- The *NAIHO Report of the National Workshop on Ethics of Research in Aboriginal Health (1987)*;
- *The AH&MRC Monograph Series Vol. I. No. 1 (1999), Primary, Secondary and Tertiary Health Care Services to Aboriginal Communities*; and
- *The AH&MRC Monograph Series Vol. I. No. 2 (1999), Guidelines for Research into Aboriginal Health*.

**2.2 NACCHO Manifesto on Aboriginal Well-being (1993)**

**2.3 NACCHO Position on Environmental Health (1993)**

**2.4 NACCHO Position on Aboriginal Men's Health (1993)**

**2.5 NACCHO Position on Aboriginal Mental Health (1993)**

**2.6 NACCHO Position on Aboriginal Women's Health (1993)**

**2.7 NACCHO Position on Aboriginal Prisoner Health (1993)**

**2.8 NACCHO Position on Aboriginal Dental Health (1993)**

**2.9 NACCHO Position on Socially Communicable Diseases (1993)**

**2.10 NACCHO Position on Research and Ethical Guidelines (1993)**

### **2.11 General Aims and Objectives**

Recognising that Aboriginal people suffer economic, social, nutritional and housing disadvantages which cause or accentuate medical ill health beyond that of the general community; and that "Aboriginal health" means not just the physical well-being of an individual but refers to the social, emotional and cultural well-being of the whole Community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well-being of their Community, the Aims and Objectives of the *Bourke Aboriginal Health Service Limited* shall be:-

The establishment or conduct of all or any of the following objectives within the context of the Aboriginal understanding of health within the Aboriginal community as defined within this *Constitution*:

- (a) the amelioration of poverty within the Aboriginal community;
- (b) the advancement of Aboriginal religion;

- (c) the development and maintenance of educational courses and programs for members of the Aboriginal community within the Aboriginal community; and
- (d) to deliver holistic and culturally appropriate health and health related services to the Aboriginal community.

### **Amelioration of Poverty within the Aboriginal Community**

**2.12** In respect of Clause 2.11(a) above (to ameliorate poverty within the Aboriginal community) and mindful of the *NACCHO Manifesto on Aboriginal Well-being (1993)*, this shall include but not be restricted to

delivery of and support for indigenous food programs to counteract dietary deficiencies affecting Aboriginal health;  
and

- a) provision of temporary shelter and essential housing for the homeless;
- b) establish, provide and maintain community services; including essential transport; the supply of water, gas, and electricity; the provision and installation of plant, fittings and requisites in connection with any community service and do anything necessary or convenient therefore in pursuit of the Aims and Objectives of the Organisation;  
the establishment and maintenance of schemes and programs to provide employment for the unemployed members of the Aboriginal community;
- c) the acquisition of property for Community housing and Community development;
- d) the undertaking of necessary tasks to improve the conditions of urban, rural or remote life for Aboriginal people in pursuit of the Aims and Objectives of the Organisation;
- e) the establishment and operation of farming programs and the acquisition or hiring of agricultural machinery and implements in pursuit of the Aims and Objectives of the Organisation;
- f) the erection of dwellings and buildings in pursuit of the Aims and Objectives of the Organisation;
- g) the acquisition of land on which dwellings or buildings are being, or have been erected, and the selling or letting of same in pursuit of the Aims and Objectives of the Organisation;
- h) the acquisition and maintenance of buildings and grounds for medical, educational, religious, recreational or other Community purposes in pursuit of the Aims and Objectives of the Organisation;
- i) the undertaking of research into poverty as an underlying and contributing factor in the ill-health of Aboriginal individuals and communities to actively seek the amelioration of poverty in the Aboriginal community; and
- j) the promotion and development of strategies within local Aboriginal communities to remedy the nutritional, social, economical, emotional, and housing disadvantages which cause or accentuate medical problems, psychological and socio-somatic illness within the Aboriginal community.

### **Advancement of Aboriginal Religion**

**2.13** In respect of *Clause 2.11 (b)* above (for the advancement of Aboriginal religion) and mindful the *NACCHO Manifesto on Aboriginal Well-being (1993)*, and the following *NACCHO Position Papers* which enunciate the integral nature of Aboriginal religious traditions, values and heritage in the sustaining or regaining of health and well-being in Communities, this shall include but not be restricted to:

- a) enabling Aboriginal people and communities to facilitate, where culturally appropriate, the promotion of Aboriginal religion's inseparable components of tradition, culture, heritage, law, lore and spiritual and ethical values to enable the regaining or sustaining of community health and well-being;
- b) strengthening and fostering the development of Aboriginal identity through positive initiatives and programs which emphasise the cultural and spiritual values which underpin Aboriginal society and are essential for its health and well-being;
- c) enabling and supporting research and education in and the promotion of Aboriginal religion and traditional values;
- d) enabling acquisition of sacred land and the acquisition and maintenance of sacred sites;
- e) facilitating and supporting the teaching and researching of Aboriginal languages to members of the Aboriginal community;  
  
researching and promoting the use of Aboriginal traditional methods of healing within the Aboriginal community and to ensure that its knowledge, procedures and plant information are not misused by the non-Aboriginal community, and when appropriately used, that royalties are provided to the Aboriginal communities concerned;
- f) liaising and assisting Aboriginal people and other Aboriginal organisations in their struggle for Aboriginal Land Rights and to promote the need to recognise the indispensable requirement of land in Aboriginal culture and its pivotal role for the well-being of Aboriginal communities; and
- g) promoting wherever possible and culturally appropriate, traditional Aboriginal heritage, culture, customs, law, lore, history, language and the spiritual, moral and ethical teaching of its religious traditions and to provide research and develop educational programs to sustain within or regain such knowledge and practice for Aboriginal communities.

### **Provision of Educational Programs for the Aboriginal Community**

**2.14** In respect of 2.11 (c) above (to provide constructive educational programmes for members of the Aboriginal community) and mindful of the *NACCHO Manifesto on Aboriginal Well-being (1993)*, and the *NACCHO Position Papers*, this shall include but not be restricted to:

- a) the delivery of educational programs in Aboriginal health;

- b) the delivery of educational courses on Aboriginal understanding of health and the well-being of Aboriginal Communities;
- c) the delivery of educational courses in health related services to Aboriginal communities;
- d) the delivery of educational courses and research into specific diseases affecting Aboriginal people;
- e) the delivery of educational courses in health information and statistics to equip Aboriginal people and communities to evaluate, monitor and address specific diseases and health procedures directly affecting Aboriginal people;
- f) the delivery of health educational courses at primary, secondary and tertiary levels;
- g) the acquisition of land and buildings for the educational purposes of the Organisation;
- h) the delivery of cross-cultural educational courses that enlightens the non-Aboriginal community and health service providers of the health needs of Aboriginal people;
- i) the promotion of knowledge and understanding of the health needs of Aboriginal people within the general public, governments, departments and departmental Area Health Services, ensuring adequate provision of appropriate health services for Aboriginal people;
- j) routine assistance to local Aboriginal communities for developing or revising local health plans that inform local Aboriginal communities, the Organisation and service providers of the types of health services required to meet the needs and aspirations of Aboriginal people;
- k) the delivery and promotion of educational courses for members and members of the Aboriginal community to enable them to assist in carrying out the Aims and Objectives of the Organisation;
- l) the encouragement, funding and facilitating of, and general assistance to Aboriginal people to undergo education and training in health and the social sciences to equip Aboriginal people with the necessary skills to ameliorate ill-health in the Aboriginal community; and
- m) the encouragement of and assistance towards Aboriginal people undergoing education and training in medicine, nursing and other health vocations

### **Delivery of Health and Health Related Services to the Aboriginal Community**

**2.15** In respect of *Clause 2.11 (d)* above (to deliver holistic and culturally appropriate health and health related services to the Aboriginal community) and mindful of the *NACCHO Manifesto on Aboriginal Well-being (1993)*, and the *NACCHO Position Papers*, this shall include but not be restricted to:

- a) providing Aboriginal people with competent and free medical services of a general practitioner;  
providing Aboriginal people with competent dental services of a qualified dentist;
- b) conducting clinics in which health and health related services can be provided to Aboriginal people without charge;
- c) acting as advocate, intermediary and support arm to ensure that where it is



necessary and/or where it is desired by Aboriginal patients, Aboriginal people are enabled to use existing health services effectively with parity in access and equity in standards comparable to those available and utilised by the wider community;

- d) seeking the attainment and sustainment of health within the Aboriginal community;
- e) providing assistance where necessary for the infrastructure of Aboriginal communities with the constructing of dams, water reticulation systems, sewerage works, water supplies, drainage systems, generator plants and provide any other necessary environmental health requirement in pursuit of the Aims and Objectives of the Organisation;

development and maintenance of access ways, bridges, culverts, drains, curbs and guttering; construction of roads and the subdividing of land in pursuit of the Aims and Objectives of the Organisation;

- f) providing resources and support services, including the acquisition of land and the acquisition and construction of buildings for clinics, health and health related services, to Aboriginal communities;
- g) providing expertise to ensure appropriate access to such ancillary services as are necessary for the effective provisions and use of medical, hospital, pharmaceutical, pathological, psychological and other services;
- h) by means of research, data analysis, surveys, performance indicators and other appropriate procedures, make assessments of the particular and overall health needs of Aboriginal communities and take, or cause to be taken, steps to meet these needs;
- i) the development of, involvement in or support for research into specific diseases affecting Aboriginal people;
- j) the development of, involvement in or support for research in epidemiology and biostatistics to equip members of Aboriginal communities to evaluate, monitor and address specific diseases and health procedures directly affecting Aboriginal people;
- k) promotion, development and expansion of local Aboriginal community controlled primary health care services, consistent with the *National Aboriginal Health Strategy, 1989 (NAHS)*; the recommendations of the *Royal Commission into Aboriginal and Torres Strait Islanders Deaths in Custody (RCIADIC)*; the recommendations within the 'Health Report' of the *Aboriginal and Torres Strait Islander Justice Commissioner: Second Report (1994)*; the document *AH&MRC Monograph Series Vol. 1. No. 1 (1999), Primary, Secondary and Tertiary Health Care Services to Aboriginal Communities*, and other relevant publications and reports which advocate the principles of Aboriginal Community Controlled Health as defined within this *Constitution*;
- l) the interaction with indigenous peoples within NSW and other States and Territories within Australia, as well as indigenous peoples outside of Australia, with regard to the importance and role of culture and traditions for the health and well-being of indigenous societies;

m) liaising with and advising the State Government of NSW and the Commonwealth

- government of Australia, their respective Ministers for Health and Ministers for Aboriginal Affairs, government departments and organisations within both the Aboriginal and non-Aboriginal community, concerning all matters related to the well-being and health of Aboriginal people;
- n) supporting, promoting and evaluating the devolution from Commonwealth and State government resources to appropriate Aboriginal community controlled health services;
  - o) acting as representatives of, and advocates for, constituent Aboriginal communities in all matters dealing with health services, health research, health programs, epidemiology and bio-statistics, data analyses, health related services, related socio-economic factors which affect the well-being of Aboriginal people;
  - p) liaising with and seeking advice from the AH&MRC Ethics Committee for ethical evaluation of all research projects; the collection, use, analysis, dissemination and publication of Aboriginal health data; health surveys and health publications that relate to Aboriginal people within the service boundaries of the organisation;
  - q) in the context of socio-somatic illness, implementing programs through the Organisation, or supporting programs within associated Aboriginal organisations, that seek to remedy the nutritional, social, economic, emotional, employment and housing disadvantages which cause or accentuate ill health within the Aboriginal community;
  - r) providing as resources enable, all necessary support for those services included within the definition for “**Health related services**” covered by the Aboriginal holistic definition of health including, but not restricted to, such services as health promotions and disease prevention services, substance misuse, men’s and women’s health, specialised services to children and the aged, services for people with disabilities, mental health services, dental care, clinical and hospital services and those services addressing, as well as seeking the amelioration of, poverty within Aboriginal communities; and
  - s) promoting and encouraging the use of Aboriginal Community Controlled Health Services within the Aboriginal community and to operate such a service known as the *Bourke Aboriginal Medical Service*, subject to the registration of that name consistent with provisions under Section 601DD of the *Corporations Act*, and operate any associated clinic or satellite clinic in the provision of primary health care to Aboriginal people.

## PART 3 FUNCTIONS AND POWERS

### Functions

**3.1.1** The Company shall have the function to do all such necessary lawful things that are incidental or conducive to the attainment of the Aims and Objectives of the Company and the exercise of the powers of the Company.

**3.1.2** The Company shall have the function to co-ordinate, facilitate and oversee the operations of the Organisation as required by the *Constitution* and in accordance with the Aims and Objectives of the Organisation contained therein.

