

CONSTITUTION
of
Winnunga Nimmityjah
Aboriginal Health and
Community Services Ltd.

October 2016

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1. NAME, LEGAL ENTITY AND LIMITED GUARANTEE

- (a) The name of the Company is: Winnunga Nimmityjah Aboriginal Health and Community Services Ltd.
- (b) Winnunga Nimmityjah Aboriginal Health and Community Services Ltd. (referred to as WNAHCS) is registered as a company pursuant to the *Corporations Act 2001*.
- (c) WNAHCS is a registered charity pursuant to the *Australian Charities and Not-for-profits Commission Act 2012*.
- (d) Each Member must, if required and necessary, contribute and guarantee an amount limited to not more than \$10 per member, to the property of Winnunga Nimmityjah Aboriginal Health and Community Services Ltd if Winnunga Nimmityjah Aboriginal Health and Community Services Ltd is wound up or upon dissolution of the Company, or if the Company's endorsement as a deductible gift recipient is revoked (whichever occurs first), and the amount must be paid by each member or each person who ceased to be a member less than 12 months prior to WNAHCS being wound up. The contribution is to be applied to:
 - i. The debts and liabilities of WNAHCS incurred before the member stopped being a member, and/or
 - ii. The costs of winding up.

2. VISION

To continue to provide comprehensive primary health care (holistic health) and community services in a culturally safe setting that is effective and efficient for the ACT and region's Aboriginal community.

3. OBJECTS

The Objectives of WNAHCS are to:

- (a) Provide consistent and effective holistic, culturally safe and supportive health and community services to Aboriginal and Torres Strait Islander peoples and others in the region, including people on the New South Wales side of the border, where such a service may be required. Such services may include but are not limited to, health, family and child services, youth services, aged care, employment and housing services, sporting and lifestyle and justice related services.
- (b) Promote, strengthen and maintain the social and cultural integrity of Aboriginal and Torres Strait Islander communities by ensuring that all programs operate in culturally safe and supportive ways.
- (c) Advocate for Aboriginal and Torres Strait Islander peoples to community organisations and government agencies and where desirable, form partnerships with the aim of promoting better whole of life outcomes including: better health, economic participation, social inclusion, family and community participation.
- (d) Auspice organisations that provide services to Aboriginal and Torres Strait Islander peoples of the ACT and surrounding areas.
- (e) Purchase, take on lease or in exchange and the hiring or otherwise acquiring of any real or personal property that may be deemed necessary or convenient and this shall include but not be limited to land and/or buildings and structures.
- (f) Establish any legal entity whose sole purpose is to benefit Winnunga Nimmityjah Aboriginal Health and Community Services Ltd or any of its aims or objectives.

- (g) Maintain a Public Benevolent Institution which will be a Non-Profit Institution organised for the direct relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness among the Aboriginal and Torres Strait Islander Community which it serves and that is not-for-profit and where all funds and revenue are directed at achieving the objectives of WNAHCS.

4. POWERS

Subject to the Act and these sections, WNAHCS has the power to do anything lawful to carry out its directly related or indirectly related Objects.

5. MEMBERS AND MEMBERSHIP

5.1 Members

- (a) A person is a member if their name appears on the Register of Members.

5.2 Membership

- (a) To be admitted as a member a person must be at least 18 years of age and must be Aboriginal or Torres Strait Islander.
- (b) Subject to (b) the Board of Directors may admit to membership any person who agrees to support the objects of Winnunga Nimmityjah Aboriginal Health and Community Services Ltd.
- (c) An application for membership:
 - i. Must be made in writing; and
 - ii. Must be accompanied by an *Application for Membership* form which is duly signed by two (2) current members of WNAHCS who agree to nominate the applicant; and
 - iii. Must include an *Application for Membership* form signed by the applicant; and
 - iv. Must be addressed to the Board of Directors.
- (d) A person who applies for membership agrees:
 - i. To abide by all the provisions of this Constitution
 - ii. To act in a manner consistent with the achievement of the aims and objectives of WNAHCS.
 - iii. To not make public statements on behalf of WNAHCS unless prior to making such statements the Board of Directors has approved the making of such statements.
 - iv. To pay any subscription fee as determined from time to time by the Board of Directors.
- (e) Membership applications are not considered by the Directors before a meeting of members if a meeting of members is to be held in less than 30 days prior to a meeting of members. Membership applications received less than 30 days prior to a meeting of members will be considered within 90 days following the meeting of members.
- (f) A person may be denied membership by the Directors on the following grounds:
 - i. There is a conflict of interest between WNAHCS and the applicant.
 - ii. There is a perceived conflict of interest between WNAHCS and the applicant.
 - iii. The applicant does not have the capacity to enter in to a contractual agreement.

- iv. Acceptance of the applicant as a member would or could or may tend to be detrimental to WNAHCS or the objects of WNAHCS.
- (g) A person who is denied membership may make an application for review of the decision at the next annual general meeting of members. An application for a review of the decision must:
 - i. Be made in writing
 - ii. Be addressed to the Board of Directors,
 - iii. Must be received by the Board of Directors within 21 days of the applicant receiving notice that membership has been denied
- (h) Upon receipt of a request for review of a decision to deny membership the Board of Directors must:
 - i. Within 21 days acknowledge receipt of the request in writing addressed to the applicant.
 - ii. Place the item on the agenda of the next general meeting.
 - iii. Inform the applicant of the date of the next general meeting of members at least 21 days prior to the date of the general meeting.
 - iv. Inform the applicant, at least 7 days prior to the date of the general meeting of the time they may be present to put their case to the general meeting.
- (i) Where the next general meeting is less than 21 days from the date of receipt of the application for review, the Board is not bound by the time limits provided for in this section.
- (j) The annual general meeting of members may accept the applicant as a member on a majority vote. Failure to achieve a majority vote will be confirmation of the decision of the Board of Directors.
- (k) A person who has been denied membership will not be eligible to apply for membership for a period of two (2) years.

5.3 Member rights and responsibilities

- (a) Each Member has the following rights:
 - i. To attend and speak at a General Meeting of WNAHCS;
 - ii. If the Member's membership subscription is paid according to this Constitution, to vote at any meeting of members;
 - iii. To not be removed as a Member unless the Directors and WNAHCS have complied with the relevant provisions of this Constitution;
 - iv. To put forward resolutions to be voted on at a General Meeting of WNAHCS in accordance with the relevant provisions this Constitution;
 - v. To ask the Directors to call a General Meeting of WNAHCS in accordance with the relevant provisions this Constitution;
 - vi. To access the following books and records of WNAHCS:
 - 1. The Register of Members;

2. The minutes of meetings of members;
 3. WNAHCS's Constitution; and
 4. Other documents as required by law.
- (b) Members and Directors do not have the right to share in the profits of WNAHCS or take part in the distribution of WNAHCS' assets if it is wound up.
- (c) Each Member has the following responsibilities:
- i. To comply with relevant provisions of the Act and this Constitution; and
 - ii. To pay any subscription fee that is due; and
 - iii. To notify WNAHCS of any change in their address within 28 days; and
 - iv. To treat other members and the Directors with respect and dignity; and
 - v. To not behave in a way that significantly interferes with the operation of WNAHCS;
 - vi. To not behave in a way that interferes with Company meetings; and
 - vii. To not behave in a way that damages or may tend to cause significant damage to WNAHCS whether or not that behaviour is wilful or reckless.

