

Constitution

Victorian Aboriginal Children and Young Peoples Alliance Ltd

ACN

A Public Company Limited by Guarantee

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1. Preamble

- (a) The Alliance journey began in 2014, when Victorian Aboriginal Community-Controlled Organisations (ACCOs) saw the need for a collective Aboriginal voice for the interests of Aboriginal and Torres Strait Islander children and young people, especially for those in care services. The Alliance seeks to effect change at every level of government and service delivery.
- (b) The Alliance began with thirteen members, with two further member organisations subsequently joining the Alliance.
- (c) Each Member of the Alliance are a community service established under the Children, Youth and Families Act. The Alliance brings the collective voice of 15 ACCOs to child and family services.
- (d) The Founding Members have come together with the purpose of forming the Company to act as the representative and peak body for members of the Victorian Aboriginal and Young People's Alliance.

2. Name of Corporation

The name of the Company is Victorian Aboriginal Children and Young Peoples Alliance Ltd.

3. Status of the Constitution and replaceable rules

This is the Constitution of the Company. The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

4. Interpretation

4.1. Definitions

In this Constitution unless the contrary intention appears:

Auditor means the person appointed for the time being as the auditor of the Company (where applicable).

ABN means Australian Business Number.

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and includes any regulations made under the ACNC Act and any rulings or requirements of the Commissioner made under the ACNC Act having application to the Company.

ASIC means the Australian Securities and Investments Commission.

Board means the Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne, Victoria, Australia.

Children, Youth and Families Act means the *Children, Youth and Families Act 2005* (Vic).

Company means Victorian Aboriginal Children and Young Peoples Alliance Ltd (ACN).

Constitution means this constitution as amended from time to time.

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

Deductible Contributions means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a

fundraising event held for that purpose.

Director means a person who is a director for the time being of the Company and **Directors** means the Directors acting collectively.

Founding Members means the organisations listed in Schedule 1.

Gifts means gifts of money or property for the Objects of the Company.

Member means the Founding Members and any other person or body corporate who is, or who is registered as, a member of the Company.

Members means more than one Member.

Membership means being a Member of the Company.

Objects means the objects of the Company set out in clause 5.1.

Property means any real, personal, tangible, intangible, moveable or immovable property of any kind where ever situated including money and choses in action.

Register of Members means the register of Members maintained pursuant to the Corporations Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

Representative means an individual appointed to represent a corporate Member at a General Meeting of the Company in accordance with the Corporations Act.

Rule means a rule, by-law or policy made by the Directors in accordance with Clause 19(d).

Secretary means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

Special Resolution means a resolution of which notice has been provided in accordance with the Corporations Act and which is passed by at least 75% of the votes cast by members present and entitled to vote on the resolution at a general meeting.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

4.2. Interpretation

In this Constitution:

- (a) the words “including”, “include” and “includes” are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation, regulations and instruments made under it, and that legislation and subordinate legislation, regulations and instruments, as amended, re-enacted or replaced from time to time, and includes any successor legislation;
- (c) a reference to a “person” includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution;
- (e) a reference to a meeting includes a meeting by digital or other technology where all attendees have reasonable opportunity to participate;
- (f) a reference to a person being present in person includes an individual participating in a meeting as described in clause 4.2(e);
- (g) a reference to a person being present includes an individual participating in a meeting in person or through a proxy, attorney or Representative; and

- (h) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act when used in this Constitution.

4.3. Operation of Corporations Act

While the Company is a registered charity under the ACNC Act the provisions of the Corporations Act in Part 2G.2 and Part 2G.3¹ apply as if section 111L(1) of the Corporations Act was not enacted and if one of those provisions includes a reference to lodging documents with or notifying ASIC that requirement does not apply to the Company.