### Powers

**3.2.1** The Company has, both within all States and Territories of Australia, all those powers provided for in the *Corporations Act*, including all powers and legal capacity of a natural person, and no restriction is placed on the exercise of those powers.

The Company shall do all such necessary lawful things which are incidental or conducive to the attainment of the Aims and Objectives and the exercise of the powers of the Company and may:

- a) take proceedings and be preceded against in its registered name;
  - b) to do and suffer all other things that incorporated organisations may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions;
  - c) to acquire interests in, administer, sell or otherwise dispose of interests in bodies corporate, securities, debentures, stocks, bonds, prescribed interests, unit trusts and joint ventures;
  - d) to form, participate in the formation of, or enter into a partnership, joint venture or other organisation, with other persons or bodies;
  - e) to acquire by purchase or otherwise, shares, debentures, or other securities of any company or limited company, subject to the provisions of the *Corporations Act*;
  - f) to facilitate and encourage the creation, issue, or conversion of debentures, debenture stocks, bonds, obligations, shares, stocks and securities, and to administer such securities;
  
  - g) to accept money on deposit, and to raise, or borrow, or secure the payment of money in such a manner as the Organisation may think fit as it is permitted by the *Corporations Act*, and secure the same, or the repayment, or performance of any debt, liability, contract, guarantee, or other engagement incurred, or to be entered into by the Company in any way not inconsistent with the provisions of the *Corporations Act*, in pursuit of the Aims and Objectives of the Organisation;
- to sell or dispose of the undertaking of the Organisation, or any part thereof, including shares, debentures or securities for such consideration as the Organisation may think fit, subject to the provisions of the *Corporations Act*;
- h) to take and hold mortgages, liens, and charges to secure payment of the purchase price or any unpaid balance thereof of any part of the Company's property of whatever kind sold by the Company or any money due to the Company from

purchases and others;

- i) to enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Aims and Objectives of the Organisation or any of them; and to obtain from any such Government or authority any rights, privileges and concessions which the Organisation may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- j) to apply for, secure by grant, legislative enactment, assignment, transfer, purchase or otherwise; to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privilege which any government or authority or any corporation or other politic body may be empowered to grant; to pay for, aid in, and contribute towards carrying the same into effect; and to appropriate any of the Company's debentures and assets to defray the necessary costs, charges and expenses thereof;
- k) to appoint, employ, engage, remove or suspend managers, administrative staff, contractors, tradespersons, consultants and other persons as may be necessary for the purposes of the Organisation;
- l) to subscribe to, become a member and co-operate with or amalgamate with any other association or organisation whose objects are similar to those of the Organisation.

*Provided* that the Company shall not subscribe to or support with its funds, or amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its individual members, as provided for at *Clause 3.7* of this *Constitution*.

*Provided* that the Company shall not support with its funds any activity or endeavour to impose on or procure to be observed by its members or others and regulations or restrictions, which if any object of the Company would make it a trade union within the meaning of the Trade Union Act.

**3.2.3** Nothing in this *Clause* shall affect the investment of the Organisation's funds in any securities authorised by law for the investment of trust funds;

**3.2.4** For the purposes of this *Clause* a body corporate includes a body corporate that is incorporated outside Australia and its external territories.

### **Power to Acquire Property**

**3.3** The Company may, in accordance with the provisions of the *Corporations Act*, and in furtherance of the Organisation's Aims and Objectives and primary activity, acquire by lease, purchase, donation, devise, bequest, or otherwise any real or personal property and may manage, improve, exchange, hire, dispose, lease or otherwise deal with any such real or personal property.

*Provided* that in the case the Company shall take or hold any property which may be subject to any trusts the Company shall only deal with the same in such manner as is allowed by law having regard to such trusts.

### **Charitable Institution and Function and Powers to Act as Trustee for Charitable Trusts**

**3.4.1** The Company shall have the power to:

- a)** function as a charitable institution, as defined within the *Constitution* as a charitable, religious and educational institution; and being an institution which is not carried on for the purpose of profit or gain to individual members and which is not empowered to make any distribution, whether in money, property or otherwise, to individual members.
- b)** establish and act as trustee for charitable trusts and may by all lawful means acquire and receive personal and real property and shall apply the same in or towards the establishment or conduct of all or any of the following objectives within the context of the Aboriginal understanding of health within the Aboriginal community as defined within the *Constitution*:
- c)** carry on the business of a trustee and without limiting the generality thereof to act as a trustee of any trust, trust fund, foundation, or any like organisation whatsoever and to create and declare trusts.
- d)** act as trustee, agent, nominee or broker for any person or persons, corporation or corporations or trustee, either alone or in conjunction with others and either with or without remuneration for so acting and to act as trustee, agent, nominee or broker as aforesaid.
- e)** do all such acts and deeds or things as the Company may be required or authorised or have discretion to do in its capacity as trustee, nominee or agent as aforesaid.
- f)** carry out all or any of the aims and objects of the Company and perform all or any of its functions in any part of the world and either as principal, agent, contractor or otherwise and by or through trustees or agents or otherwise and either alone or in conjunction with others.
- g)** undertake and execute, either gratuitously or otherwise, any trust the undertakings of which represents a Community service in the interest of Aboriginal people and seems desirable and to make, execute or enter into any trust, trust deed, declaration of trust, or other deed or instrument and to vary, amend or revoke the same by deed, instrument or otherwise, subject to the provisions of the *Corporations Act* and this *Constitution*;
- h)** establish, manage, carry on and support or aid in the establishment and support of societies, associations, institutions, trust funds, foundations, trusts, enterprises and conveniences calculated to meet the Aims and Objectives of the Organisation, and grant, subscribe or guarantee money for any charitable and benevolent objectives in pursuit of the Aims and Objectives of the Organisation;  
  
accept any gift endowment, subsidy, grant or bequest made to the Organisation generally or for the purpose of any specific object and to carry out any trusts attached to any such gift, endowment, subsidy, grant or bequest, *provided* that in the case the Organisation shall take or hold any property which may be subject to any trust, the Organisation shall only deal with the same in such manner as is allowed by law having regard to such trusts;

**3.4.2** The Company shall have the power to:

- a)** raise funds for the relief of poverty within the Aboriginal community;

- b) raise funds for the advancement of Aboriginal religion;
- c) raise funds for the development and updating of educational programmes to provide constructive educational health courses for members of the Aboriginal community and to undertake or participate in medical research to redress ill-health within the Aboriginal community; and
- d) raise funds for the delivering of holistic and culturally appropriate health and health related services and programs to the Aboriginal community.

The *Clauses* of this *Constitution* are intended to confirm, *inter alia*, the Company to be an organisation carried on otherwise than for the purposes of profit or gain to the individual members of the Organisation and accordingly any income to be exempt under the relevant provisions of the *Income Tax Assessment Act 1997*, as amended, and that gifts, bequests subscriptions and donations to the Organisation, being a public charitable company, are allowable deductions within the Act.

### **Invitation and Acceptance of Donations etc. by Appeal to the Public**

**3.5** The Company will seek from the public and, subject to legislative provisions, accept subscriptions, donations and bequests (whether of real or personal property) to promote and undertake any charitable undertaking, taking such lawful steps as may be necessary or desirable to obtain contributions to the funds of the Organisation in the form of donations, subscriptions, bequests or otherwise.

### **Deductible Gift Recipient and Gift Fund**

**3.6** With respect to *Clause* 3.5 above:

where the Organisation has been endorsed by the Australian Taxation Office as a Deductible Gift Recipient (DGR), prior to any receipt of a tax deductible donation, gift of money or property, the Organisation shall establish and maintain a separate gift fund consistent with the provisions within subsections 30-125 (4) to (7) of the *Income Tax Assessment Act 1997* (ITAA 1997) or as amended from time to time.

the gift fund shall be maintained:

- for the principal purpose of the Organisation;
- as the sole account into which such gifts are deposited; and
- used exclusively for crediting such gifts; and
- shall only be used, or its funds disseminated, consistent with the public benevolent institutional purposes outlined in the Aims and Objectives with this *Constitution*.

the name of the gift fund shall be the *Bourke Aboriginal Health Service Limited Deductible Gift Fund* and the governance of the fund shall be consistent with relevant provisions within the *Income Tax Assessment Act 1997*, as amended from time to time, and relevant provisions within the *Constitution*.

at the first occurrence of either the winding up of the Gift Fund, or the revocation of endorsement of the Organisation as a DGR, any surplus assets of the Gift Fund, remaining after the payment of the liabilities attributable to it, shall be transferred to another organisation in Australia

which is a public benevolent institution for the purposes of any Commonwealth Taxation Act and to which income tax deductible gifts can be made and, where possible, to incorporated Aboriginal Community Controlled Health Services within the State of New South Wales or to the Aboriginal Health & Medical Research Council of New South Wales, being public benevolent institutions to which income tax deductible gifts can be made.

### **Company Trading or Securing Pecuniary Gain**

**3.7.1** Subject to the provisions of the *Corporations Act* the Company may trade or secure pecuniary gain to meet the aims and objectives of the Organisation.

The Company shall not trade or secure pecuniary gain for the purpose of dividing or providing pecuniary gain to any:

individual member or former member of the organisation; nor any individual associate member or former associate member the organisation; nor any individual member or former member of the Board of Directors; nor any individual member or former member of a sub-committee of the Board of Directors.

**3.7.3** Subject to the provisions of the *Corporations Act* the income and property of the Company, however derived, shall be applied solely towards the promotion of the *Aims and Objectives* of the Organisation as set forth in the *Constitution* and no portion thereof shall be paid or transferred directly or indirectly by way of discount, dividend, bonus, rebate or otherwise by way of profit to individual members of the Organisation.

*Provided* that nothing herein contained shall prevent the payment in good faith of remuneration to any employee of the Organisation or to any member of the Organisation in return for any authorised services actually rendered to the Organisation or for goods supplied in the ordinary and usual way of business nor prevent the payment of proper market interest on money borrowed from any member of the Organisation.

**3.7.4** Subject to the provisions of the *Corporations Act* any surplus resulting from the Company's operations during a financial year, after providing for depreciation in value of any property belonging to the Organisation or for contingent liability for loss, shall be applied to carrying out the Aims and Objectives of the Organisation.

**3.7.5** Subject to the provisions of the *Corporations Act*, membership in the Organisation does not confer upon any of its individual members any right, title or interest whether legal or equitable, in the property of the Organisation.

**3.7.6** Subject to the provisions of the *Corporations Act* and this *Clause*, members and associate members can be recipients of pecuniary gain or property where such a remittance or transfer is provided to an incorporated organisation as follows:

- (i) the incorporated body's aims and objectives are consistent with those of this Organisation;
- (ii) where there are provisions in the *Constitution* or *Rules* of the recipient incorporated body precluding any pecuniary gain being distributed to

individual members of the incorporated body; and

- (iii) where there are provisions in the *Constitution* or *Rules* of the recipient incorporated body precluding any pecuniary gain being distributed to individual members of the incorporated body in the event of the winding up of the incorporated body.

### **Members' Liabilities**

**3.8.1** The liability of the members is limited.

**3.8.2** Every member of the Organisation undertakes to contribute to the assets of the Organisation in the event of its being wound up while a member, or within one year after ceasing to be a member, for payment of the debts and liabilities of the Organisation contracted before ceasing to be a member and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$10.00 (ten dollars).

### **Funds - Source and Acquittal**

**3.9.1** The funds of the Company may be derived from any levied entrance fees and annual subscriptions of members, donations, government grants, charitable gifts, fees for consultancies, interest, investments and, subject to any resolution passed by the Organisation at general meetings, such other sources as the Board of Directors determines.

**3.9.2** True and fair accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place, and of property, assets and liabilities of the Company.

**3.9.3** All money received by the Company must be deposited as soon as practicable and without deduction to the credit of the Company's appropriate bank accounts.

**3.9.4** The Company must, as soon as practicable after receiving any money, issue an appropriate receipt in the name of the Company in the manner prescribed in the *Corporations Act* and the *Income Tax Assessment Act 1997*.

**3.9.5** The Company must, when required to do so and by the stipulated date, acquit any receipt of grants or funding in the required and appropriate manner.

### **Funds Management**

**3.10** Subject to any resolution passed at general meetings, the funds of the Company are to be used in pursuance of the Aims and Objectives of the Company in such manner as the Board of Directors determines.

### **Winding Up and Distribution of Surplus Property**

**3.11** In the event of the winding up of the Company:

- (i) the winding up of the Company shall be in accordance with relevant sections of Chapter 5 of the *Corporations Act*.
- (ii) on the winding up of the Company, a member or an associate member, or a former member or associate member shall not receive any surplus assets,



remaining after the payment of the Company's liabilities.