5.4 Member's right to raise an issue with the Board of Directors

- (a) A member may raise any matter with the Board of Directors that the member sees fit to raise. The procedure for raising a matter with the Board of Directors is:
- i. The matter must be stated in writing, addressed to the Board of Directors, clearly describing the matter.
 - ii. The letter must be signed by the member.
- (b) Where the Board receives correspondence from a member in the form described above, the Chairperson must:
- i. Place the item on the agenda of the next Board meeting.
 - ii. The matter must be discussed by the Board at the next Board meeting, but no later than ninety (90) days from the date of receipt of the letter.
 - iii. The Chairperson, or another Director by delegation of the Chairperson, must inform the member in writing of the outcome of the discussion of the matter within fourteen (14) days of the meeting at which the matter was discussed.

5.5 Member's right to nominate a member for election as a Director

- (a) A member, prior to a General Meeting of Members at which there is to be election of a Director or Directors, may nominate a member for the position of Director. The criteria and procedure for such nomination is:
- i. The person being nominated must have been a continuous member of WNAHCS for at least twelve (12) months and must have been eligible to vote at any meeting of members for a continuous period of 12 months prior to the date at which elections are to be held for Directors.
 - ii. The nomination must be in writing, signed by two (2) nominees and the person being nominated and must be addressed to the Board of Directors and be received by the Board of Directors at least fourteen (14) days prior to the date of the meeting of members.

- iii. Any nomination form prescribed by the Bylaws must be completed and submitted;
 - iv. Persons nominating must be financial members of WNAHCS.
 - v. The nominated member must understand the provisions of this Constitution and the provisions of the *Act* relating to duties of Directors and must declare any matter whatsoever that will or may prevent them from properly acting as a Director. This declaration must be made at least five (5) days prior to the date of the meeting of members.
- (b) Failure to declare any relevant matter will be grounds for the Board of Directors, by a majority vote, to remove the nominated person's name from the list of eligible nominees.

5.6 Member subscription fees and voting at general meetings of members

- (a) The Board of Directors shall set the membership subscription fee and the membership subscription fee shall not exceed what is reasonable for the administration of membership business.
- (b) It is the responsibility of members to pay any subscription fee that is due.
- (c) Membership fees must be paid annually.
- (d) A member who is not financial (up to date with the payment of the subscription) thirty (30) days prior to a meeting of members will not be eligible to vote on any resolution proposed and is not eligible to propose a resolution to be voted on.

This section applies regardless of any other provision of this Constitution.

6. VOTING AT MEETINGS OF MEMBERS

6.1 Voting at general meetings of members

- (a) A member who has a right to vote at any meeting of members.
- (b) At a General Meeting, each Member has one vote.
- (c) The Chairperson has one vote in their capacity as an ordinary member and the chairperson shall have a casting vote.
- (d) A challenge to a right to vote at a General Meeting:
 - i. May only be made at the meeting; and
 - ii. Must be determined by the chair, whose decision is final.
- (e) A resolution put to the vote at a General Meeting may be decided by:
 - i. A simple majority on a show of hands; or
 - ii. By a ballot or poll whereby votes are collected and counted; or
 - iii. By a show of cards in favour or against;
- (f) Where a vote is by ballot or poll, two independent vote counters, one of who may be the auditor, must oversee the counting of votes and must confirm the final count.
- (g) If there is any doubt as to the independence of a vote counter, that doubt shall be removed by a resolution to accept the independent vote counter and the independent vote counter shall be accepted by a simple majority of voting members. A vote pursuant to this Section shall be by show of hands. A resolution to accept an independent person for the purpose of this section does not have to comply with any notice provisions for resolutions.

- (h) The Directors shall determine the form of voting.
- (i) A Special resolution is required if a provision of this Constitution requires a Special resolution or if the Act specifies that a special resolution is required on a particular matter.
- (j) A Special Resolution must be decided on a majority of 75% of eligible voting members present at the meeting.

6.2 Proxy voting at general meetings of members

- (a) A member may appoint a proxy to vote on resolutions proposed at meetings of members.
- (b) The proxy must be a member of WNAHCS and must be entitled to vote in their own right as a member.
- (c) A member may hold only one proxy at any time. This means that a member may vote on their own behalf and may, upon being duly authorised, exercise the vote of one other member and only one other member, if appointed as proxy by that member.
- (d) A proxy appointment form must be made available to members upon request.
- (e) To be valid a proxy form must:
 - i. State the member's name; and
 - ii. State the name of the proxy; and
 - iii. State the date of the meeting at which the proxy is to act; and
 - iv. State any restriction on the proxy. For example, if the proxy is to vote on only a particular resolution to be proposed at the meeting; and
 - v. The form must be signed by the member appointing the proxy.
- (f) A proxy appointment will be valid for only one meeting of members.
- (g) A proxy form must be submitted to the CEO of WNAHCS at least seven (7) days prior to a meeting of members. Upon authentication of current membership, the proxy form will be made available to the member exercising the proxy immediately prior to the meeting at which the proxy is to be exercised.

7. HOW TO STOP BEING A MEMBER

- (a) A person may stop being a member by:
 - i. The member providing in writing addressed to the Board of Directors notice of their termination of membership; or
 - ii. The Board of Directors issuing a notice of termination of membership.
- (b) The Board of Directors may issue a notice of termination of membership on the following grounds:
 - i. The member subscription fee has been in arrears for a period exceeding 12 months; or
 - ii. The member is no longer eligible for membership; or
 - iii. That the Board of Directors has determined by a 2/3 majority that a member has breached any of the provisions of this Constitution applying to members.
- (c) The Directors may, by resolution of a two-thirds majority cancel the membership of a member if they are not eligible for membership, have ceased to be eligible for

membership, or if the member has breached a provision of this Constitution relating to the conduct of members.

- (d) Before cancelling the membership, the Directors must issue a *show cause* notice to the member in writing asking the member to show cause why the member should not have their membership cancelled. The Notice must:
 - i. Be in writing;
 - ii. Be addressed to the member at the address that appears on the Register;
 - iii. Must provide adequate explanation for the reason for issuing the show cause notice;
 - iv. Must provide the member with 21 days to submit a written reply;
- (e) Upon receipt of a 'Notice to Show Cause' why membership should not be terminated a member who wishes to respond must:
 - i. Submit their written response in writing within 21 days of receipt of the 'Notice to Show Cause'.
- (f) A member who does not respond to a 'Notice to Show Cause' will be deemed to have no objection to their membership being cancelled and the Directors may proceed to cancel the membership.
- (g) Where a member responds in writing to the Board of Directors, the Board must, within 21 days:
 - i. Issue a notice of termination of membership to the member; or
 - ii. Issue a notice in writing affirming the membership of the member; and/or
 - iii. Issue a notice to the member providing for an opportunity to rectify any outstanding issue.
- (h) A person who has had their membership terminated may make an application for review of the decision at the next Annual General Meeting of members. An application for a review of the decision must:
 - i. Be made in writing,
 - ii. Be addressed to the Board of Directors, and
 - iii. Must be received by the Board of Directors within 21 days of the applicant receiving notice that membership has been terminated.
- (i) Upon receipt of a request for review of a decision to terminate membership the Board of Directors must:
 - i. Within 21 days acknowledge receipt of the request in writing addressed to the applicant.
 - ii. Place the application for review on the agenda of the next Annual General Meeting.
 - iii. Inform the applicant of the date of the next Annual General Meeting at least 14 days prior to the date of the meeting.
 - iv. Inform the applicant, at least 14 days prior to the date of the Annual General Meeting of the time they may be present to put their case to the General Meeting.