4.4 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

5. Objects and purpose

5.1. Objects and purpose

The Object and principal purpose of the Company is be a charity (with charitable sub-type advancing social and public welfare) and a Public Benevolent Institution (endorsed as a deductible gift recipient under item 4.1.1 set out in section 30-45(1) of the Tax Act) pursuing the following charitable objects:

- (a) to address indigenous disadvantage by being the peak body for Victorian Aboriginal Community-Controlled Organisations that advance the education, childhood development and workplace participation of Aboriginal children and young people;
- (b) to support the Members of the Company to provide care, support, protection, accommodation and other services that relieve poverty or distress and improve the lives of Aboriginal children and young people;
- (c) to engage in research and policy development to advance innovation and evidence informed practices in the delivery of services that support Aboriginal children and young people;
- (d) to advocate on behalf of Aboriginal children and young people to promote and achieve policy outcomes that alleviate the systemic disadvantage of Aboriginal people within the broader community;
- (e) to act as trustee and to perform and discharge the duties and functions incidental to acting as a trustee where this is incidental or conducive to the attainment of these Objects; and
- (f) to do such things as are incidental or ancillary to the attainment of these Objects.

5.2. Limitation of Powers

The Company is prohibited from making distributions to Members and paying fees (or other remuneration) to the Directors. The Directors must approve all other payments the Company makes to Directors.

5.3. Non profit

The assets and income of the Company must be applied solely in furtherance of the Objects, and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors or any trustees of the Company.

¹ Part 2G.2 and 2G.3 are provisions in relation to meetings of members and keeping minutes

5.4. Payment in good faith

Clause 5.3 does not prevent payment, directly or indirectly, in good faith to a Member:

- (a) of reasonable remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause 5.4(c) by the Company in a general meeting;
- (d) of reasonable rent for premises let by a Member; or
- (e) in furtherance of the Object.

5.5. Conduit Policy

Any allocation of funds or property to other persons or organisations must be made in accordance with the Objects of the Company and must not be influenced by the preference of the donor.

6. Amendment of this Constitution

6.1. Amendment by Special Resolution

This Constitution may be modified or repealed only by a Special Resolution of the Company in a general meeting.

6.2. Date of effect of amendment

Any modification or repeal of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.

6.3. Notification to the ACNC

The Company will notify ASIC or, if a registered charity, the ACNC (as applicable) of any modification or repeal of this Constitution within the time specified in the ACNC Act or the Corporations Act.

7. Member's Liability

7.1. Liability to contribute

Each Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

7.2. Limited liability

The amount that each Member or past Member is liable to contribute under clause 7.1 is not to exceed \$1.00.

8. Membership

8.1. Founding Members

The Founding Members are the founding Members of the Company.

8.2. Admission as a Member

The Directors may admit any body corporate as a Member if the body corporate is eligible under clause 8.4 and makes an application to the Directors in accordance with clause 8.5.

8.3. **Becoming a Member**

Subject to the Corporations Act, a body corporate becomes a Member on the registration of that body corporate's name in the Register of Members.

8.4. **Eligibility for Membership**

To be eligible to be a Member, a body corporate must:

- (a) be registered as a community service by the Secretary of the Department of Human Services within the meaning of the Children, Youth and Families Act;
- (b) be a declared Aboriginal agency within the meaning of section 6 of the Children, Youth and Families Act, which provides community-based child and family services in accordance with section 22 of that Act.
- (c) be a registered charity in accordance with the ACNC Act;
- (d) be endorsed as a Public Benevolent Institution;
- (e) consent in writing to become a Member;
- (f) agree to be bound by this Constitution; and
- (g) comply with any other requirements for membership as determined by the Board from time to time.

8.5. **Application for Membership**

- (a) Only a body corporate satisfying the eligibility requirements for Membership may apply for Membership.
- (b) The Board may prescribe the process, information and supporting documents required for an applicant to apply for Membership and the form in which the application for Membership is to be made.
- (c) An application for Membership must:
 - (i) be in writing signed by the applicant;
 - (ii) if the Board has prescribed the form of the application for Membership, be in that prescribed form;
 - (iii) if the Board has prescribed information and supporting documents to be included as part of an application, include the information and supporting documents, and
 - (iv) be accompanied by the membership fee, if any, determined by the Directors.

8.6. **Consideration for application for Membership**

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and in their discretion either accept, accept subject to conditions, defer the decision to a subsequent meeting of the Board or reject the application. The Board is not required to give reasons for refusing an application for membership.

8.7. **Membership fees**

The Members must pay such membership fees as prescribed from time to time by the Directors.

8.8. **Registration as a Member**

If the Board accepts an application for Membership, as soon as practicable, the Secretary must notify the applicant of the decision of the Directors and must register the name of the person in the Register of Members and record any conditions imposed on that person's Membership.