(iii) on the winding up of the Company, any surplus assets remaining after the payment of the Company's liabilities shall be transferred to:

another organisation in Australia which is a public benevolent institution for the purposes of any Commonwealth taxation Act; and

where possible, to incorporated member organisations of the AH&MRC, being Aboriginal Community Controlled Medical or Health Services within the State of New South Wales, or to the Aboriginal Health & Medical Research Council of New South Wales, but such organisations shall have rules preventing the distribution of property to its individual members and shall qualify under Item 4.1.1 of the table in subsection 30-45(1) of the *Income Tax Assessment Act 1997*

(iv) In the event of a voluntary winding up of the Company, upon the cancellation of the incorporation any surplus property, subject to any trust affecting that property or any part of it, is to be distributed in accordance with a special resolution of the Company and any such distribution:

shall be in accordance with relevant sections of Chapter 5 of the *Corporations Act* and the *Income Tax Assessment Act 1997* and shall not be paid to or distributed amongst the individual members or associate members of the Company nor former individual members or associate members; and

shall be to an organisation in Australia which is a public benevolent institution for the purposes of any Commonwealth taxation Act; and

shall be distributed, where possible, to incorporated member organisations of the AH&MRC, being Aboriginal Community Controlled Medical or Health Services within the State of New South Wales, or the Aboriginal Health & Medical Research Council of New South Wales, but such organisations shall have rules preventing the distribution of property to its individual members and shall fall under Item 4.1.1 of the table in subsection 30-45(1) of the *Income Tax Assessment Act 1997*.

### **Alteration of Constitution**

**3.12.1** Subject to the provisions of the *Corporations Act*, the statement of Aims and Objectives within the *Constitution* may be altered, rescinded or added to only by a special resolution of the Company at a General Meeting as outlined in *Clause 6.10* of the *Constitution* with a copy of the amended instrument being provided to the Australian Securities & Investments Commission within the prescribed period following the Meeting at which the amendment was carried.

**3.12.2** Any alteration to the *Constitution* shall be in accordance with the provisions of the *Corporations Act*.

### **Notification of Proposed Alterations to the Constitution**

**3.13.1** In any proposal to amend any provision of *Clause 3.11* of this *Constitution*, with regard to the winding up and distribution of surplus property, such amendment shall not be effected until the Commissioner of Taxation has advised the Organisation

that the amendment is consented to or is not opposed.

**3.13.2** In any proposal to amend any provision of this *Constitution* with regard to its Aims and Objectives, and any provision of *Clause 3.4*, with regard to its charitable status and trust powers, such amendment shall not be effected until the Commissioner of Taxation has advised the Organisation that the amendment is consented to or is not opposed and until the Australian Securities & Investments Commission have been notified within statutory period.

## PART 4 - MEMBERSHIP

### Membership of the Organisation

Membership is open to all members of the Aboriginal community over 18 years of age who reside, as provided for in *Schedule 8*, within the boundaries of the *Bourke Shire* in the manner prescribed in the *Constitution*.

Members are to be nominated as provided for by *Sub-clause 4.2* and *Schedule 4* of the *Constitution*.

Members have attendance, speaking and voting rights at Extra-ordinary General Meetings and Annual General Meetings of the Organisation.

### Membership Qualifications

**4.2** A person is qualified to be eligible to be a member of the *Bourke Aboriginal Health Service Limited* if:

- the person has not ceased to be a member of the Organisation at any time after incorporation of the Company under the Act;

- the person is a natural person;

- the person is a member of the Aboriginal community

- the person has attained the age of 18 years

- the person has been nominated for membership of the Organisation in the manner prescribed in *Schedule 4*;

- the nomination form has been lodged with the Board of the Organisation.

- the person resides within the boundaries of or within the area serviced by the *Bourke Shire*, as provided for in *Schedule 8*.

- the person has been deemed to meet the criteria for membership of the Organisation by the Board of Directors

### Processing of Membership Applications

**4.3.1** As soon as practicable after receiving a nomination for membership the nomination must be referred to the Board of Directors which is to determine whether the criteria is deemed to have been met and whether it approves or rejects the nomination.

**4.3.2** Where the Board of Directors determines a nomination the Board must notify the nominated person in writing of that determination within 21 days.

**4.3.3** The Board shall notify the applicant in writing advising:

- acceptance as a member of the Organisation; or
- unsuccessful nomination as a member of the Organisation; or
- deferral of decision.

**4.3.4** Directors in the course of their duty, may at their discretion refuse any nomination for membership and the Organisation need assign no reason for such refusal.

**4.3.5** Upon a nominee being accepted into membership the Board shall request any sum payable provided for at *Clause 4.16* of the *Constitution* following a period of 21

days after the receipt by the nominee of notification of acceptance as a member of the Organisation.

**4.3.6** Upon the acceptance of a nominee for membership in the Organisation the Board must enter the nominee's name in the *Register of Members* and, on the name being so entered, the nominee becomes a member of the Organisation.

### **Associate Membership of the Organisation**

**4.4.1** Associate Membership is open to nominated persons over 18 years of age who reside, as provided for in *Schedule 8*, within the boundaries of or within the area serviced by the Bourke Shire in the manner prescribed in the *Constitution*.

**4.4.2** Associate Members are to be nominated as provided for by *Sub-Clause 4.5* and *Schedule 5* of the *Constitution*.

**4.4.3** Associate members have both attendance and speaking rights at Extra-ordinary General Meetings and Annual General Meetings of the Organisation but are not entitled to vote nor stand for election as office holders of the Organisation nor hold office as directors on the Board of Directors.

**4.4.4** Notwithstanding *Clause 4.4.3* above, associate members can be invited to attend meetings of the Board of Directors to provide advice but cannot participate in any vote of the Board of Directors upon which such advice has been given.

### **Associate Membership Qualifications**

**4.5** A person is qualified to be an associate member of the *Bourke Aboriginal Health Service Limited* if:

the person has not ceased to be an associate member of the Organisation at any time after incorporation of the Company under the Act;

the person is a natural person;

the person has attained the age of 18 years;

the person has been nominated for associate membership of the Organisation in the manner prescribed in *Schedule 5*;

the nomination form has been lodged with the Secretary of the Organisation;

the person resides within the boundaries of or within the area serviced by the *Bourke Shire*, as provided for in *Schedule 8*;

the person has been deemed to meet the criteria for associate membership of the Organisation by the Board of Directors;

### **Processing of Associate Membership Applications**

**4.6.1** As soon as practicable after receiving a nomination for associate membership the nomination must be referred to the Board of Directors which is to determine whether the criteria is deemed to have been met and whether it approves or rejects the nomination.

**4.6.2** Where the Board of Directors determines a nomination for associate membership the Board must notify the nominated person in writing of that determination within 21 days.

**4.6.3** The Board shall notify the applicant in writing advising:

acceptance as an associate member of the Organisation; or  
unsuccessful nomination as an associate member of the Organisation; or  
deferral of decision.

**4.6.4** Directors in the course of their duty, may at their discretion refuse any nomination for associate membership deemed not to have met the criteria and the Organisation need assign no reason for such refusal.

**4.6.5** Upon a nominee being accepted into associate membership the Board shall request any sum payable provided for at *Clause 4.16* following a period of 21 days after the receipt by the nominee of notification of acceptance as an associate member of the Organisation.

**4.6.6** Upon the acceptance of a nominee for membership in the Organisation the Board must enter the nominee's name in the *Register of Associate Members* and, on the name being so entered, the nominee becomes an Associate Member of the Organisation.

### **Voting Rights at Meetings of the Organisation**

**4.7.1** Members have attendance, speaking and voting rights at Extra-ordinary General Meetings and Annual General Meetings of the Organisation.

**4.7.2** Associate members have both attendance and speaking rights at Extra-ordinary General Meetings and Annual General Meetings of the Organisation but are not entitled to vote nor stand for election as office holders of the Organisation nor hold office as Directors.

### **Attendance at Meetings of the Organisation**

**4.8.1** Members are entitled to attend all Extra-ordinary General Meetings and Annual General Meetings of the Organisation and attendance is essential for active membership unless absence is considered unavoidable by the Board of Directors. Members who have not attended meetings for a period of three years can be asked by the Board of Directors to show cause why their membership should not be revoked and such persistent absence is grounds for termination of membership.

**4.8.2** Associate Members are entitled to attend all Extra-ordinary General Meetings and Annual General Meetings of the Organisation and attendance is essential for active Associate Membership unless absence is considered unavoidable by the Board of Directors. Associate Members who have not attended meetings for a period of three years can be asked by the Board of Directors to show cause why their associate membership should not be revoked and such persistent absence is grounds for termination of associate membership.

### **Cessation of Membership**

**4.9.1** A member ceases to be a member of the Organisation under the following circumstances:

- (a) where the member is expelled in accordance with the *Constitution*;
- (b) where the member withdraws their membership in writing to the Secretary of the Organisation, consistent with *Clause* 4.11.2;
- (c) where a member, following an evaluation by the Board of Directors, is deemed not to meet eligibility requirements for membership; and
- (d) where the member is expelled by the Organisation under provisions of *Section* 4.12.

**4.9.2** Where mention is made in this *Section* to members it is also applicable and binding upon associate members.

### **Membership Entitlements Not Transferable**

**4.10** A right, privilege or obligation which a member has by reason of being a member of the Organisation:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the member's membership.

### **Resignation of Membership**

**4.11.1** A member of the Organisation is not entitled to resign that membership except in accordance with *Section* 4.11.

**4.11.2** A member of the Organisation who has paid any required amount payable in respect of its membership may resign their membership in writing to the Secretary of the Organisation.

**4.11.3** Where a member of this Organisation ceases to be a member under *Clause* 4.11.2 and in every other case where a member ceases to hold membership, the Secretary must make an appropriate entry in the register of members recording the date on which membership ceased.

**4.11.4** Where mention is made in this *Section* to member it is also applicable and binding upon associate members.

### **Expulsion of Members**

**4.12.1** The Organisation may expel a member by Special Resolution at an Extraordinary General Meeting where it considered that:

- (a) a member has failed to discharge their obligation to the Organisation prescribed by this *Constitution* or arising out of a contract; or
- (b) a member has been guilty of conduct detrimental to the Organisation.
- (c) where a member, following an evaluation by the Board of Directors, is deemed

not to meet eligibility requirements for membership.

**4.12.2** A member so affected shall be provided written notice of the proposed Special Resolution.

**4.12.3** No expelled member shall be reinstated except by Special Resolution at an Extra-ordinary General Meeting.

**4.12.4** Where mention is made in this *Section* to members it is also applicable and binding upon associate members.

### **Suspension of Members**

**4.13.1** The Organisation by Special Resolution at a general meeting may suspend members for such period as the Organisation may determine for any of the following reasons or breaches:

- (a) Infringement of any of the provisions of the *Constitution* of the Organisation;
- (b) failure to discharge obligations under the *Constitution* of the Organisation;
- (c) conduct of a manner prejudicial to the interests of the Organisation; and
- (d) deemed to not meet eligibility for membership.

**4.13.2** A member so affected shall be provided written notice of the proposed Special Resolution.

**4.13.3** Where mention is made in this *Section* to members it is also applicable and binding upon associate members.

### **Register of Members & Associate Members**

**4.14.1** The Board is responsible to the Organisation to establish and maintain a register of members and associate members of the Organisation specifying the name and address of each member together with the following:

- (i) the date on which the person became a member or associate member;
- (ii) the date on which the member or associate member ceased to hold membership.

**4.14.2** The Board shall report at each Annual General Meeting concerning membership, providing the Meeting with an updated register of members and associate members.

### **Accessibility of Register of Members and Associate Members**

**4.15** The register of members and associate members shall be kept at the principal place of administration of the Organisation and must be open for inspection, free of charge, at any reasonable hour.

### **Fee and Subscriptions**

**4.16.1** A member or an associate member must, on admission to membership, or associate membership, pay to the Organisation any fee as determined by the Board of Directors.

**4.16.2** In addition to any amount payable by the member or associate member under *Section* 4.16.1 above, a member or an associate member of the Organisation must pay to the Organisation any annual membership fee as determined from time to time by the Board of Directors:

- (a) except as provided by paragraph (b), before 1 July in each calendar year; or
- (b) where the member or associate member becomes a member on or after 1 July in any calendar year this *Clause* applies on becoming a member or associate member and before 1 July in each succeeding calendar year.