- v. Where the next Annual General Meeting is less than 14 days from the date of receipt of the application for review, the Board is not bound by the time limits provided for.
- (j) The Annual General Meeting of members may rescind the termination on a majority vote. Failure to achieve a majority vote will be confirmation of the decision of the Board of Directors.
- (k) A person whose membership has been terminated will not be eligible to re-apply for membership for a period of two (2) years.

8. GENERAL MEETINGS OF MEMBERS

8.1 Calling an Annual General Meeting

- (a) The Board of Directors must call a general meeting of members, to be known as the Annual General Meeting every year. The meeting is to be held by 30 November annually unless WNAHCS' regulating Commissioner grants permission for an extension.
- (b) All Members, Directors, the Secretary and the auditor of WNAHCS are to be notified by the Directors of the Annual General Meeting:
 - i. By posting each member a notice of the meeting to the address listed on the member's register or, if the member has provided an email address and consented to notices being sent via email, to the email address listed on the member's register.
 - ii. The notice must contain:
 1. The date of the meeting;
 2. The address at which the meeting is to be held;
 3. The time of the meeting;
 4. Any resolutions to be put to the members at the meeting;
 5. Whether Directors are to be elected at the meeting;
 6. If an AGM and election of Directors is to take place, details of how a member may access a nomination to become a Director form;
 7. The agenda of the meeting.

8.2 Annual General Meetings, the auditor and resolutions

- (a) The Chairperson of the Board of Directors shall Chair meetings of members.
- (b) The business of an Annual General Meeting includes:
 - i. Confirmation of the minutes of the previous General Meeting;
 - ii. The consideration of the end of year financial statements of WNAHCS;
 - iii. When elections are due, the election of Directors;
 - iv. If due, the appointment of the auditor;
 - v. Checking of details on the Register of Members;
 - vi. Any resolutions or special resolutions for which the members have received notice.
- (c) The register of members will be conclusive in determining membership and eligibility to vote.

- (d) A resolution is deemed carried if a majority of the eligible voting members present vote in favour of the resolution.
- (e) WNAHCS' auditor is entitled to be heard at a member's meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (f) A resolution carried at the Annual General Meeting or at a General Meeting of Members may over-rule any decision made by the Board of Directors on a matter in respect to strategic direction.

8.3 Member's resolutions at meetings of members

- (a) A notice of a Members' resolution must:
 - i. Be in writing;
 - ii. Set out the wording of the proposed resolution; and
 - iii. Be signed by 10 members or 5% of the membership, whichever is greater; and
 - iv. The members' names must be printed.
- (b) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.
- (c) When requesting that a resolution be put to members at a General meeting, the members proposing the resolution may request that WNAHCS circulate a statement in respect to the resolution and WNAHCS shall circulate the statement.
- (d) The Directors may circulate a statement in respect to any resolution.
- (e) WNAHCS must give notice of the resolution to all people entitled to it at the time of issuing a notice of a general meeting or Annual General Meeting, whichever comes first.
- (f) If the notice of a resolution to be put by members is received by WNAHCS less than 21 days prior to the date of the next general Meeting, WNAHCS cannot put the resolution to members until the next general meeting.
- (g) The Directors must not circulate a statement that is defamatory or that if in circulating the statement a law would be breached.

8.4 Quorum for general meetings

- (a) The quorum for a general meeting of members, (including an Annual General Meeting), shall be 10 or 10% of the membership, whichever is greater.
- (b) A meeting adjourned for more than one hour is deemed to have closed.

8.5 Adjourned meeting where no quorum

- (a) A meeting of WNAHCS's members that does not have a quorum present within 1 hour after the time for the meeting set out in the notice is adjourned to the same time of the same day in the next week, and to the same place, unless the Directors specify otherwise.

8.6 Quorum for re-scheduled general meeting of members

- (a) If within one hour after the time for a resumed, rescheduled meeting, the quorum required for a general meeting of members is not present, the meeting is to proceed and the number of members present at the meeting shall be deemed to be the quorum required for that meeting.

- (b) This section shall only operate where a general meeting of members has been adjourned at least 7 days prior to the resumed meeting and the reason for the general meeting of members being re-scheduled was for failure to achieve a quorum.

8.7 General meetings of members other than the Annual General meeting

- (a) The Board of Directors may by a majority vote call a general meeting of members.
- (b) A member may request a special meeting be convened of members. The request:
 - i. Must made in writing;
 - ii. Must be addressed to the Board of Directors;
 - iii. Must be signed by ten (10) members, or five per cent (5%) of the membership, whichever is the greater; and
 - iv. Must state clearly any resolution to be proposed at the Special Meeting.
- (c) The business of a Special Meeting of Members is limited to the items listed on the notice of the Special Meeting of Members.
- (d) Upon receipt of such a request, or a resolution of the Board of Directors to call a meeting of members and subject to any exceptions that apply in the Act that allow the Directors to decline to call a Special Meeting of members, the Chairperson must call a Special Meeting of Members within 21 days of receipt of the request or resolution. The meeting must be held within 60 days of the receipt of the request.
- (e) Members are to be notified by the Board of Directors of the Special Meeting of members in the same way as required for the Annual General Meeting.
- (f) The Directors may apply to the Commissioner to deny the request to hold a meeting and the decision of the Commissioner shall be final. If the Directors make an application to the Commissioner under this section, the members requesting the meeting must be notified within seven days of the request being made and must be notified of the decision within seven days.

8.8 Observers and guests

- (a) Subject to the provisions of this clause, the Company does not permit observers or guests to attend meetings of members.
- (b) The company may permit guests to attend a member's meeting. Guests may only attend at the invitation of the Board of Directors. The only guests permitted are:
 - i. Guest speakers;
 - ii. Authorised representatives of a funding body;
 - iii. A specialist advisor, for example a lawyer;
 - iv. An observer as invited by the Board of Directors.
- (c) A guest attending a meeting of members pursuant to this clause shall not have a right to vote on any resolution put to members.
- (d) A guest attending a meeting of members pursuant to this clause shall only be permitted to speak on the agenda items that the guest has been asked to speak.

- (e) A guest may be removed from a meeting of members if, by a majority, the Membership decides by resolution to remove the guest. A resolution to remove a guest does not have to comply with clauses relating to notice periods for resolutions.