9. Rights of Members are non-transferable

The rights and obligations of a Member are personal and are not transferable.

10. Cessation of Membership

10.1. Cessation of Membership

A Member ceases to be a Member:

- (a) if the Member resigns as a Member in accordance with this Constitution;
- (b) if the Member is expelled as a Member in accordance with this Constitution;
- (c) if the body corporate is being wound up or ceasing to exist;
- (d) on failing to pay any fee that may be prescribed by the Directors from time to time within 12 months after the fee was due and payable;
- (e) if the body corporate is placed under external administration or becomes insolvent, unless the Directors resolve for that Member to remain a Member of the Company.

10.2. Resignation of Member

A Member may resign from the Company by giving the Board written notice of their resignation.

10.3. Termination of membership

- (a) Subject to this Constitution, the Directors may at any time terminate the membership of a Member if the Member:
 - (i) ceases to be eligible for membership under clause 8.4;
 - (ii) refuses or neglects to comply with this Constitution or any applicable Rules made by the Directors;
 - (iii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company, or
 - (iv) fails to pay any debt due to the Company within a period of 3 months after the date for payment (such debt not including a fee referred to in clause 10.1(d)).
- (b) For a decision of the Directors under clause 10.3(a) to be effective, the general nature of the allegations made against the Member must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.
- (c) If a dispute arises regarding the termination of a Member's membership under this clause 10.3, the dispute resolution procedure contained in clause 34 must be followed and, for the purposes of clause 34.1, written notification under clause 10.3(a) will be the notice of the dispute (as defined in clause 34.1).

11. Maintenance of Register

11.1. Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) any conditions imposed on a Member's Membership; and
- (d) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

11.2. **Inspection of Register of Members**

The Company must provide access to the Register of Members in accordance with the Corporations Act.

12. General Meetings

12.1. **Annual general meetings**

The Company must hold an annual general meeting:

- (a) within 18 months of incorporation; and
- (b) after the first annual general meeting, in each calendar year.

The Board shall convene the annual general meeting.

12.2. **Business at annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

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

12.3. **Director convening a general meeting**

Any Director or the Directors may convene a general meeting.

12.4. **Meetings requested by Members**

- (a) If the Board receives a request from a Member or Members with at least 5 percent of the votes that may be cast at any general meeting the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

12.5. **Notice of general meeting**

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

12.6. **Shorter notice of general meeting**

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to

attend and vote at the general meeting agree before the meeting, and accordingly, any such general meeting will be treated as having been duly convened.

12.7. Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

12.8. Use of technology

A general meeting may be held in one place or two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

12.9. Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of a general meeting, or postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

12.10. Notice of change, postponement or cancellation of meeting

- (a) If the Directors have convened a general meeting, the Board may change the place (or places) of the general meeting, postpone or cancel the general meeting. If a Director has convened a general meeting, only the Director who convened the general meeting may change the place (or places) of the general meeting, or postpone or cancel the general meeting.
- (b) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (c) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (d) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

12.11. Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

13. Proceedings at general meetings

13.1. Quorum

- (a) A quorum at a general meeting is where a majority or 5 Members, which is the lesser number, is present in person (whether physically by use of technology in accordance with clause 12.8).

13.2. Lack of Quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
 - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (3) the place (or places) for the resumption of the adjourned general meeting will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

13.3. **Chairing general meetings**

- (a) The chair of a general meeting will be the Director elected for the time being as chair of the Board meetings, or such other Director appointed by the Board to chair the meeting.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.
- (d) Notwithstanding the preceding provisions of this clause 13.3, the members present at a general meeting may resolve to elect a Member present (in person) to chair the meeting.

13.4. **Conduct of general meetings**

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

13.5. **Adjournment**

- (a) The chair of a general meeting may adjourn the meeting to another date, time and place (or places) if it appears to the chair that it is likely to be impracticable to hold or to continue to hold the meeting because of the number of Members who wish to attend but who are not present.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.

- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business referred to in the notice convening the adjourned or postponed general meeting.

14. Proxy

14.1. Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint another Member as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy must be another Member.
- (c) An appointment of a proxy may be a standing one.
- (d) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.
- (e) If a Member is entitled to cast two or more votes at a meeting, the Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.