### **Resolution of Internal Disputes**

**4.17.1** Where mention is made in this *Section* to members it is also applicable and binding upon associate members.

**4.17.2** Disputes between members and or associate members, both, in their capacity as members of the Organisation, and disputes between members and associate members and the Organisation, notwithstanding the provisions of *Sections* 4.12 & 4.13 are to be referred to the Chairperson for mediation in accordance with:

- a) the Rules of Natural Justice provisions;
- b) the Aboriginal ethical values of trust, integrity and consensus; and
- c) the spirit of 'Aboriginal community control' as defined in this *Constitution*.

### **Disciplining of Members**

**4.18.1** Where mention is made in this *Clause* to members it is also applicable and binding upon associate members.

**4.18.2** A complaint may be made by any member of the Organisation that some other member of the Organisation:

- a) has persistently refused or neglected to comply with a provision or provisions of the *Constitution*; or
- b) has persistently and wilfully acted in a manner prejudicial to the interests of the Organisation.

**4.18.3** On receiving such a complaint, the Board of Directors:

- a) must cause notice of the complaint to be served on the member concerned;
- b) must give the member at least twenty one (21) days from the time the notice is served within which to make submissions to the Board of Directors in connection with the complaint; and
- c) must take into consideration any submissions made by the member in connection with the complaint.

**4.18.4** The Board of Directors may, by resolution, expel the member from the Organisation or suspend the member from membership of the Organisation where, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved.

*Provided* that in any implementation of this ruling the Organisation shall be mindful of



the 'Rules of Natural Justice' and the definition of 'Aboriginal Community Control' as outlined in the *Constitution*.

**4.18.5** Where the Board of Directors expels or suspends a member it must, within seven (7) days after the action is taken, cause written notice to be given to the member of the action taken indicating the reasons given by the Board for having taken that action and of the member's right of appeal under *Section 4.19*.

**4.18.6** The expulsion or suspension does not take effect:

- a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned; or
- b) where within that period the member exercises the right of appeal, unless and until the Organisation confirms the resolution under *Clauses 4.19.4* and *4.19.5*, whichever is the later.

### **Right of Appeal of Disciplined Member**

**4.19.1** A member may appeal to the Organisation in general meeting against a resolution of the Board of Directors under *Section 4.18*, within twenty one (21) days after notice of the resolution is served on the member, by lodging with the Secretary a notice to that effect.

**4.19.2** The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.

**4.19.3** On receipt of a notice from a member under *Clause 4.19.1*, the Board may convene an Extra-ordinary General Meeting of the Organisation to consider the matter. However, at the discretion of the Board, due to financial restraints on Aboriginal organisations, this matter may be adjourned until the next Annual General Meeting.

**4.19.4** At an Extra-ordinary General meeting, or at a scheduled specified time at an Annual General Meeting of the Organisation convened under *Clause 4.19.3*:

- no business other than the question of the appeal is to be transacted whilst the matter is being considered;
- the Board of Directors and the member must be given the opportunity to state their respective cases orally or in writing, or both; and
- the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.

**4.19.5** Where at an Extra Ordinary General Meeting or an Annual General Meeting the Organisation passes a special resolution confirming the expulsion or suspension of a member as provided for in *Clause 4.19.4* above, the expulsion or suspension shall take effect.

**4.19.6** Where mention is made in this *Section* to members it is also applicable and binding upon associate members.

## PART 5 - THE BOARD OF DIRECTORS

### Cultural Preamble

**5.0.1** Mindful of the heritage and structure of Aboriginal society and the role of elders and the Law in Aboriginal culture, the *Constitution* is drafted as an attempt to synchronise corporate structures with cultural models of governance and, compliance with prescribed requirements for the composition of the organisation's governing committee is undertaken fully conscious that this obligation reflects a system of government intrinsically different from Aboriginal culture.

**5.0.2** Notwithstanding the abovementioned acknowledgement the Board of Directors of the *Corporation* shall:

Conduct all its affairs and deliberations cognisant of this cultural heritage and its implicit imperatives.

Ensure its actions are underpinned by:

- the laws of Natural Justice;
- the Aboriginal ethical values of trust, integrity and consensus; and
- the spirit of "Aboriginal community control" as defined in the *Constitution*.

### Powers of the Board of Directors

**5.1** The Directors of the Board of this Company:

- (a) are subject to the *Corporations Act* and any Regulation thereunder; the *Constitution* and any resolution passed by the Organisation in general meeting not inconsistent with the aforementioned;
- (b) are to control and manage the affairs of the Organisation;
- (c) may exercise all such functions as may be exercised by the Organisation other than those functions that are required by the *Constitution* to be exercised by a general meeting of members of the Organisation;
- (d) may exercise all of the Organisation's powers and perform all such acts and do all such things as appear to the Board of Directors to be necessary or desirable for the proper management of the affairs of the Organisation as may be exercised by the Organisation other than those acts that are required by the *Constitution* to be performed by a general meeting of members of the Organisation;
- (e) shall have power to appoint and at its discretion, remove or suspend, without prejudice to the general powers conferred on the Board of Directors by the *Corporations Act* or the *Constitution*, the Company's officers, servants, consultants, agents, tradespersons and contractors, and to determine their powers, duties and remuneration;
- (f) may, by resolution and by instrument in writing, delegate any of its powers under *Sub-clause* (d) above other than:
  - (i) this power of delegation; and
  - (ii) a function which is a duty imposed on the Board of Directors by the *Corporations Act* or by any other law, to an officer, an employee or the Chartered Accountant of the

Organisation with any conditions or limitations which the Board of Directors sees fit to impose;

- (g) may, at any time, revoke or vary a delegation made pursuant to *Sub-clause* (f) above; and
- (h) may continue to exercise, notwithstanding any delegation under this *Clause*, all or any of its powers under *Sub-clause* (d) above.

### **The Board of Directors - Its Composition and Membership**

**5.2.1** The Board, meaning the governing Board of Directors or the committee of management of the Organisation shall comprise, subject to the provisions of 201A of the *Corporations Act* and *Clause* 5.2.8 of the *Constitution*, nine (9) directors all of whom shall be at least 18 years of age.

- (a) Nine Directors (9) shall be elected from amongst members, except members who are current staff members, at an Annual General or a General meeting of the Organisation for a term of two years.
- (b) The Board of Directors duly elected in (a) above shall elect the Honorary Chairperson and Deputy Chairperson and may determine the period during which each is to hold office.

**5.2.2** Each Director is, subject to the *Constitution*, to hold office for a period of two years until the conclusion of the Annual General Meeting the year following the date of the Director's election, but is eligible for re-election.

**5.2.3** Compliant with the provisions of *Sections* 150 (d) & (e) of the *Corporations Act* the Company shall prohibit paying fees to its directors and shall require Directors to approve all other payments the company makes to Directors and accordingly the Directors shall be paid, or allowed out of the funds of the Company, such reasonable and appropriate remuneration or emoluments for their services, other than those services of a director, as the Company in general meeting may from time to time determine, and as the Board of Directors approve, and any such payment being paid to a Director shall be included in the Report of the Board of Directors presented to members at the Annual General Meeting.

**5.2.4** Each Director shall be entitled to be paid out of the funds of the Company all reasonable and appropriate travelling, accommodation, food and incidental expenses, based on the appropriate Australian Public Service daily rates, incurred in attending meetings of the Organisation or of the Board of Directors or any Committees thereof or while engaged on authorised business of the Organisation and, where any of the Directors shall be called upon to perform extra services or exercise any special professional requirements for any authorised purpose of the Organisation or to make special exertions in going from his usual residence or abroad or otherwise for any authorised purposes of the Organisation, he shall be paid reasonable and appropriate travelling expenses. All aforementioned expenditure shall be submitted to the Finance Committee, or in the absence of a Finance Committee, the Board of Directors, for consideration, and upon approval, payment.

**5.2.5** No Director can vote at meetings of the Board of Directors or be included in the

quorum until the Secretary has received the signed '*Consent to Act as a Director*' form as required by *Section 201D* of the *Corporations Act*.

**5.2.6** Consistent with the provisions of the *Corporations Act*, in order to maintain a quorum for director's meetings, when a director is unable to act as a director for a specified period a director can be appointed by the Board, or by members at a General Meeting, to act for and on behalf of the Director during their inability for any time to act as director and the appointed director assumes office upon signing the *Consent to Act as a Director* form with the notification of ASIC of the appointment within 14 days as required under *Section 201L* of the *Corporations Act*.

**5.2.7** Subject to *Clause 5.2.6* above and consistent with the provisions of 201K (4) of the *Corporations Act*, where a member on the Board of Directors is unable to act as a Director for a specified period the director can nominate an alternate Director and subject to the approval of the Board the alternate director can assume office and shall have the right to receive notice of meetings of the Board of Directors and to attend and vote at meetings and exercise all the powers of a Director.

**5.2.8** The appointing Director of an alternate Director may, consistent with the provisions of 201K (4) of the *Corporations Act*, terminate the alternate director's appointment at any time.

**5.2.9** Any insufficiency of Directors on the Board of Directors shall not affect the powers of the Board in carrying out its functions unless such insufficiency in numbers affects the required quorum for conducting company business.

**5.2.10** The Board of Directors shall make no decisions without the required quorum, other than a decision to call an Extra-ordinary Meeting.

**5.2.11** In general meeting the members of the Organisation may, subject to the provisions of the *Corporations Act*, increase or reduce the number of Directors of the Company.

**5.2.12** Upon being elected or appointed to the Executive Committee members shall complete any required documentation under the *Child Protection (Prohibited Employment) Act 1998* and consent to any related screening process on the Criminal Record Check Consent Form for auditing compliance with procedures and standards in accordance with Section 36 (1)(f) of the *Commission for Children and Young People Act 1998* or any subsequent relevant legislation.

**5.2.13** Following election or appointment to the Executive Committee, committee members shall undertake any orientation course or training in governance as considered necessary by the Committee.

### **Office Bearers of the Organisation**

**5.3.1** The duties of the Office Bearers are additional to those of a Director and for the purposes of a quorum the positions of Chairperson and Deputy Chairperson, are not in addition to those mentioned in *Clause 5.2.2* and the office-bearers of the Organisation shall be:

- (a) the **Honorary Chairperson** ; and
- (b) the **Honorary Deputy Chairperson**.

**5.3.2** In the event of a casual vacancy occurring on the Board of Directors relating to the elected office of Chairperson the Board shall appoint a Chairperson from the Directors of the Company, to fill the casual vacancy for Chairperson and the Director so appointed is to hold office, subject to the *Constitution*, until the conclusion of the elections at the next Annual General Meeting or General Meeting following the date of the appointment.

**5.3.3** In the event of a casual vacancy occurring on the Board of Directors relating to the elected office of Deputy Chairperson, the Board may appoint another director of the Company to fill the casual vacancy for Deputy Chairperson and the Director so appointed is to hold office, subject to the *Corporations Act* and the *Constitution*, until the conclusion of the next Annual General Meeting following the date of the appointment.

**5.3.4** In the event of a casual vacancy occurring on the Board of Directors the Board may appoint a director of the Company to fill the vacancy subject to the provisions of the *Corporations Act* and the *Constitution*, until the conclusion of the elections at the next Annual General Meeting following the date of the appointment.

**5.3.5** Nominations of candidates for election as Chairperson, Deputy Chairperson and/or Directors of the Organisation must:

- (a) Be made in writing, signed by two members of the Organisation and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
- (b) Be provided to the Organisation prior to the holding of the election at the Annual General Meeting.
- (c) Include, where appropriate, reference to the candidates skills and past governance experience relevant to the position
- (d) Include a statement outlining the applicants understanding of the representative role on behalf of the Aboriginal community
- (e) Include a statement outlining the applicants understanding of their contribution towards the governance of the organisation

*Provided* that, where appropriate, candidates who indicate that they will address members at the Annual General Meeting with regards to sub clauses (c), (d) and (e) above, compliance to provide these provisions in writing will be deemed to have been met.

**5.3.6** The election of Chairperson and Deputy Chairperson will be conducted in such usual and proper manner as the Board may direct.

### **Chairperson**

**5.4.1** The Honorary Chairperson of the Organisation shall be elected by the Board of

Directors who may determine the period during which the Chairperson is to hold office.

**5.4.2** The Chairperson is to preside as Chairperson at each Annual General Meeting, Extra-ordinary General Meeting and meeting of the Board of Directors of the Organisation at which the Chairperson is present.

**5.4.3** The Chairperson of the Organisation shall represent the Board of Directors and be the public spokesperson for the Organisation having responsibility for all obligations required for the office under the *Corporations Act*.