9. THE BOARD OF DIRECTORS

- (a) The governing body of Winnunga Nimmityjah Aboriginal Health and Community Services shall be the Board of Directors.
- (b) Every Director:
 - i. Must have been a member for at least 12 months prior to the meeting at which the election of Directors is to take place;
 - ii. Must not have been convicted of an offence under the Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* or the *Associations Incorporation Act* or any corresponding legislation in any state or Territory of Australia;
 - iii. Must not, within the past five years, have had the status of an undischarged bankrupt;
 - iv. Must not have, within the past five years, signed a personal insolvency agreement and not kept to the agreement; or
 - v. Must not have in the past five years been convicted of a criminal offence punishable by imprisonment for three months or more; or
 - vi. Must never have been disqualified from managing corporations, companies or associations under the *Corporations Act 2001*, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* or the *Associations Incorporation Act* or any corresponding legislation in any state or Territory of Australia; or
 - vii. Must not have been found guilty of any criminal or civil offence against Winnunga Nimmityjah Aboriginal Health Clinic/Health Service Inc or Winnunga Nimmityjah Aboriginal Health and Community Services or any related entities, past and current.
- (c) The Board of Directors shall consist of a maximum of six (6) directors and a minimum of four (4) directors.
- (d) The election of the Board of Directors shall occur at the Annual General meeting.
- (e) A Director duly elected shall hold office for three years unless a Director ceases to be a Director in accordance with this Constitution.
- (f) A member who is currently or has, within the immediately preceding two year period, been an employee of WNAHCS or any of its associated bodies corporate, affiliates or companies, or an association, company, company, body corporate or entity under the auspice of WNAHCS shall not be eligible for election or nomination as a Director.
- (g) If the number of Directors falls below six, the Board of Directors may appoint, by a majority, an additional Director to the Board. A Director so appointed will remain a Director until the next general meeting or until such time as new elections, which may be held at a special meeting of members and the Director must have their appointment confirmed by the members. The term of a Director appointed pursuant to this section shall cease at the same time as if the original Director had not ceased to act.
- (h) If the number of Directors falls below four, the Directors must appoint sufficient Directors so the number of Directors is at least four. This must be done within 30 days of the number of Directors falling below four and the Directors may not conduct any business

of WNAHCS except that which is required to appoint Directors, until the minimum number of Directors is reached. The term of a Director appointed pursuant to this section shall cease at the same time as if the original Director had not ceased to act.

- (i) If the Directors fail to appoint sufficient Directors to meet the minimum required, the Directors shall, within thirty days of the number of Directors falling below four, call a meeting of members for the purpose of electing Directors. The term of a Director appointed pursuant to this section shall cease at the same time as if the original Director had not ceased to act.

For the sake of clarity, it is intended that all Directors cease to be Directors in order that Director elections are held at the same time when elections fall due such that elections of Directors are held every three years.

- (j) WNAHCS does not permit alternate Directors or proxy Directors.

Transitional provision

- (k) At the time of incorporation of Winnunga Nimmityjah Aboriginal Health and Community Services Ltd, the Directors who are Directors of the former entity, Winnunga Nimmityjah Aboriginal Health Clinic/Health Service (ACT), shall be the Directors of WNAHCS and shall remain Directors of WNAHCS until they either cease to be Directors pursuant to a provision of this Constitution or a three year term has expired since the date of their election to the former entity.

10. DIRECTORS' AND OFFICERS' DUTIES

10.1 Directors duties

- (a) The Directors, Secretary, other officers and employees have the same duties as those contained in Chapter 2D.1 of the *Corporations Act 2001 (Cth)* and any other duty imposed in law upon Directors, officers and employees.
- (b) The duties of Directors include but are not limited to:
 - i. The duty to act with care and diligence; and
 - ii. The duty to act in good faith and for a proper purpose; and
 - iii. The duty to disclose a conflict of interest (material personal interest); and
 - iv. The duty not to improperly use position or information; and
 - v. The duty to be properly informed about the financial position of WNAHCS; and
 - vi. The duty to not trade while insolvent.
- (c) The Directors, officers and employees cannot delegate the duties in this section.

10.2 Duty to disclose material personal interests

- (a) A Director who has a Material Personal Interest in a matter that relates to the affairs of WNAHCS must give the other Directors notice of the Material Personal Interest unless this Constitution says otherwise.
- (b) A Director does not need to give notice of Material Personal Interest if:
 - i. The Material Personal Interest:
 - 1. Arises because the Director is a Member and is held in common with the other Members;
 - 2. Arises in relation to the Director's remuneration as a Director; or

3. Relates to a contract WNAHCS is proposing to enter into that is subject to approval by the Members and will not impose any obligation on WNAHCS if it is not approved by the Members;

and

- ii. All the following conditions are satisfied:
 1. The Director has already given notice of the nature and extent of the interest and its relation to the affairs of WNAHCS under section 8.11(a);
 2. If a person who was not a Director when the notice under section 8.11(a) was given is appointed as a Director, the notice is given to that person; and
 3. The Director has not acted under a conflict of interest;
 4. The nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - iii. The Director has given a standing notice of the nature and extent of the Material Personal Interest and that notice is still effective.
- (c) The notice required under this section must:
- i. Give details of the:
 1. Nature and extent of the interest; and
 2. Relation of the interest to the affairs of WNAHCS;
 - ii. Be given at a Directors' meeting as soon as possible after the Director becomes aware of their interest in the matter; and
 - iii. The details must be recorded in the minutes of the meeting.
- (a) Directors at a meeting of the Board of Directors must properly consider any conflicts of interest that arise between a Director or an officer and the affairs of WNAHCS and must manage any such conflicts in the interests of WNAHCS.

11. DIRECTORS POWERS, EXECUTIVE, MEETINGS AND THE CONDUCT OF BUSINESS

11.1 Powers of Directors

- (a) The Board of Directors shall have all the powers granted pursuant to the Act, this Constitution and any other applicable laws but may not exercise any powers that this Constitution requires be exercised in a general meeting.
- (b) The Board of Directors shall have the power to determine the policies, protocols, procedures, allocation of resources, structure and priorities of WNAHCS and to carry out any functions deemed necessary for the proper conduct of the business of WNAHCS.
- (c) The powers of the Directors include but are not limited to the power to:
 - i. Publish from time to time such bylaws as it deems reasonable and necessary to regulate and conduct the affairs of WNAHCS.
 - ii. Appoint an Auditor.
 - iii. Appoint or otherwise employ a CEO.
 - iv. Direct the CEO.
 - v. Print and publish newsletters, periodicals, books, leaflets or other documents.