14.2. Instrument of proxy

- (a) The instrument appointing a proxy may be in the form set out in Schedule 2 to this Constitution.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.
- (d) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:
 - (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
 - (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

14.3. Proxy to be received by the Company

The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office;
- (b) a place, or electronic address specified for that purpose in the notice of the general meeting.

14.4. Power to demand a poll

A proxy may demand, or join in demanding, a poll.

14.5. Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

14.6. Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

14.7. No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

15. Body Corporate Representative

15.1. Appointment of a Corporate Representative

- (a) A Member may appoint a natural person as its Representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
 - (iv) The appointment of a Representative may be a standing one.

15.2. Authority to act as a Representative

- (a) An appointment of a Representative must be in writing and be signed by the body corporate appointing the Representative and state:
 - (i) the Member's name and address, or
 - (ii) the Representative's name or the name of the office held by the Representative; and
 - (iii) the general meeting at which the Representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the Presentative may be in the form set out in Schedule 3 to this Constitution.
- (c) The instrument appointing the Representative may specify the manner in which the Representative must vote on any particular resolution and may restrict the exercise of any power.
- (d) The Company may rely on an instrument appointing a Representative as definitive evidence that the Representative has been validly appointed in accordance with the rules and procedures of that Member for the making of such an appointment.

15.3. Instrument to be received by the Company

- (a) An instrument purporting to appoint the Representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a Representative must be received by the Company at any of the following:
 - (i) the registered office; or
 - (ii) a place or electronic address specified for that purpose in the notice of the general meeting.

15.4. **Revocation of appointment of Representative**

The appointment of a Representative may be revoked by the Member who appointed the Representative by notice to the Company from the Member stating that the appointment of the Representative is revoked or by appointing a new Representative.

16. Voting

16.1. **Entitlement to vote**

Each Member entitled to vote at a general meeting may vote in person through their Representative or by proxy. Each Member has one vote, whether on a show of hands, or on a poll.

16.2. **No Casting vote**

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative, and consequently the resolution fails.

16.3. **Proxy vote to be identified**

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

16.4. **Voting on resolution**

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution. A resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

16.5. **Objection to right to vote**

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

16.6. **Written resolutions**

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document and a signature includes an electronic signature.

16.7. **Minutes**

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:

- (i) carried;
- (ii) carried unanimously;
- (iii) carried by a particular majority; or
- (iv) lost or not carried by a particular majority,

is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.

- (b) Within three months after each general meeting, the Directors must record or cause to be recorded in the minutes book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within one month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

16.8. Disputes to be resolved by the chair

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

17. Poll

17.1. Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

17.2. Right to demand a poll

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least five percent of the votes that may be cast on the resolution on a poll.

17.3. Procedure for demanding a poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a chair or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the

general meeting continuing for the transaction of any business.

18. Appointment and removal of Directors

18.1. Number of Directors

- (a) The Company must have between three (3) and five (5) Directors as the Members determine at a general meeting.

18.2. Nomination of Directors

- (a) Each Member may nominate a maximum of one (1) person for election as a Director.
- (b) However, a Member must not nominate a person for election if that Member has a previous nominee who was successfully elected as a Director, that Director is serving the term for which the Member successfully nominated them for election, and the Director is not due to resign at the upcoming annual general meeting.

18.3. Qualifications of Directors

- (a) To be eligible for the office of Director a person must consent in writing to act as a Director.
- (b) In the event that it is required under a law, regulation or guideline applicable to the Company, the Company must ensure that a majority of the Directors are persons who have the requisite level or degree of responsibility to the general public.

18.4. Election of Directors

- (a) Where there is a greater number of nominations for the office of Director than there are vacancies, the method of electing Directors shall be optional preferential voting.

18.5. Terms and retirement of Directors

- (a) Subject to this clause, a Director is elected for a maximum of three (3) years.
- (b) At each annual general meeting:
 - (i) any Director who is appointed to fill a casual vacancy under clause 18.7 must retire; and
 - (ii) at least one, and up to two, of the remaining Directors, must retire, such that each Director retires once every three years.
- (c) The Director(s) who must retire at each annual general meeting under clause 18.5(b)(ii) will be the Director(s) who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire shall be determined by agreement among the relevant Directors, or failing agreement, by lot.
- (d) A retiring Director holds office until the conclusion of the meeting at which that Director retires.
- (e) The Members may by ordinary resolution remove any Director before the expiration of that Director's period of office.