**5.4.4** Notwithstanding *Clause 5.4.3* above, and subject to the requirements of the *Corporations Act*, due to the office of Chairperson not being a salaried position the Chairperson can delegate negotiation with all governments and delegate responsibility for all delegated discussions with ministerial staff, departmental personnel, non-government organisations and Community organisations which relate to the aims and objectives of the Organisation to the Chief Executive Officer, other Directors or appropriate staff, subject to the delegated person keeping the Chairperson fully informed of any such delegated responsibility and retaining the right for the Chairperson to personally attend and participate at any such meeting related to the above mentioned delegation.

**5.4.5** The Chairperson shall provide advice and guidance on policy matters to the Chief Executive Officer who shall at all times be responsible to the Chairperson and keep him or her fully informed of, and reported upon, all such delegated responsibilities of the Organisation.

**5.4.6** The Chairperson shall sign the report to be tabled by the Board of Directors at each Annual General Meeting stating the name of each Director of the Board and the name of each alternate Director who acted as a Director during the most recently ended financial year of the Organisation and report on any authorised approved payment to directors for services rendered in addition to those services of a director as provided for in *Clause 5.2.5*.

The Chairperson, shall be reimbursed out of the funds of the Company for authorised administrative expenses, the details of which shall be itemised and included in the financial returns submitted at each Annual General Meeting or Extra-ordinary General Meeting of the Organisation.

**5.4.8** The Chairperson shall be the person through whom all administrative staffing matters, policy issues and other concerns of the Board are relayed to the CEO of the ACCHS, ensuring an executive rather than an administrative role of the Board of Directors.

**5.4.9** Notwithstanding the provisions of *Sections 4.12, & 4.13*, the Chairperson shall adjudicate and act as mediator in any dispute between members (in their capacity as members) of the Organisation, and any dispute between members and the Organisation, in accordance with:

- (i) the 'Rules of Natural Justice' provisions;
- (ii) the Aboriginal ethical values of trust, integrity and consensus; and
- (iii) the spirit of "Aboriginal Community Control" as defined in the *Constitution*.

**5.4.10** The Chairperson, as the elected representative of the Organisation, shall be responsible to the Board of Directors to ensure that absolute discretion, culturally appropriate protocol and confidentiality shall apply in all Organisation activities, meetings and dealings related to Aboriginal religion, associated spiritual matters, cultural traditions, customs, heritage, lore, law, sacred sites, land rights and Community knowledge throughout the diverse Aboriginal communities of this land.

### **Deputy Chairperson**

**5.5.1** In addition to those provisions in *Clause 5.3.1.(b)* above the Board of Directors must appoint the Deputy Chairperson and may determine the period during which the Deputy Chairperson is to hold office.

**5.5.2** The honorary Deputy Chairperson of the Organisation shall carry out all the required duties for the office of Chairperson during a vacancy in the office of Chairperson, or, when the Chairperson is unable to perform the duties of office, shall act as Chairperson undertaking the duties of the Chairperson.

**5.5.3** Notwithstanding *Clause 5.5.2* above:

- (i) the office of Chairperson does not become vacant where the Chairperson is attending meetings, conferences, on interstate travel or on unapproved leave; and
- (ii) in the event of any extended vacancy in the Office of Chairperson, or a casual vacancy for the office of the Chairperson, the extent of the Chairperson's duties to be undertaken by the Deputy Chairperson until the appointment or election of a new Chairperson shall be determined by the Board of Directors.

### **Casual Vacancies and Procedure for Filling Casual Vacancies**

**5.6** For the purposes of the Constitution, a casual vacancy in the office of a Director occurs where the Director:

- (a) dies; or
- (b) ceases to belong to a member of the Organisation; or
- (c) becomes an insolvent under administration within the meaning of the *Corporations Act*; or
- (d) resigns office by notice in writing given to the Secretary; or
- (e) is removed from office under *Clause 5.7.1*; or
- (f) becomes a mentally incapacitated person; or
- (g) is absent without the consent of the Board of Directors from all meetings of the Board held during a period of 3 months; or
- (h) becomes prohibited from acting as a director of a company by reason of any order made under the law; or

- (i) holds any office of profit under the Organisation without disclosure to the Board of Directors; or
- (j) receives any payment from the Organisation otherwise than in accordance with the *Constitution*; or
- (k) becomes directly or indirectly interested (within the meaning of the *Corporations Act*) in any contract or proposed contract with the Organisation, provided however that a Director shall not vacate his office by reason of his being a member of any organisation, corporation, society or association which has entered or proposes to enter into a contract with the Organisation where such aforementioned body complies with the provisions of *Section 3.6* of the *Constitution* and where he shall have declared the nature of his interest in the manner required under the *Corporations Act*.

### **Removal of Office Bearer or Director**

**5.7.1** The Organisation in general meeting, subject to the provisions of Section 203D of the *Corporations Act*, may by resolution remove any Director or Office Holder from office before the expiration of the Director's term of office and may elect another member to hold office until the expiration of the term of office of the Director so removed.

**5.7.2** The Organisation at an Extra-ordinary General Meeting at which the prescribed notification and purpose for a Resolution to remove the Chairperson have been given, may by Resolution remove the said Chairperson of the Organisation before the expiration of the Chairperson's term of office and may by Resolution elect another person nominated by members to assume office of Chairperson until the expiration of the term of office of the director so removed.

**5.7.3** In the event that the respective office of the Chairperson or Office Bearers so removed in *Clause 5.7.2* above is not filled the provisions for casual vacancy replacement, as provided for in *Sections 5.3* and *5.6* apply.

### **Meetings and Quorum**

**5.8.1** The Board of Directors must meet at least twice in each period of twelve (12) months at such place, time and manner as the Board may determine.

**5.8.2** The Chairperson may convene additional meetings of the Board of Directors.

**5.8.3** The provisions of Section 248C of the *Corporations Act* enable a meeting of the Board to be convened by the Secretary upon the request of a director giving reasonable notice individually to each other director.

**5.8.4** Oral or written notice of a meeting of the Board of Directors must be given by the Secretary to each Director at least 48 hours (or such other period as may be unanimously agreed on by the Board of Directors) before the time appointed for the holding of the meeting.

**5.8.5** Notice of a meeting given under *Clause 5.8.3* must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which Directors present at the meeting unanimously agree to treat as special business.

**5.8.6** The quorum for any meeting of the Board of Directors shall be one-half (or



where one-half is not a whole number the whole number next higher than one-half) of the number of Directors eligible as provided in *Sub-clauses* 5.2.2 (a) & (b) for the transaction of the business of a meeting of the Board of Directors.

**5.8.7** No business is to be transacted by the Board of Directors unless a quorum is present and where, within an hour of the time appointed for the meeting a quorum is not present, the meeting is to stand adjourned to an agreed alternate time and place.

**5.8.8** In the event of any Director retiring from a meeting due to an expressed conflict of interest or a pecuniary interest being declared, for the purposes of establishing a quorum, attendance shall be as if those so affected were in actual attendance but this provision shall not apply beyond the specific business matter being discussed.

**5.8.9** Where at the adjourned meeting a quorum is not present within an hour of the time appointed for the meeting, the meeting is to be dissolved. Five minutes after the adjournment, the meeting will reconvene as a “Sub Committee” of the Board of Directors, for the purpose of dealing with the business to hand. The quorum for the “Sub Committee” meeting shall be three Directors present. Any resolution passed at the “Sub Committee” meeting has the same force and effect as it would have if it had been done or suffered by the Board of Directors.

**5.8.10** At a meeting of the Board of Directors the Chairperson or, the Deputy Chairperson, or such one of the remaining Directors as may be chosen by the Directors present at the meeting is to preside.

**5.8.11** A general meeting of the Organisation may disallow any regulation, direction or decision of the Organisation issued or made by the Board of Directors, however, notwithstanding the above, no resolution passed by the Organisation at a general meeting shall invalidate any prior act of the Board which would have rated as valid had the Extra-ordinary General Meeting not passed the resolution.

**5.8.12** The Board of Directors may choose to meet, whenever it considers it necessary, by means of a telephone conference link-up or a television conference link-up or any other similar audio or audio-visual electronic communications equipment, or combinations of some Directors meeting in person at one place with other Directors meeting with them by means of the aforesaid electronic facilities, whereby all persons participating in the Meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meetings (including for the purpose of constituting a quorum) and a resolution passed at such a meeting, notwithstanding that the Directors are not present together at one place at the time of the conference, be deemed to have been passed at a meeting of the Board of Directors held on the day and the time at which the conference was held.

### **Delegation by the Board of Directors to a Sub-committee**

**5.9.1** The Board of Directors may, by its resolution and by instrument in writing, delegate to one or more sub-committees (consisting of such Directors or individual members of the Organisation, including the appointment of other persons, as the Board thinks fit) the exercise of such of the functions of the Board of Directors as are specified in the instrument, other than:

    this power of delegation;

a function which is a duty imposed on the Board of Directors by the *Corporations Act* or by any other law; and

act upon a resolution which has not been confirmed by the Board of Directors.

**5.9.2** The Board of Directors may, by its resolution and by instrument in writing, establish Advisory Committees (consisting of such Directors or members of the Organisation, including the appointment of other persons, as the Board of Directors thinks fit) the exercise of acting in an advisory role to the Board of Directors or to any committees of Directors.

**5.9.3** A function the exercise of which has been delegated to a sub-committee under *Clause 5.9.1* may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.

**5.9.4** A delegation under *Clause 5.9.1* may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.

**5.9.5** Despite any delegation under *Clause 5.9.1* the Board of Directors may continue to exercise any function delegated.

**5.9.6** Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation, and upon a sub-committee resolution being confirmed by the Board of Directors, has the same force and effect as it would have if it had been done or suffered by the Board of Directors.

**5.9.7** The Board of Directors may, by instrument in writing, revoke wholly or in part any delegation under *Clause 5.9.1* above.

**5.9.8** No resolution of any sub-committee (“sub-committee resolution”) shall bind the Company unless either:

such sub-committee resolution is subsequently confirmed by the Board of Directors; or

such sub-committee resolution was passed pursuant to, and in accordance with, the terms of a prior resolution of the Board of Directors (“an authorising resolution”) conferring authority on the sub-committee to pass the sub-committee resolution.

The Board of Directors shall exercise due diligence and care in the conferral of any authority on a sub-committee by way of an authorising resolution.

**5.9.9** The provisions contained within the *Corporations Act* and the *Constitution* shall govern the meetings and proceedings of any sub-committee.

**5.9.10** A sub-committee may meet and adjourn as it thinks proper.

**5.9.11** The quorum for any meeting of a sub-committee of the Board of Directors shall be one-half (or where one-half is not a whole number the whole number next higher than one-half) of the number of members in the sub-committee.

**5.9.12** In the event of any Director retiring from a meeting of a sub-committee due to

an expressed conflict of interest or a pecuniary interest being declared, for the purposes of establishing a quorum, attendance shall be as if those so affected were in actual attendance but this provision shall not apply beyond the specific business matter being discussed.

### **Voting and Decisions**

**5.10.1** Questions arising at a meeting of the Board of Directors or of any sub-committee appointed by the Board of Directors are to be determined by a majority of the votes of Directors at meetings of the Board of Directors or of members present at sub-committee meetings.

**5.10.2** Each Director present at a meeting of the Board of Directors or any member present at a sub-committee appointed by the Board of Directors (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.

**5.10.3** Subject to the provisions of *Section 5.2* the Board of Directors may act despite any vacancy on the Board of Directors.

**5.10.4** Any act or thing done or suffered, or purporting to have been done or suffered, by the Board of Directors or by a sub-committee appointed by the Board of Directors, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any Director of the Board of Directors or sub-committee.

**5.10.5** A resolution in writing consented to and signed by a majority of the Directors for the time being entitled to receive notice of a meeting of the Board of Directors shall be valid and effectual as if it had been passed at a meeting of the Board of Directors duly called, convened and held.

**5.10.6** In *Clause 5.10.5* above a “resolution in writing” includes the same resolution set out in more than one document each signed by more than one of the Directors of the Board of Directors.

### **Minutes of the Board of Directors**

**5.11.1** The Board of Directors shall cause minutes to be made of:

- (i) all appointments of officers and servants;
- (ii) all names of Directors present at all meetings of the Board of Directors; and
- (iii) all proceedings at all meetings of the Board of Directors.

**5.11.2** The confirmation of minutes shall be taken as the first business at the next succeeding meeting of the Board of Directors, or Sub Committee, to which the minutes relate. Where it is impracticable for the minutes to be confirmed at that meeting, then the minutes shall be confirmed at the next succeeding meeting.

**5.11.3** Such minutes shall be signed by the Chairperson at the Meeting at which proceedings were held or by the chairperson at the next succeeding meeting.

**5.11.4** Every Director and Alternate Director present at any meeting shall sign his or her name in an attendance book to be kept for that purpose and this record shall be

included in the Minutes of the Meeting.