- vi. Receive or make gifts, subscriptions or donations to any fund, authority or institution.
 - vii. Establish and support, or aid in the establishment or support of, any other Aboriginal Service formed for any of the objects, consistent with any of the objectives of WNAHCS.
 - viii. Establish, maintain and manage any building and the expenditure of money and the doing of any other things necessary or advisable to achieve the aims of the Institution.
 - ix. Purchase, take on lease or in exchange and the hiring or otherwise acquiring of any real or personal property that may be deemed necessary or convenient.
 - x. Buy, sell and supply of and dealing in, goods of any kind.
 - xi. Arrange for the construction maintenance and alteration of buildings or works necessary or convenient.
 - xii. Accept any gift whether subject to special trust or not.
 - xiii. Take any measures from time to time as the Board may deem expedient or appropriate for the purpose of procuring contributions to the funds of WNAHCS, whether by way of donations, subscriptions, grants or otherwise.
 - xiv. Borrow or raise money in such manner and on such terms as the Board may think fit.
 - xv. Secure the repayment of money raised or borrowed or the payment of a debt or liability of WNAHCS by giving mortgages, charges or securities upon or over all or any of the real or personal property of WNAHCS.
 - xvi. Invest in authorised trustee investments of any monies of WNAHCS not immediately required for any of its objects or purposes.
 - xvii. Establish and support, or aid in the establishment and support, of services, institutions, funds, trusts, schemes and conveniences calculated to benefit employees or past employees of WNAHCS and their dependants, and the granting of pensions, allowances or other benefits to employees or past employees of WNAHCS and their dependants, and the making of payments towards insurance or superannuation in relation to any of those purposes.
- (d) Do any other lawful act as may be necessary, incidental or conducive to the achievement of the objectives of WNAHCS.

11.2 Executive Directors

- (a) The Executive Directors are elected by the Board of Directors at the first meeting following the election of Directors for a term determined by the Board of Directors that is not to exceed three (3) years. A person may be re-elected to the executive following a general meeting and may be re-elected to the same position as previously held.
- (b) The executive Directors are:
 - (i) Chairperson;
 - (ii) Vice Chairperson;
 - (iii) Secretary;
 - (iv) Treasurer.

- (c) The Chairperson shall perform all the duties of the Chairperson as specified in this Constitution.
- (d) Unless otherwise specified in this Constitution, the vice chairperson shall undertake all the duties of the Chairperson in the absence of the Chairperson.
- (e) The Directors may remove an Executive Director from the position of Executive Director by a majority vote in favour of the removal of the Director as an Executive Director.
- (f) If the Directors remove a person from the role of Executive Director, the Directors must elect, by a simple majority, a Director to the vacant Executive Director position within 30 days of the vacancy occurring.

11.3 Director's meetings

In this section 'reasonable notice' shall mean reasonable in the circumstances and includes consideration of the urgency of the business to be attended.

- (a) The Directors will meet as often as the Directors consider necessary for the good functioning of WNAHCS, but must meet at least six times per annum.
- (b) The Directors will normally determine the date, time and place of each Directors' meeting at the previous meeting but if not so determined, the Chairperson shall determine the date, time and place, but only so far as to ensure compliance with this section.
- (c) A Director may call a Directors' meeting by giving reasonable notice individually to every other Director.
- (d) The date, time and place for a Directors' meeting must not unreasonably prevent a Director attending.
- (e) Reasonable notice of each Directors' meeting must be given to each Director. The notice must state:
 - i. The date, time and place of the meeting;
 - ii. The general nature of the business to be conducted at the meeting; and
 - iii. Any proposed resolutions.
- (f) Reasonable notice will usually mean at least seven days notice, however where the business of WNAHCS requires an extraordinary meeting of the Directors, notice may be less and all of the circumstances giving rise to calling a meeting on short notice shall be considered in determining the appropriate notice period.
- (g) A resolution passed at a Directors' meeting will not be invalid only because of an unintentional omission or mistake in giving notice of the Directors' meeting under or in giving notice of any changes to the item, date or place of the Directors' meeting.

11.4 Quorum for a Director's meeting

The quorum for a Directors' meeting is a majority of the Directors, and the quorum must be present at all times during the meeting.

11.5 Chairing Director's meetings

- (a) The Chairperson is responsible for chairing the Directors' meetings.
- (b) In the absence of the Chairperson the Vice Chairperson shall chair the Directors' meetings.
- (c) In the absence of the Chairperson and the Vice Chairperson, the other Directors present must elect a Director present to chair a meeting, or part of it as the case may be.

11.6 Resolutions of Directors

- (a) Subject to any other provisions contained in this section, only resolutions passed at a properly convened Directors meeting are valid.
- (b) Unless otherwise specified in this Constitution or by law, a resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (l) Where a resolution is proposed and one vote is required for the resolution to carry, the Chairperson of the Board may exercise a right to a casting vote. This vote shall be in addition to their vote as a Director of the Board.
- (c) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a statement that they are in favour of the resolution set out in the document.
- (d) Separate copies of a document under this section may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (e) A resolution under this section is passed when the last Director signs.

11.7 Using technology

- (a) WNAHCS, in the usual course of business, requires Directors to attend meetings in person.
- (b) Where a Director cannot attend a meeting in person for good cause, the Directors may consent, by majority, to the Director's attendance through the use of technology of any kind.
- (c) A Directors' meeting may be called or held using any technology consented to by a majority the Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable period before the meeting.

11.8 Public statements

- (a) The Chairperson is authorised to make public statements on behalf of WNAHCS.
- (b) The Chief Executive Officer is authorised to make public statements on behalf of WNAHCS.
- (c) The Directors may authorise by a majority any other person to make a public statement on behalf of WNAHCS.
- (d) The Directors by a majority may withdraw the authority of any individual to make public statements.

12. CEASING TO BE A DIRECTOR

12.1 Ceasing to be a Director

- (a) A person ceases to be a Director if:
 - i. The person is deceased; or
 - ii. The person resigns; or
 - iii. The person ceases to meet the eligibility criteria; or
 - iv. The term of the person's appointment as a Director expires; or
 - v. The person is removed as a Director by the Members;

- vi. The person is removed as a Director by the other Directors.

12.2 Removal by Members

- (a) WNAHCS may, by resolution in General Meeting, remove a Director from office despite anything in:
 - i. The Constitution; or
 - ii. An agreement between WNAHCS and the Director concerned; or
 - iii. An agreement between any or all members of WNAHCS and the Director concerned.
- (b) A notice of intention to move a resolution to remove a Director must be given to WNAHCS at least 21 days before the meeting is to be held. However, if WNAHCS calls a meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than 21 days after the notice is given.
- (c) WNAHCS must give the Director concerned a copy of the notice as soon as practical after it is received.
- (d) The Director concerned is entitled to put his or her case to the Members by:
 - i. Giving WNAHCS a written statement for circulation to members; and
 - ii. Speaking to the motion at the meeting.
- (e) WNAHCS is to circulate the written statement given under this section to members by:
 - i. Sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - ii. If there is not time to comply with this section, having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.
- (f) The Directors may circulate a statement in respect to the resolution.
- (g) A written statement given under this section does not have to be circulated to members if it is defamatory or if to do so would breach a law.

12.3 Removal by other Directors

- (a) A Director may be removed from office by a majority of two thirds of Directors if the Director fails to attend 3 or more consecutive Directors' meetings without good cause.
- (b) This section operates despite anything in:
 - i. The Constitution;
 - ii. An agreement between WNAHCS and the Director concerned; or
 - iii. An agreement between any or all members and the Director concerned.
- (c) Before removing the Director concerned, the Directors must give the Director concerned a notice to show cause why they should not be removed as a Director. The notice in writing must:
 - i. State that the Directors intend to remove the Director concerned from office because they have failed without reasonable excuse to attend 3 or more consecutive Directors' meetings; and
 - ii. State that the Director concerned has 21 days to object in writing to the removal.