18.6. Reappointment of Directors

Directors are entitled to seek reappointment as Directors provided that as a result of the reappointment the Director's period of continuous service to the Company will not exceed a period of nine (9) years unless the Members, by ordinary resolution in a general meeting, elect to waive this requirement for a particular Director.

18.7. Casual vacancy or additional Director

- (a) The Directors may at any time appoint any person meeting the requirements of clause 18.3 to be a Director, either to fill a casual vacancy or as an

addition to the existing Directors, provided the total number of Directors does not exceed the maximum number in clause 18.1

- (b) A Director appointed under this clause holds office until the conclusion of the next annual general meeting of the Company but is eligible for appointment at that meeting if they are nominated in accordance with clause 18.2.

18.8. **Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, a person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) ceases to be eligible under clause 18.3;
- (c) resigns as a Director by notice in writing to the Company;
- (d) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (e) dies;
- (f) is disqualified from acting as a Director under the Corporations Act;
- (g) is absent from 3 consecutive Board meetings without leave of absence from the Board.

19. **Powers and duties of Board**

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the Board include the power to:
 - (i) borrow or otherwise raise money;
 - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
 - (iii) issue debentures and other securities, and any instrument (including any bond).
- (d) Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on the Members for the management and conduct of the business of the Company.

20. **ACNC governance standards**

The Company and each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the ACNC Act and the Corporations Act from time to time.

21. **Delegation**

- (a) The Board may delegate any of its powers to:
 - (i) a Director;
 - (ii) a committee in accordance with clause 22.1;
 - (iii) an employee of the Company; or
 - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Directors

and the Directors may at any time revoke or vary the delegation.

- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

22. Committees

22.1. Delegation to committees

- (a) The Directors may delegate any of their powers, to a committee which may consist of one or more Directors and such other persons as they think fit.
- (b) A committee to which any powers have been delegated under clause 22.1(a) must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

22.2. Meetings of committees

A committee may meet and adjourn as it thinks proper.

22.3. Chairperson of a committee

The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chairperson of the meeting.

22.4. Determination of questions

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting.
- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

23. Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

24. Remuneration and reimbursement for expenses

24.1. Remuneration of Director

The Company must not pay and a Director is not entitled to receive any fee (or other remuneration) from the Company for services performed as a Director.

24.2. Reimbursement of expenses

Directors are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board, if approved by the Board.

25. Board meetings

25.1. Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.

- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

25.2. **Attendance at meetings**

The following persons will be entitled to attend Board meetings:

- (a) the Directors;
- (b) the associates referred to in clause 25.3 (unless the Director's determine that they do not wish the associates to attend a particular Board Meeting); and
- (c) any person invited by the Chair of the Board to observe a Board meeting.

25.3. **Associates**

- (a) In addition to the Directors, the Board may appoint two associates with relevant professional experience to attend Board meetings.
- (b) The associates do not hold the office of Director and do not have a vote on the Board.

25.4. **Notice of meetings**

- (a) Reasonable notice of each Board meeting must be given to the Directors and to the associates appointed from time to time, unless the Director's determine that they do not wish the associates to attend a particular Board Meeting.
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

25.5. **Omission to give notice**

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

25.6. **Use of technology**

A Board meeting may be held in one, two or more places using such technology as determined by the Board and set out in the notice. The Board must use technology that gives Directors a reasonable opportunity to participate at that Board meeting. The clauses relating to meetings of Directors apply to each such meetings in the usual manner.

25.7. **Quorum at meetings**

- (a) A quorum at a Board meeting is three Directors.
- (b) The Directors may act despite a vacancy in their number. If their number is reduced below 3 Directors, the Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

25.8. **Chair of meetings**

- (a) The Directors may elect from their number a chairperson and a deputy chairperson of their meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.
- (b) If the chair is not present within 15 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, then the deputy chairperson, if elected under clause 25.8(a), must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

25.9. **Passing resolutions at meetings**

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person is entitled to vote and has one vote.

25.10. **No Casting vote**

If on any resolution an equal number of votes is cast for and against a resolution, the chair does not have a casting vote in addition to any vote cast by the chair as a Director and subsequently the resolution is lost.

25.11. **Conduct of meetings**

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

25.12. **Written resolutions**

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document and a signature can be an electronic signature.