### **Register of Directors**

**5.12** The Company shall keep and maintain a register of the Directors which shall contain the names and residential addresses of each Director and the date on which the person became a Director and shall be kept at the registered address of the Company and be open to inspection, free of charge, at any reasonable hour. A copy of this register may also be kept at the Organisation's principal place of administration.

### **Directors and Pecuniary Interest**

**5.13.1** Any Director who has direct or indirect conflict of interest or pecuniary interest in a contract or proposed contract shall, as soon as the director becomes aware of such an interest, disclose the nature and extent of such interest to the Board of Directors and any such disclosure shall be recorded in the Minutes of the Board of Directors at which such disclosure is made.

**5.13.2** Any directors who have any direct or indirect conflict of interest or pecuniary interest in a contract or a proposed contract shall not take part in any deliberations or decisions of the Board with respect to that contract.

**5.13.3** Any Director who has any direct or indirect conflict of interest or pecuniary interest in any financial matter, or proposed financial matter, being considered by the Board of Directors shall, as soon as the Director becomes aware of such an interest, disclose the nature and extent of such interest to the Board and any such disclosure shall be recorded in the Minutes of the Board of Directors meeting at which such disclosure is made and the Director concerned shall not take part in any deliberations or decisions of the Board with respect to that financial matter.

## PART 6 - GENERAL MEETINGS

### Annual General Meetings - Holding of

**6.1.1** With the exception of the first Annual General Meeting of the Organisation, the Organisation must, at least once in each calendar year and within the period of 5 months after the expiration of each financial year of the Organisation, convene an Annual General Meeting of its members.

**6.1.2** The Organisation must hold its first Annual General Meeting:

- (a) Within the period of 18 months after its incorporation; and
- (b) Within the period of 5 months after the expiration of the first financial year of the Organisation.

**6.1.3** *Clauses* 6.1.1 & 6.1.2 above have effect subject to any extension under the provisions of the *Corporations Act*.

### Annual General Meetings - Calling of and Business at

**6.2.1** The Annual General Meeting of the Organisation is, subject to the *Corporations Act* and to *Clause* 6.1, to be convened on such date and at such place and time as the Board of Directors thinks fit.

**6.2.2** In addition to any other business that may be transacted at an Annual General Meeting, the business of an Annual General Meeting is to include the following:

- (a) To confirm the minutes of the last preceding Annual General Meeting and of any Extra-ordinary General Meeting held since that meeting;
- (b) To receive from the Board of Directors reports on the activities of the Organisation during the last preceding financial year;
- (c) To receive the membership report of the Organisation during the last preceding financial year and any membership nominations which have been determined by the Board of Directors;
- (d) To receive from the Board of Directors a financial report on the activities of the Organisation during the preceding financial year as provided in the *Corporations Act*; details of any assets and liabilities including mortgages, debts, charges, securities, trusts or any other dealings with property or securities at the end of the last financial year together with the report from the auditor;
- (e) To elect nine Directors from the membership of the Organisation;
- (f) To endorse the two delegates and alternate delegates to attend AH&MRC and NACCHO General Meetings and Annual General Meetings. Following the meeting the organisation shall inform both abovementioned peak bodies of such appointments and their alternates within any required timeframe. The delegates shall include the Chairperson or other Director and the Chief Executive Officer or other administrative staff member;
- (g) To appoint the Company auditor if required:

The Annual General Meeting must be specified as such in the notice convening it.

**6.2.4** The quorum for the transaction of business at a duly constituted Annual General Meeting of members of a public Company is ten members, represented by delegates entitled under the Constitution to vote at an Annual General Meeting, and the quorum must be present at all times throughout the meeting.

#### **Extra-ordinary General Meetings - Calling of**

**6.3.1** The Board of Directors may convene an Extra-ordinary General Meeting of the Organisation. All General Meetings other than the Annual General Meeting shall be called Extra-ordinary General Meetings.

**6.3.2** All business shall be special that is transacted at an Extra-ordinary Meeting.

**6.3.3** The Board of Directors must call and arrange to hold a general meeting on the request of 5% of the votes that may be cast at the general meeting or at least 100 members entitled to vote at the meeting.

**6.3.4** The request from members of the Organisation to have a meeting called must:

- (a) be in writing;
- (b) state any resolution to be proposed at the meeting;
- (b) be signed by the members making the requisition;
- (c) be formally lodged with the Secretary; at the principal place of administration of the Organisation; and
- (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.

**6.3.5** The Directors must, at least twenty one (21) days from receipt of the request must call the meeting within two months after the request has been given to the company.

#### **Notice**

##### **6.4.1**

The Secretary must, at least twenty one (21) days before the date fixed for the holding of the meeting (or period otherwise prescribed by the *Corporations Act*), cause to be sent in a manner consistent with *Section 7.6* of the *Constitution* to each member's address or facsimile number appearing in the register of members, a notice specifying the place, date and time of any Extra-ordinary General Meeting approved by the Board of Directors and the nature of the business proposed to be transacted at the meeting.

**6.4.2** Where the nature of the business proposed to be dealt with at an Extra-ordinary General Meeting requires a special resolution of the Organisation, the Secretary must, at least twenty one (21) days before the date fixed for the holding of the general meeting, or period otherwise prescribed by the *Corporations Act*, cause notice to be sent to each member in the manner provided in *Clause 6.4.1* above, specifying, in addition to the matter required under that *Clause*, the intention to propose the resolution as a Special Resolution.

**6.4.3** No business other than that specified in the notice convening an Extra-ordinary General Meeting is to be transacted at the meeting except, in the case of an Annual General Meeting, business which may be transacted under *Clause* 6.2.2, and except business which members present at the meeting agree to treat as special business.

**6.4.4** A member desiring to bring any business before an Extra-ordinary General Meeting or an Extra-ordinary General Meeting associated with an Annual General Meeting, may give notice in writing of that business to the Secretary who must include that business in the next notice calling an Extra-ordinary General Meeting given after receipt of the notice from the member.

**6.4.5** Neither the non-receipt of notice by a member nor the accidental omission to give notice of any Annual General Meeting or Extra-ordinary General Meeting to any member entitled to notice shall invalidate the proceedings of any resolution passed at that meeting.

#### **Procedure**

**6.5.1** No item of business is to be transacted at an Extra-ordinary General Meeting unless a quorum of members entitled under the *Constitution* to vote is present at the time when the meeting proceeds to business.

**6.5.2** The quorum for the transaction of business at a duly constituted Extra-ordinary General Meeting of members of the Company is ten members entitled under the Constitution to vote at an Extra-ordinary General Meeting, and the quorum must be present at all times throughout the meeting.

**6.5.3** In the event of any member retiring from a meeting due to an expressed conflict of interest or a pecuniary interest being declared, for the purposes of establishing a quorum, attendance shall be as if those so affected were in actual attendance but this provision shall not apply beyond the specific business matter being discussed.

**6.5.4** Where 30 minutes after the appointed time for the commencement of an Extra-ordinary General Meeting a quorum is not present, the meeting is to stand adjourned to a time and place to be determined by the Board of Directors.

#### **Presiding Member**

**6.6.1** The Chairperson or, in the Chairperson's absence, the Deputy Chairperson, is to preside as chairperson at each Extra-ordinary General Meeting of the Organisation.

**6.6.2** Where the Chairperson and the Deputy Chairperson are absent or unwilling to act, the members present must elect one of the members present to preside as chairperson at the meeting.

#### **Adjournment**

**6.7.1** The chairperson of an Extra-ordinary General Meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

**6.7.2** Where an Extra-ordinary General Meeting is adjourned for twenty one (21) days or more, the Secretary must give written or oral notice of the adjourned meeting to each member of the Organisation stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

**6.7.3** Except as provided in *Clause* 6.7.1 and 6.7.2, notice of an adjournment of an Extra-ordinary General Meeting or of the business to be transacted at an adjourned meeting is not required to be given.

### **Attendance and Voting at General Meetings and Annual General Meetings.**

**6.8.1** Members have attendance, speaking and voting rights at Extra-ordinary General Meetings and Annual General Meetings of the Organisation.

**6.8.2** On any question arising at an Extra-ordinary General Meeting or an Annual General Meeting a member has only one (1) vote or one vote.

**6.8.3** A member is not entitled to vote, at an Annual General Meeting or an Extra-ordinary General Meeting of the Organisation unless any money due and payable by the member has been paid, other than the amount of any annual subscription payable in respect of the then current year.

**6.8.4** Associate members have both attendance and speaking rights at Extra-ordinary General Meetings and Annual General Meetings of the Organisation but are not entitled to vote nor stand for election as office holders of the Organisation nor hold office as Directors.

**6.8.5** In the case of an equality of votes on a question at a general meeting the chairperson of the meeting is entitled to exercise a second or casting vote.

### **Making of Decisions**

**6.9.1** Notwithstanding the Organisation's commitment to the principles of consensus in decision making a resolution arising at an Annual General Meeting or an Extra-ordinary General Meeting of the Organisation is to be determined on a show of hands and, unless before or during the declaration of the show of hands a poll, or an exact count, of the hands is demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Organisation, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

**6.9.2** At an Annual General Meeting or an Extra-ordinary General Meeting of the Organisation, a poll, or an exact count, of a vote may be demanded by the chairperson or by at least two (2) members present in person at the meeting.

**6.9.3** At an Annual General Meeting or an Extra-ordinary General Meeting of the Organisation, a secret ballot may be demanded by the chairperson or by at least two (2) members present in person at the meeting.

**6.9.4** Where a poll, or an exact count, of a vote is demanded at an Annual General Meeting or an Extra-ordinary General Meeting, it must be taken:

- (a) immediately in the case of a vote which relates to the election of the Chairperson of the meeting or to the question of an adjournment; or



(b) in any other case, in such manner and at such time before the close of the meeting as the Chairperson directs,

and the resolution of the poll, or the exact count, of a vote on a matter is taken to be the resolution of the meeting on that matter.

### **Special Resolutions**

**6.10** A resolution of the Organisation is a special resolution where:

- (a) a resolution which is passed by at least 75% of the votes cast by members entitled to vote on the resolution at an Extraordinary General Meeting or Annual General Meeting of which not less than 21 days' written notice (or within any prescribed period for such written notice in any amendment to the *Corporations Act*) have been given which specified the intention to propose the resolution as a special resolution and is passed in accordance with the provisions of the *Corporations Act*; or
- (b) it is made to appear to the Australian Securities & Investments Commission that it is not practicable for the resolution to be passed in the manner specified in paragraph (a), where the resolution is passed in a manner specified by the Australian Securities & Investments Commission.

### **Minutes of Annual General Meetings and Extra-ordinary General Meetings**

**6.11.1** The Board of Directors shall cause minutes to be made:

- (a) of names of all members present and all present at all meetings of the Organisation. and
- (b) of all proceedings at all Extra-ordinary General Meetings and Annual General Meetings.

**6.11.2** The confirmation of minutes shall be taken as the first business at the next succeeding Annual General Meeting or Extra-ordinary General Meeting of the Organisation to which the minutes relate. Where it is impracticable for the minutes to be confirmed at that meeting, then the minutes shall be confirmed at the next succeeding meeting.

**6.11.3** Such minutes shall be signed by the chairperson at the Meeting at which proceedings were held or by the chairperson at the next succeeding meeting.

**6.11.4** All members present at all meetings of the Organisation shall sign his or her name in an attendance book to be kept for that purpose and this record shall be included in the minutes related to that meeting.

### **Patrons**

**6.12** The members at general meeting may from time to time consider appointing a Patron or Patrons for the Organisation, or for particular charitable trusts of the Organisation, and upon direction from the general meeting of the Organisation the Board of Directors shall be empowered to consult with any such suggested person with a view to appointment.

Secretary

### **6.13**

**One or more Secretaries will be appointed by the Board of Directors in**

**accordance with the Corporations Act for such term, at such remuneration (if any) and on such conditions as it thinks fit, and any Secretary so appointed may be removed with or without cause.**

## PART 7 - MISCELLANEOUS

### Insurance

**7.1.1** The Organisation must effect and maintain an adequate level of liability insurance and any other prescribed amount for liability insurance.

**7.1.2** In addition to the insurance required under *Clause 7.1.1* above the Organisation may effect and maintain other insurance including Directors' and Officers' Liability Insurance and Professional Indemnity insurance.

### Funds Management

**7.2.1** Subject to any resolution passed by the Organisation at an Extra-ordinary General Meeting, the funds of the Organisation are to be used in pursuance of the Aims and Objectives of the Organisation in such manner as the Board of Directors determines.