- (d) If the Director concerned does not object or does not respond to the notice within the specified time period, the Director is deemed to not object to removal and the Directors may remove the Director concerned.
- (e) Where a Director responds in writing to the Board of Directors and objects to being removed as a Director, the Board must, within 21 days:
 - (i) Consider the response in good faith;
 - (ii) Notify the Director if their objection has been accepted and the resolution to remove the Director cancelled; or
 - (iii) Issue a notice in writing to the Director confirming that a resolution will be put to the members at the meeting of members and the resolution shall be that the Director is removed as Director for failure to attend three or more consecutive meetings without good cause.
- (f) The Director is entitled to:
 - (i) Under the Rules, give the Company a written statement for circulation to members at the next General Meeting of members; and
 - (ii) Speak to the motion at the meeting.
- (g) The Company is to circulate the written statement given under this section to members by:
 - (i) Sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (ii) If there is not time to comply with this clause 12.3(g)(i), have the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.
- (h) The written statement given under this clause does not have to be circulated to members if it is defamatory or if to do so would breach a law.
- (i) If a Director is removed pursuant to this clause, the Company must send the Director a copy of the resolution to the last known address of the Director, as soon as practicable after the resolution has been passed.

13. REMUNERATION OF DIRECTORS

- (a) Subject to this Section, the Directors may be paid such sitting fee as determined by WNAHCS by resolution at a General Meeting of members.
- (b) The Directors may not receive payment in respect to this section unless and until the members have passed a resolution at a General Meeting and the resolution will expire at the commencement of the next Annual General Meeting.
- (c) WNAHCS must disclose the remuneration and expenses paid to each Director of WNAHCS in the audited financial statements published by WNAHCS annually and as required by law.
- (d) WNAHCS must have in place an endorsed policy and procedure in respect to the criteria Directors must meet to be eligible for any member approved payment, including remuneration and reimbursement of expenses.
- (e) Reimbursements are not remuneration and the Directors may be reimbursed for travel and other expenses that the Directors reasonably incur in the performance of their duties as Directors and subject to the sections of the Australian Taxation office in respect to reimbursement. Any reimbursements paid under this section do not require member approval.

14. THE CHIEF EXECUTIVE OFFICER

- (a) The Chief Executive Officer is an officer of WNAHCS for the purposes of the Act.
- (b) The Board of Directors may delegate to the Chief Executive Officer the authority to conduct the day-to-day business and management operations of WNAHCS. The powers that may be exercised by the Chief Executive Officer include, but are not limited to the authority to:
 - i. Appoint, employ and dismiss people.
 - ii. Determine appropriate policies and procedures as necessary or deemed necessary or desirable for the efficient, lawful and safe management of any employees.
 - iii. Determine wages, salaries and gratuities of appointees and employees.
 - iv. Print and publish newsletters, periodicals, books, leaflets or other documents.
 - v. Establish, maintain and manage any building and the expenditure of money and the doing of any other things necessary or advisable to achieve the aims of the institution.
 - vi. Purchase, take on lease or in exchange and the hiring or otherwise acquiring of any real or personal property that may be deemed necessary or convenient.
 - vii. Buy, sell and supply of and dealing in, goods of any kind.
 - viii. Arrange for the construction maintenance and alteration of buildings or works necessary or convenient.
 - ix. Accept any gift whether subject to special trust or not.
 - x. Take any measures from time to time as the Board may deem expedient or appropriate for the purpose of procuring contributions to the funds of WNAHCS, whether by way of donations, subscriptions, grants or otherwise.
 - xi. Borrow or raise money in such manner and on such terms as the Board may think fit.
 - xii. Maintain the registry of members.
 - xiii. Make any public statement on behalf of WNAHCS.
 - xiv. Do any other lawful act as may be necessary, incidental or conducive to the achievement of the objectives of WNAHCS.
- (c) No power or authority that is delegated under this provision shall relieve the Board or WNAHCS of any of its responsibilities under the Act or any other applicable laws or regulations.

15. FRIENDS OF WNAHCS

- (a) A friend of WNAHCS is a person who has been accepted by the Board of Directors as a person who may attend the meetings of members. A friend has no voting rights. A friend may be asked at any time, by a resolution of the majority of the Board or a resolution at a general meeting to not attend a meeting of members, to not attend a particular portion of a meeting of members or refrain from participating in any other of the activities of members.
- (a) A friend of WNAHCS is liable to pay the same subscription fee as ordinary members.

16. PATRONS OF WNAHCS

- (a) One or more patrons may be appointed by the Board of Directors. Such appointment must be by unanimous vote.
- (b) A patron of WNAHCS is a person who, having accepted an invitation from the Board of Directors, may act in a representative capacity on behalf of WNAHCS at public functions. A patron may make public statements on behalf of WNAHCS at functions that have been pre-approved by the Board for the patron to attend.
- (c) The term of patronage will be determined by the Board of Directors. A term of patronage may be terminated without notice, by the Board of Directors.
- (d) The role of a patron is to increase the public profile of WNAHCS in such a way as to promote the objectives and good standing of WNAHCS.
- (e) A patron is prevented from acting in any way that may impede the objectives of WNAHCS.

17. NEGOTIABLE INSTRUMENTS

- (a) Any two Directors as delegated by the majority of Directors of WNAHCS may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) A Director and the CEO may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (c) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way for a particular instrument.

18. COMMON SEAL

WNAHCS does not have a common seal.

19. DISTRIBUTION OF FUNDS AND PROPERTY

19.1 Application of funds and property

- (a) Subject to the Act and this Constitution, all funds or property of WNAHCS not subject to any special trust can be used at the discretion of the Directors for the sole purpose of carrying out the objectives of WNAHCS.
- (b) Subject to the Act and this Constitution, no portion of the funds and property of WNAHCS may be paid or distributed to any Member of WNAHCS.
- (c) Nothing in this section is intended to prevent:
 - i. The payment in good faith of reasonable wages to a member who is an employee of WNAHCS (having regard to the circumstances of WNAHCS and the qualifications, role and responsibilities of the member as an employee); or
 - ii. Reasonable payment in good faith to a member for a contract for goods or services provided by that member (having regard to the market costs for obtaining similar goods or services in the area where the goods or services are to be provided).

19.2 Distribution of funds

- (a) The Disbursement of funds may be undertaken in any way consistent with this Constitution and the policies of WNAHCS as approved by the Board of Directors. Funds disbursement may include electronic fund transfers, writing cheques, payment of cash and any other lawful means of disbursement of funds.

- (b) No one person in WNAHCS may disburse funds. All funds must be disbursed by at least two people.
- (c) Funds may be disbursed by:
 - i. At least two Directors, or
 - ii. One Director and the Chief Executive Officer, or
 - iii. One Director and the Finance Manager; or
 - iv. One Director and a finance assistant; or
 - v. The CEO and the finance manager; or
 - vi. The CEO and a finance assistant.
- (d) Nothing in this provision shall prevent the use of petty cash from time to time once funds have been disbursed for that purpose and all other provisions of this Constitution have been complied with.