**7.2.2** Subject to the provisions of 5.3.1(c)(i) of the *Constitution*, all cheques, drafts, bills of exchange, promissory notes, commercial bills and other negotiable instruments must be signed by two persons, either any two authorised Directors, Office Bearers being Directors or senior administrative employees authorised to do so in writing by the Board of Directors.

**7.2.3** A summary of all cheque expenditure and banking details for each account of the Organisation shall be forwarded monthly to the Treasurer.

**7.2.4** The members of the Board of Directors shall ensure that the Company complies with the requirements of the *Corporations Act* as to accounts and audit and shall ensure that relevant copies of accounts together with related balance sheets are forwarded to any trusts for which the Company acts as trustee.

**7.2.5** The Board of Directors shall have the power to delegate authority for approving all expenditure of the Company to a Finance Committee. Where such a Finance Committee is established it shall consist of the Chairperson and/or the Treasurer of the Company, the latter being the chairperson of the Finance Committee of the Company; additional members of the Board of Directors as may be deemed necessary from time to time; the Chief Executive Officer and the Finance Officer or Chartered Secretary of the Company.

**7.2.6.** Notwithstanding the provisions of *Clause 7.2* above the Board of Directors shall retain the power to determine who shall be entitled to sign cheques or endorse the aforementioned on the Organisation's behalf and may instruct accordingly and shall report to the Annual General Meeting any variation from the provisions of *Clause 7.2*, however, nothing in this *Clause* shall be interpreted to allow any amendment to the requirements within the *Constitution* regarding to the affixing of the Company's seal nor any negation of the requirement for countersigning the aforementioned instruments.

### Common Seal

**7.3.1** The common seal of the *Bourke Aboriginal Health Service Ltd.* shall be secured at the Organisation's principal place of administration and must be open to inspection

at any reasonable hour.

**7.3.2** The common seal must not be affixed to any instrument except pursuant to a resolution of the Board of Directors and the affixing of the common seal must be attested by the signatures of 2 Directors and each use of the seal is to be recorded in the Seal's Register and a report of this record to be tabled at each meeting of the Board of Directors.

**7.3.3** The person affixing the seal on an instrument must certify the date and place at which the seal is affixed and the capacity in which they have acted for the Company.

### **Custody of Books**

**7.4** All records, books and other documents relating to the Organisation, other than those prescribed by the *Corporations Act* to be kept at the Registered Office, shall be kept at the principal place of administration in the custody of or under the control of the Chief Executive Officer.

### **Inspection of Books**

**7.5** All records, books and other documents of the Organisation other than legal documents related to Court action or current litigation, personnel files and documents and other privileged information, either kept at the Registered Office or the principal place of administration, are open to inspection, free of charge, to members at any reasonable hour.

### **Service of Notices**

**7.6.1** Subject to provisions of the *Corporations Act*, a notice may be served on the Organisation by addressing it to the Organisation and either posting or personally delivering it to:

- (a) the registered office of the Organisation; or
- (b) the principal place of administration of the Organisation.

**7.6.2** For the purpose of the *Constitution*, a notice may be served by or on behalf of the Organisation on any member either personally or by sending it in a manner consistent with *Clause 7.6.4* to the member's address shown in the register of members.

**7.6.3** Where a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document is, unless the contrary is proved, taken for the purposes of the *Constitution* to have been served on the person at the time at which the letter would have been delivered in the ordinary course of post.

**7.6.4** Where a Notice of Meeting or a document, other than that required under *Sections 4.11, 4.12 and 4.13*, is sent to a member by properly addressing and providing the correct transmission number, forwarding to the person a copy of the document through facsimile transmission, the document is, unless the contrary is proved, taken for the purposes of this *Constitution* to have been served on the

member at the time at which the document would have been delivered in the ordinary course of facsimile transmission providing that the original of the said document is also forwarded on the same day by post.

**7.6.5** A notice forwarded by facsimile transmission shall be deemed to have been served, unless the sender's facsimile machine indicates a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.

### **Financial Year**

**7.7** The financial year of the Organisation shall be the intervening period between the 1<sup>st</sup> July and the 30<sup>th</sup> June of the following year.

### **Appointed Auditors**

**7.8.1** The name and address of the Auditor or Auditors, whether a person or a firm, for the Organisation, as determined by the members at an Annual General Meeting in accordance with the provisions of the *Corporations Act*, or by the Board of Directors in the circumstances provided for in *Clause 7.8.7*, and as submitted to the Australian Securities & Investments Commission within the prescribed period, shall be included in *Schedule 1* of the *Constitution*.

**7.8.2** Within one month of incorporation the Board of Directors shall appoint a person or persons, or a firm or firms, as auditor or auditors of the Company.

**7.8.3** At the Company's first Annual General Meeting a person or persons, and/or a firm or firms, shall be appointed as auditor.

**7.8.4** At each subsequent Annual General Meeting, if there is a vacancy in the office of auditor, a person or persons, and/or a firm or firms, shall be appointed as auditor to fill the vacancy.

**7.8.5** The appointed auditor holds office until death, removal or resignation from office in accordance with the provisions of the *Corporations Act*.

Compliant with Section 249K (1) & (2) of the *Corporations Act*, the Company shall provide its auditor:

- notice of any general meeting or the Annual General Meeting in the same manner that a member of the Company is entitled to receive notice; and
- any other relevant communication relating to the general meeting or Annual General Meeting that a member of the Company is entitled to receive.

**7.8.7** The appointed auditor may be removed from office only by Special Resolution at an Extra-ordinary General Meeting of the Organisation and the removal shall take effect only where such action is in accordance with the provisions of the *Corporations Act*.

**7.8.8** Within one month after a vacancy in the office of auditor, other than a vacancy provided for in *Clause 7.8.6* above, where there is no continuing auditor and the

members at an Annual General Meeting have not appointed an auditor to fill the vacancy, the Board of Directors shall appoint a person or persons, and/or a firm or firms, to fill the vacancy.

**7.8.8** The appointed auditor shall report each financial year on the financial statements of the Organisation with regard to their being correctly drawn up in accordance with Australian accounting standards to:

- provide a true and fair view of the assets and liabilities of the Organisation for the past financial year;
- provide an accurate record of income and expenditure for the financial year; and
- report on compliance with the provisions of the *Corporations Act*.

### **Financial Reporting**

**7.9.1** The Treasurer of the Organisation shall present a financial statement to the Board of Directors which shall prepare a Report thereon and which they shall present for the audit. The Board of Directors shall present the following for consideration at the Annual General Meeting:

a report from the Board of Directors, signed by the Chairperson and stating:

- (i) the name of each Director and the name of each alternate Director who acted as a Director during the most recently ended financial year of the Organisation; and
  - (ii) the principal activities of the Organisation during the most recently ended financial year and any significant change in the nature of those activities that occurred during that financial year; and
  - (iii) the amount of any payment paid to Directors; the purpose for each payment and the date of the Board of Directors meeting at which such payment was approved for services other than for services as a director;
- (b) a copy for all members of the Auditor's Report on the Organisation's accounts in respect of the most recently ended financial year of the Organisation; and
- (c) the accounts including the mandatory statement on solvency.

**7.9.2** Within one month of the Annual General Meeting the Secretary shall lodge with the Australian Securities & Investments Commission, in the form and manner prescribed in the *Corporations Act*, a statement concerning the financial affairs of the Organisation for the immediate past financial year.

**7.9.3** It is the duty of the Secretary and the ultimate responsibility of the Board of Directors to ensure filing with the Australian Securities & Investments Commission within the prescribed period the financial statement, annual return and other required information under the provisions of the *Corporations Act*.

### **Chief Executive Officer and Administration**

**7.10.1** The administration of the Organisation shall be managed by the Chief Executive Officer, or other such nomenclature as the Company may prefer for this

position, who shall be appointed by the Board of Directors, or a sub-Committee appointed by that Board, and at all times shall be responsible to the Board of Directors of the Organisation. Where the Chief Executive Officer is also appointed to the position of a Company Secretary the Australian Securities & Investments Commission shall be notified of the appointment on the prescribed form of the *Corporations Act*.

**7.10.2** Subject to the provisions of *Sub-clause* 5.1 (e) any vacancy in the office of the Chief Executive Officer, and when applicable the Deputy Chief Executive Officer, shall be filled by the Board of Directors, or sub-Committee appointed by that Board, following appropriate advertising and an interview by the appointed sub-Committee.

**7.10.3** In addition to those delegated responsibilities provided for in *Clause* 5.4 the responsibilities of the Chief Executive Officer include management of the Organisation's administration and the Chief Executive Officer shall:

- co-ordinate the aims and objectives of the Organisation
- implement the policies and administrative procedures approved by the Board;
- serve the Board of Management, the Chairperson and other Office Bearers of the Organisation;
- in consultation with the Secretary, ensure all requirements of the *Act*, relevant Commonwealth and State statutes and the *Constitution* are adhered to;
- in consultation with the Secretary, maintain all registers;
- in consultation with the Secretary, ensure that Minutes of all meetings and Committee meetings are disseminated;
- ensure timely information flow to all members and associate members;
- implement decisions of general Meetings and the Board of Management;
- ensure that all industrial requirements are adhered to;
- undertake relevant research, prepare necessary reports and provide timely advice;
- co-ordinate the preparation necessary for all Annual General Meetings, General Meetings, meetings of the Board of Management and conferences
- in consultation with the Treasurer, any Finance Sub-committee and the Board of Management, have responsibility for those matters so directed in the financial matters of the Organisation;
- in consultation with and as directed by the Chairperson, liaise with the peak Aboriginal Community Controlled Health secretariat, government departments, agencies and other relevant organisations;
- be sensitive to Community diversity and responsive to Community instructions, provide support and educational services for Aboriginal culture and heritage to enhance spiritual healing within the Community; and
- undertake other duties as required and directed and as outlined in the Duty Statement determined and reviewed by the Board of Management.

**7.10.4** The specific duties of the Chief Executive Officer shall be outlined in a Duty Statement as determined and reviewed by the Board of Directors.

**7.10.5** The terms and conditions of the employment of the Chief Executive Officer shall be determined and reviewed by the Board of Directors.

**7.10.6** The Chief Executive Officer shall demonstrate and shall ensure that all staff demonstrate, a clear understanding of and commitment to the Aims and Objectives of the Organisation; the definitions of "health" and "Aboriginal community control in

health” as defined within the *Constitution*.

**7.10.7** The Chief Executive Officer shall be responsible to the Board for ensuring that professional support, assistance and advice is provided to the Chairperson of the Organisation in their his/her role as spokesperson for the Organisation and to provide appropriate briefing when the Chairperson is in attendance at meetings at which the Chief Executive Officer acts as negotiator with governments, ministerial staff, departmental personnel, non-government organisations and Community organisations on behalf of the Board.

**7.10.8** The Chief Executive Officer shall be directly responsible to the Chairperson of the Organisation in any delegated role directed by the Chairperson to act as spokesperson for and representative of the Organisation and in any delegated negotiations with governments, ministerial staff, departmental personnel, non-government organisations and Community organisations on behalf of the Board of Directors.

**7.10.9** The Chief Executive Officer shall not be a member of the Board nor count towards a quorum of the Board of Directors.

**7.10.10** The Chief Executive Officer, shall be responsible to the Chairperson as the elected representative of the Organisation, for ensuring that absolute discretion, culturally appropriate protocol and confidentiality shall apply in all Organisation activities, meetings and dealings related to Aboriginal religion, associated spiritual matters, cultural traditions, customs, heritage, lore, law, sacred sites, land rights and Community knowledge throughout the diverse Aboriginal communities of this land.

### **Attendance of the Chief Executive Officer at Meetings of the Organisation**

**7.11.1** The Chief Executive Officer shall:

- (a) be entitled to attend all Meetings of the Organisation and to attend all meetings of the Board of Directors, excluding *in camera* sessions unless requested to be present, and to participate in any discussions relating to any question or motion before such meetings, but shall not be entitled to vote on any motion of the Board of Directors; and
- (b) have access to all Board of Directors documents and minutes, excluding minutes of *in camera* sessions unless provided by the Board of Directors, and shall receive notices of all meetings of the Board of Directors.

**7.11.2** For the purpose of this *Clause* ‘The Chief Executive Officer’ means the appointed person to the position of Chief Executive Officer of the Organisation by the Board of Directors, or who performs the functions and the duties of the Chief Executive Officer.

### **Registered Office**

**7.12** The registered office of the Company, as determined from time to time by the Board of Directors and as submitted to the Australian Securities & Investments Commission, shall be at the place so designated in *Schedule 2* of the *Constitution*.

### **Principal Place of Administration**

**7.13** The principal place of administration of the Company, as determined from time



to time by the Board of Directors and as submitted to the Australian Securities & Investments Commission, shall be at the place so designated in *Schedule 3* of the *Constitution*.

#### **Amendments to Schedules**

**7.14** Amendments to *Schedules* within the *Constitution* shall be in accordance with the provisions of the *Corporations Act* and shall be made by minute following a majority vote of Directors at a meeting of the Board of Directors. A copy of any such amendment shall be provided to the Australian Securities & Investments Commission and copies forwarded by the Secretary to the membership of the Organisation within twenty one (21) days following the amendment.

#### **Indemnity**

**7.15** Every Director; the Secretary; other officers for the time being of the Company; and auditor or auditors of the Company shall be indemnified out of the funds and assets of the Company against all liabilities arising out of the execution of the duties of their office which is incurred by them in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application under the *Corporations Act* in which relief is granted to them by the Court in respect of any negligence, default, breach of duty or breach of trust.

**SCHEDULE 1**

**NAME AND ADDRESS OF APPOINTED AUDITOR**

**[Clause 7.8]**

**Name of Nominated Company Auditor.**

Mr Brett Herbert  
Herbert Accounting Service

**Address:**

Suite 6, 162 Summer Street  
(upstairs Best & Less Building)  
ORANGE NSW 2800

**Postal Address:**

PO BOX 934  
ORANGE NSW 2800

**Telephone:**

02 6362 5940

**SCHEDULE 2**

**REGISTERED OFFICE**

**[Clause 7.12]**

The Registered Office of the Company shall be:

**Address:**

61 Oxley Street  
Bourke  
New South Wales  
2840

or such other place as the Board of Directors of the Organisation may determine.

**Telephone:**

02 6872 3088

**Facsimile:**

02 6872 2749

**SCHEDULE 3**

**PRINCIPAL PLACE OF ADMINISTRATION**

**[Clause 7.13]**

The principal place of administration of the Company shall be:

**Address:**

61 Oxley Street  
Bourke  
New South Wales  
2840

or such other place as the Board of Directors of the Organisation may determine.

**Telephone:**

02 6872 3088

**Facsimile:**

02 6872 2749




**SCHEDULE 4 -**

**Bourke Aboriginal Health Service Limited**

**Application for Membership Form**

**[Sub-clause 4.2(v)]**

(Print Full Name of Applicant)

.....

(Address) .....

As an Aboriginal person over the age of 18 years I hereby apply to become a member of the Bourke Aboriginal Health Service Limited. In the event of my admission as a member, I agree to be bound by the *Constitution* for the time being in force.

(Signature of applicant) ..... (Date)...../...../20...

**Nomination**

Each applicant for membership is to be nominated by two current members of the Organisation who are Aboriginal persons over the age of 18 years residing within the boundaries of or the area serviced by the *Bourke Shire*, as provided for in *Schedule 8*.

**Nominees**

(Full name of first nominee).....

(Address).....(Telephone).....

The applicant, who is known personally to me, is nominated for membership of the Organisation.

(Signature of first nominee) .....(Date) ...../...../20...

**Second Nominee**

(full name).....

(Address).....(Telephone).....

The applicant, who is known personally to me, is nominated for membership of the Organisation.

(Signature of second nominee).....(Date) ...../...../20...

**SCHEDULE 5**

**Bourke Aboriginal Health Service Limited**

**Application for Associate Membership Form**

**[Sub-clause 4.5(iv)]**

(Print Full Name of Applicant)

.....

(Address) .....

I hereby apply to become an associate member of the above-named incorporated Company. In the event of my admission as an associate member, I agree to be bound by the *Constitution* of the Organisation for the time being in force.

(Signature of applicant) ..... (Date)...../...../20...

**Nomination**

Each applicant for associate membership is to be nominated by two current members of the Organisation who are Aboriginal persons over the age of 18 years residing within the boundaries of or within the area serviced by the *Bourke Shire*, as provided for in *Schedule 8*.

**Nominees**

(Full name of first nominee).....

(Address).....(Telephone).....

The applicant, who is known personally to me, is nominated for membership of the Organisation.

(Signature of first nominee) .....(Date) ...../...../20...

**Second Nominee**

(full name).....

(Address).....(Telephone).....

The applicant, who is known personally to me, is nominated for membership of the Organisation.

(Signature of second nominee).....(Date) ...../...../20...

## SCHEDULE 6

### NATIONAL ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION (NACCHO)

#### DEFINITION ON

#### ABORIGINAL COMMUNITY CONTROL IN HEALTH SERVICES

**(Clause 13)**

- Community Control is a process which allows the local Aboriginal community to be involved in its affairs in accordance with whatever protocols or procedures are determined by the Community.
- The term Aboriginal Community Control has its genesis in Aboriginal peoples' right to Self Determination
- An Aboriginal Community Controlled Health Service is:
  - 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.
  - delivering a holistic and culturally appropriate health service to the Community which controls it.
- By definition, organisations controlled by Government to any extent are excluded.
- By definition, organisations which adopt a vertical approach to health, inconsistent with the Aboriginal holistic definition of *health* as defined by the NAHS, are excluded.

NACCHO Broome Conference, 1995, \*Amended NACCHO Annual General Meeting 1999



## SCHEDULE 7

### CORE FUNCTIONS OF PRIMARY HEALTH CARE IN ABORIGINAL COMMUNITY CONTROLLED HEALTH SERVICES (ACCHS)

#### [Section 1.3 “Primary Health Care”]

#### Primary Health Care

Primary Health Care is essential, integrated care based upon practical, scientifically sound and socially acceptable procedures and technology made accessible to communities as close as possible to where they live through their full participation in the spirit of self-reliance and self-determination. The provision of this calibre of health care requires an intimate knowledge of the community and its health problems, with the community itself providing the most effective and appropriate way to address its main health problems, including promotive, preventative, curative and rehabilitative services. (Adapted from the W.H.O. Alma-Ata Declaration 1978)

Primary Health Care is the first level of contact of individuals, families and the community with the health care system and in Aboriginal communities this is usually through an Aboriginal Community Controlled Health Service (ACCHS) or satellite Aboriginal community health clinic that it services.

Primary health care, within the holistic health provision of an ACCHS, provides the sound structure to address all aspects of health care arising from social, emotional and physical factors. It incorporates numerous health related disciplines and services, subject to its level of operation, available resources and funding. In addition to the provision of medical care, with its clinical services treating diseases and its management of chronic illness, it includes such services as environmental health, pharmaceuticals, counselling, preventive medicine, health education and promotion, rehabilitative services, antenatal and postnatal care, maternal and child care, programs and necessary support services to address the effects of socio-somatic illness and other services provided in a holistic context mentioned in *Schedule 8* of this *Constitution* and included in the NACCHO definition for ‘Aboriginal Health Related Services’:

**“Aboriginal health related services”** mean those services covered by the Aboriginal holistic definition of health including, but not restricted to, such services as health promotions and disease prevention services, substance misuse, men’s and women’s health, specialised services to children and the aged, services for people with disabilities, mental health services, dental care, clinical and hospital services and those services addressing, as well as seeking the amelioration of, poverty within Aboriginal communities.”

This all inclusive, integrated health care refers to the quality of health services. It is a comprehensive approach to health and arises out of the practical experience within the Aboriginal community itself to provide effective and culturally appropriate health services to its communities.

The following list of core services are those services which are provided, subject to adequate funding, in many ACCHSs and reflect the Aboriginal definition of holistic health:

“**Aboriginal health**” means not just the physical well-being of an individual but refers to the social, emotional and cultural well-being of the whole Community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well-being of their Community. It is a whole of life view and includes the cyclical concept of life-death-life.”

## **Core Functions of Primary Health Care in (ACCHS)**

### **Medical Care**

#### Clinical Health Services

May include, but not restricted to, the following services provided by medical practitioners and/or appropriately qualified allied health professionals, trained Aboriginal Health Workers or qualified nursing staff using standard treatment procedures.

Diagnostic and clinical care

Treatment of illness/disease

- Management of chronic illness
- Referral to secondary health care (inpatient hospital and other health residential facility) and tertiary health care (specialist services and care)

when not available at the ACCHS

Dialysis services and endocrinology referral

Collections for pathology testing and or referral

Radiology services or referral

Sterilisation of equipment meeting Australian Standards

Respiratory disease testing, services and referral

Cardiovascular testing, services and referral

Outreach clinical health services to satellite clinics or communities without services

- Clinical health services to prisons and institutions
- Domiciliary health care

#### Pharmaceutical Services

Prescription of medication and drugs

- Pharmaceutical supplies, (subject to State and Federal legislation and mindful of the *W.H.O. Alma Ata Declaration* advocating provision of essential drugs)
- Pharmaceutical supply arrangements with hospital pharmacies or local pharmacists when not available at the ACCHS.

#### (iii) Preventative Care

Population health promotional program

Early intervention

Otitis Media examination and testing

Immunisation

Health education and promotion

Socially communicable disease control, manuals and education programs

Health protection supplies and distribution

Antenatal instruction and classes

Maternal and child care (0 – 5 years)

Diabetic screening, testing and counselling  
Screening, individual and mass screening programs  
Vaccinations  
Infection control  
Injury/accident prevention education  
Outreach health promotional programs

- Dietary and nutrition education

(iv) Medical Records & Health Information System

- Up-to-date comprehensive Medical Record System
- Monitoring sheets and Follow up Files
- Health registers
- Health Information Data system
- Immunisation and vaccination registers

**Dental Health Services**

May include, but not restricted to, the following services provided by dental practitioners and/or appropriately qualified dental health workers or trained dental technicians using standard treatment procedures.

(i) Dental Clinical Services

Diagnostic and dental care

Treatment of tooth decay/extraction

- Provision of dentures
- Orthodontic and specialist services
- Orthodontic and specialist services referral when not available at an ACCHS

Sterilisation equipment meeting Australian Standards

Outreach dental services to satellite clinics or communities without dental services

(ii) Preventative Dental Care

Dental health promotional program

Early intervention

Dental health education

Dental health supplies and distribution

(iii) Dental Records & Information System

- Up-to-date comprehensive Dental Record System
- Monitoring sheets and Follow up Files
- Dental Health registers
- Health Information Data system

**Health Related Services and Community Support Services**

Subject to the type of service, may include, but not restricted to, the following services provided by medical practitioners, visiting physicians, appropriately qualified allied health professionals, trained Aboriginal Health Workers, qualified nursing staff or community personnel using culturally appropriate procedures and programs.

- Social and emotional wellbeing services
- Psychiatric services and care
- Counselling and group activities
- 'Stolen Generations' counselling and Link-up services and support

- Cultural promotion activities
- Aboriginal traditional methods of healing
- Clinic usage as venue for visiting specialists
- Aged care services
- Paediatric Services
- Client follow-up and support
- Home and community care
- Assistance with surgical aids
- Podiatry services
- ENT Services
- Ophthalmology services
- Optometry services
- Advocacy work e.g. support letters for public housing issues
- Homelessness support and temporary shelter services
- Submission writing for community organisations
- Advocacy/interpreting services
- Community development work
- School based activities
- Transportation health services and Community bus activities
- Accommodation or assistance for visiting rural and remote patients
- Meeting of patients travelling long distance by public transport
- Deceased transportation and arrangements
- Funeral assistance
- Youth activities and counselling
- Satellite primary health services to remote outlying communities or towns without services
- Support services for people in custody
- Prison advocacy services
- Welfare services and food assistance
- Affordable and wholesome food provision
- Financial assistance for medical supplies or prescriptions
- Environmental health services
- Substance misuse counselling, education and promotions
- Detoxification services
- Needle exchange services
- Services for people with disabilities
- Men's and women's business services
- Family counselling services
- Crisis intervention services
- Audiometry services
- Audiology services
- Local or Regional Health Ethics Committee representation
- Community and ACCHS research and data analysis
- Formal in-service staff education and training
- Liaison with mainstream and private health sectors to assist in access and equity to secondary and tertiary health care services for Aboriginal people

- Community, Shire Council, Regional Area Health Service, Hospital Board committee representation

The above list, whilst only a guide, includes certain specialist services (tertiary care) which can be available within the holistic health service provision of an ACCHS, depending upon the level of its operation, resources, funding and geographical location, or arranged through ACCHS clinics for visiting specialists and physicians or, in the absence of both of the above, by referral to the mainstream and private health care sectors with co-ordinated care provided by ACCHS medical practitioners, Aboriginal Health Workers and/or qualified nursing staff.

**SCHEDULE 8**

**BOUNDARIES OF THE  
BOURKE ABORIGINAL HEALTH SERVICE LIMITED**

**(Sections 4.2, 4.5, 4.19)**

The boundaries of the *Bourke Aboriginal Health Service Limited* shall be the boundaries of the Bourke Shire.

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