20. RECORD KEEPING

20.1 Minutes of meetings

- (a) WNAHCS must keep records of minutes in which it records meetings within one month:
 - i. Proceedings and resolutions of General Meetings;
 - ii. Proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
 - iii. Resolutions passed by Directors without a meeting; and
- (b) The minutes of the meeting may be kept:
 - i. In writing; or
 - ii. By an audio, or audio-visual, recording.
- (c) If the minutes of the meeting are kept in writing, WNAHCS must ensure that either the chair of the meeting, or the chair of the next meeting signs those minutes within a reasonable time after the first meeting.
- (d) If the minutes of the meeting are kept by an audio, or audio visual, recording, WNAHCS must ensure that either the chair of the meeting, or the chair of the next meeting, signs a declaration confirming that the recording is a recording of the meeting and that the recording constitutes the minutes of the meeting.
- (e) WNAHCS must keep its minutes at its Registered office.
- (f) A minute that is recorded and signed in accordance with this section is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

20.2 Constitution and records

- (a) WNAHCS must keep:
 - i. An up-to-date copy of its Constitution (incorporating any changes to the Constitution made in accordance with the Act and the terms of the Constitution); and
 - ii. Written records relating to the:
 - 1. Names and addresses of WNAHCS' current Directors and officers; and

2. WNAHCS' registered office.

- (b) The Chief Executive Officer shall maintain custody of all books, documents, records and registers of WNAHCS, except those required under this Constitution to be in the custody of another officer of WNAHCS.

20.3 Financial records

- (a) WNAHCS must keep written financial records that:
- i. Correctly record and explain its transactions and financial position and performance; and
 - ii. Would enable financial reports to be prepared and audited consistent with the Australian Accounting Board Standards or any Standards that may replace or supersede the Australian Accounting Board Standards and any other applicable laws.
- (b) This obligation extends to transactions undertaken as trustee.
- (c) The financial records must be retained for the period prescribed by law but in any event must be retained for at least 7 years after the transactions covered by the records are completed.
- (d) If the records that WNAHCS is required to keep are kept in electronic form:
- i. The records must be convertible into hard copy; and
 - ii. The hard copy must be made available, within a reasonable time, to a person who is entitled to inspect the records.
 - iii. The records are to be kept at the Registered Office of WNAHCS.

21. ANNUAL REPORTING

WNAHCS will publish an annual report and the annual report shall be available at the date of the AGM. The annual report shall at least contain:

- (a) The audited financial statements of WNAHCS including profit and loss statements;
- (b) The remuneration and reimbursement paid to each Director;
- (c) A Chairperson's report;
- (d) A Chief Executive Officer's report.

22. REGISTER OF MEMBERS

22.1 Members and the Register of Members

- (a) WNAHCS must establish and maintain a Register of Members.
- (b) The Register of Members must contain the following information about a member:
- i. Their full name and address; and
 - ii. The date on which their name was entered on the register; and
 - iii. The date of the last payment of any subscription fee payable; and
 - iv. Any alternate address nominated by the member for service of notices, including an email address.
- (c) The Register of Members may also contain any other name by which the member is or was known.

22.2 Register of Former Members

- (a) WNAHCS must establish and maintain a separate Register of Former Members.
- (b) The Register of Former Members must contain the following information about each individual who stopped being a member within the last 7 years:
 - i. The former member's full name and address; and
 - ii. The date on which the person stopped being a member; and
 - iii. Any alternate address nominated by the member for service of notices, including an email address.
- (c) The Register of Former Members may also contain any other name by which the individual is or was known.

22.3 Location of registers

WNAHCS must keep the Register of Members and the Register of Former Members at WNAHCS' registered office.

22.4 Right to inspect the register of members

- (a) The register of members must be open for inspection by any person, and any person has a right to inspect the registers.
- (b) If a register is kept on a computer, WNAHCS must allow the person to inspect a hard copy of the information on the register (unless the person and WNAHCS agree that the person can access the information by computer).
- (c) Information that is accessed from the register of members must only be used in a manner that is relevant to the interests or rights of members and may not be used for any other purpose.

23. NOTICES

23.1 How a notice to a member may be given

Unless the Act or this Constitution requires otherwise, a notice may be given:

- (a) In writing, delivered by hand to the member's address as recorded in the Register of Members;
- (b) Sent by pre-paid ordinary mail to the member's address as recorded in the Register of Members; or
- (c) Sent by email to the member's current email address (if the member has nominated one).

23.2 When notice is to be given

- (a) Unless the Act or this Constitution requires otherwise, a notice of a General Meeting of Members including a meeting at which a special resolution is proposed, must be given at least 21 days in advance.
- (b) If the notice:
 - i. Is given by post it is taken to have been given 3 days after posting;
 - ii. Is given by email or in person on a business day, it is taken to have been given at 5pm on the business day it is sent;

- iii. Is given by email or in person on a non-business day, it is taken to have been given at 9am on the next business day.
- (c) For clarity, if notice of a General Meeting of Members is to be given by ordinary post, the Notice must be sent at least 24 full days prior to the date of the meeting, allowing for 3 days ordinary post and 21 days notice of the meeting. The day the notice is posted is not counted.

24. DISPUTE RESOLUTION

- (a) Any dispute between Members or between a Member and the Company which does not fall within the scope of any other provision of this Constitution shall be subject to the following process which must be completed before any other action is taken by one of the parties to the dispute.
- (b) An individual nominated by each party to the Agreement shall meet and endeavor to resolve the dispute.
- (c) If any dispute is not resolved within 10 business days in the manner provided for in clause 24(b), either party may by notice in writing to the other party (with a copy being sent to the Secretary) require the dispute to be referred to mediation under this clause.
- (d) The parties must use their reasonable endeavors to agree on the appointment of a suitably qualified person to act as mediator. If the parties cannot agree on the person to be appointed as mediator within fourteen (14) days of a notice being lodged under clause 24(c), then either of the parties may request the President of the Institute of Arbitrators and Mediators to appoint a suitably qualified person, preferably having experience in working with Aboriginal organisations.
- (e) The parties must co-operate with all reasonable requests by the mediator and seek to resolve their dispute in good faith.
- (f) A mediation conference must be held within two (2) months of a notice being lodged under Rule 24(c) or within such further time as may be agreed by the parties.
- (g) The costs and expenses of the mediator will be borne in any part as determined by the mediator and the mediator's decision in respect to costs shall be final.
- (h) The parties may appoint representatives (excluding legal representatives) but shall ensure that notice of such appointment is given to the other party and the mediator. Each party is to bear its own costs for representation.
- (i) The mediator must:
 - i. Consult with the parties to seek to clarify the issues for mediation and to prepare for the mediation conference;
 - ii. Give the parties all reasonable opportunity to be heard;
 - iii. Allow due consideration by each party of any statement made by the other party;
 - iv. Observe, so far as is practicable, the rules of procedural fairness in the conduct of the mediation;
- (j) Not determine the dispute, but may make non-binding recommendations to the parties; and
- (k) Record and notify the parties and the Secretary in writing of the result of the mediation within seven (7) days of the conclusion of the mediation conference or such further time for mediation and/or negotiation as the mediator may allow.

25. WINDING UP

- (a) WNAHCS may be wound up voluntarily if the Members of WNAHCS in General Meeting so resolve by Special Resolution.
- (b) If, on the winding up or dissolution of WNAHCS, or loss of deductible gift recipient status, surplus assets, including gifts and contributions, remain after satisfaction of all its debts and liabilities, these surplus assets must only be given or transferred to a fund, authority or institution:
 - i. Which is charitable at law (a Deductible Gift Recipient); and
 - ii. Which has objects similar to WNAHCS'; and
 - iii. Whose constitution prohibits distributions or payments to its members and Directors (if any) to any extent.
- (c) The identity of the fund, authority or institution referred to in this section must be decided by the Members by ordinary resolution at or before the time of winding up or dissolution of WNAHCS and if the Members cannot decide, by a Court or the Commissioner.
- (d) The distribution of surplus assets must not be made to any member or Director or any person to be held on trust for any member or Director.

26. BY-LAWS

- (a) The Directors may pass any by-law for the purpose of giving effect to this Constitution.
- (b) By-laws may relate to matters including but not limited to:
 - i. Specific procedures for conducting member and membership matters;
 - ii. The form of member and nominee application forms;
 - iii. The form of any other document required under this constitution;
 - iv. The code of conduct for Directors.

27. CHANGING THE CONSTITUTION

27.1 Changing the Constitution

For WNAHCS to change its Constitution, the following steps must be complied with:

- (a) WNAHCS must pass a Special Resolution effecting the change; and
- (b) If, under the Constitution, there are further steps that must also be complied with to make a change, those steps must be complied with; and
- (c) WNAHCS must lodge all documents with the Commissioner as required by the Act.

27.2 Date of effect of change

A Constitutional change under this section takes effect on the day the change is registered with the Commissioner.

28. DEFINITION AND INTERPRETATION

28.1 Definitions

In this Constitution, unless the contrary intention appears:

- (a) **Aboriginal means** a person who is Aboriginal or of Aboriginal descent and who claims to be an Aboriginal and who is accepted as such by the community within which he or she is associated.
- (b) **Act** means the *Corporations Act 2001 (Cth)* as amended from time to time and any regulations made under it.
- (c) **ACT** means the Australian Capital Territory.
- (d) **Annual General Meeting (AGM)** means a general meeting held in accordance with this Constitution.
- (e) **Applicant** means a person who is eligible to become a Member of WNAHCS and has applied to become a Member according to this Constitution.
- (f) **Board of Directors** means the whole or any number of Directors comprising a quorum held in any manner (including by electronic means, by resolutions signed by the Directors or any other means permitted by law) authorised by this Constitution.
- (g) **Books** include a register, any record of information, financial reports or records, or documents of WNAHCS however compiled, recorded or stored, but does not include medical records of any patients of WNAHCS.
- (h) **Business day** means a day which is not a Saturday, Sunday or bank or public holiday in the place concerned.
- (i) **By-Laws** means those rules or by-laws published from time to time by the Board of Directors.
- (j) **CEO** means Chief Executive officer and means the Chief Executive officer of Winnunga Nimmityjah Aboriginal Health and Community Services Ltd.
- (k) **Common Seal** means the common seal of WNAHCS, if any.
- (l) **Company** means Winnunga Nimmityjah Aboriginal Health and Community Services Ltd.
- (m) **Commissioner** means the Commissioner of the Australian Securities Commission, or an appointed delegate or another person appointed, pursuant to either the *Corporations Act 2001*, and/or means the Commissioner of the *Australian Charities and Not-for-profits Commission Act 2012*.
- (n) **Constitution** means this constitution including any schedules.
- (o) **Directly related family member** means a mother, father, brother, sister, spouse, defacto spouse, child, grandchild or grandparent.
- (p) **Director** means a person elected or appointed to manage the affairs of WNAHCS in accordance with the Act and this Constitution.
- (q) **Financial year** means 1 July to 30 June.
- (r) **General Meeting** refers to both Special General Meetings and AGMs of the Members of WNAHCS called and held according to this Constitution.
- (s) **Majority** means 50% plus one of those present and eligible to vote.
- (t) **Material Personal Interest** means a personal interest that has the capacity to influence a Director's consideration of, and vote on, a particular matter.
- (u) **Member** means any person whose name appears on the Register of Members;
- (v) **Objects** means WNAHCS' objects set out in this Constitution.

- (w) **Officer** is a Director, Secretary, manager, administrator, special administrator, receiver, receiver and manager, liquidator or trustee of WNAHCS or a person who makes decisions that affect a substantial part of the business of WNAHCS, or could significantly affect WNAHCS' financial position.
- (x) **Public Benevolent Institution** means a Public Benevolent Institution as defined by the Australian Taxation Office.
- (y) **Register of Former Members** means the register of former members kept according to this Constitution.
- (z) **Register of Members** means the register of members.
- (aa) **Regulations** means the *Corporations Act Regulations* as implemented and amended from time to time.
- (bb) **Relevant issue** means any issue that will or may or may tend to interfere with the ability of a person to fully discharge their duties as a Director and may include but is not limited to other Directorships.
- (cc) **Secretary** means a person elected or appointed according to this Constitution and includes a Contact Person for the purposes of the Act.
- (dd) **Special Resolution** means a resolution that has been passed by at least 75% of the votes cast by Members present at a General Meeting and entitled to vote on the resolution.
- (ee) **Strategic Direction** means and is restricted to, matters pertaining to the priorities of the services provided by WNAHCS but excludes, without limitation, operational policies and decisions.
- (ff) **Torres Strait Islander** means a person who is Torres Strait Islander or of Torres Strait Islander descent and who claims to be a Torres Strait Islander and is accepted as such by the community within which he or she is associated.

28.1 Interpretation

In this Constitution:

- (a) Words in the singular include the plural and vice versa;
- (b) Any gender includes the other genders;
- (c) The words 'including', 'include' and 'includes' are to be read without limitation;
- (d) A reference to:
 - i. Legislation is to be read as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
 - ii. Writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - iii. A section or schedule is a reference to a section or schedule, as the case may be, of this document;
- (e) Headings and notes are used for convenience only and are not intended to affect the interpretation of these sections;
- (f) A word or expression defined in the Act and used, but not defined, in these sections has the same meaning given to it in the Act when used in these sections;
- (g) If a word or phrase is defined its other grammatical forms have corresponding meanings;

- (h) Where time is to be calculated by reference to a day or event, that day or the day of the event is excluded; and
- (i) Any inconsistency with the Act is to be resolved in favour of the Act; and
- (j) Where there is ambiguity as to the extent of the powers of WNAHCS, the ambiguity shall be resolved in favour of WNAHCS and a broad interpretation shall be applied so as not to narrow the powers of WNAHCS.