25.13. **Minutes of meetings**

- (a) Within 3 months after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes within three months after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

26. Director's conflict of interests

26.1. **Declaration of interest**

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:

- (i) the nature and extent of the interest; and
- (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

26.2. Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

27. Appointment of Chief Executive Officer and Secretary

27.1. Secretary

- (a) The Company must have at least one Secretary. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

27.2. Chief Executive Officer

- (a) The Directors may appoint a Chief Executive Officer on such terms and conditions (including as to remuneration) as they consider appropriate.
- (b) The Directors may delegate any of their powers to the Chief Executive Officer:
 - (i) on the terms and subject to any restrictions they decide; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board,and may revoke the delegation at any time.
- (c) The Chief Executive Officer may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

28. Removal and remuneration of Auditor

28.1. Remuneration of Auditor

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

28.2. Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company

to send a copy of the written representations to the Members before the resolution is put to a vote; and

- (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

28.3. **Auditor's attendance at general meetings**

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

29. Execution of documents

Documents executed for and on behalf of the Company must be executed by:

- (a) Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Directors by resolution appoint from time to time.

30. Financial records

30.1. **Member's access to financial records**

A Member or any other person may only inspect financial or any other records of the Company where such inspection is authorised by the Board, or required by law or by order of a court with jurisdiction.

30.2. **Directors' access to financial records**

Any Director may at any time access and inspect any financial and any other record of the Company.

30.3. **Access to financial records after ceasing to be a Director**

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

31. Notices

31.1. **General**

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

31.2. **How to give a communication**

In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the person's current email address for notices.

31.3. **Communications by post**

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;

- (b) outside Australia or to an address outside Australia, ten Business Days after posting.

31.4. Communications by email

A communication is taken to be given if sent by email immediately on sending the email unless the sender receives a delivery failure notification indicating that the email has not been delivered to the information system of the recipient.

31.5. After hours communication

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

32. Indemnity and insurance

32.1. Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may indemnify each officer of the Company in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer in or arising out of the conduct of any activity of the Company or the proper performance of any duty of that officer.
- (b) The indemnity in clause 32.1(a):
 - (i) is enforceable without the officer first having to make a payment or incur an expense;
 - (ii) is enforceable by the officer notwithstanding that the officer has ceased to be an officer of the Company; and
 - (iii) applies to any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, whether incurred before or after the date of this Constitution.

32.2. Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of any officer. The Board will determine the terms of the indemnity contained in the agreement.

32.3. Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer or any person who has been an officer of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer of any duty.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

33. Winding up and revocation

33.1. Winding up of the Company

- (a) In the case of the winding-up of the Company, any surplus assets that

remain after the satisfaction of all debts and liabilities, then, subject always to clause 33.2, those surplus assets must be transferred to another organisation with charitable purposes which is not carried on for the profit or gain of its individual members.

- (b) The organisation will be determined by a special resolution of the Members at or before the time of dissolution.

33.2. **Transfer of surplus assets – deductible gift recipients**

- (a) Where the Company has been endorsed as a deductible gift recipient under Subdivision 30 BA of the Tax Act, either as an entity or in relation to a fund or an institution it operates, then where:
 - (i) the Company is wound up;
 - (ii) the fund or institution is wound up; or
 - (iii) the endorsement under Subdivision 30 BA of the Tax Act is revoked;
- (b) any surplus:
 - (i) Gifts;
 - (ii) (Deductible Contributions; and
 - (iii) (money received by the Company because of such Gifts or Deductible Contributions,

remaining after payment of all liabilities must be transferred to one or more organisations, funds or institutions that comply with clause 33.1 and are deductible gift recipients.

34. **Dispute resolution**

34.1. **Handling a dispute**

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of this Constitution or otherwise (**Dispute**), then either party must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) the Member and the Company must in the period of 14 days from the service of the notice of the Dispute (Initial Period) use their best endeavours to resolve the Dispute;
- (b) if the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company;
- (c) if the disputants are unable to agree on a mediator within 7 days of the expiration of the Initial Period, the Member or the Company may request the chairperson of Resolution Institute to nominate a mediator to whom the Dispute will be referred;
- (d) the costs of the mediation must be shared equally between the Member and the Company; and
- (e) where:
 - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 34.1(b);
 - (ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or
 - (iii) the mediation fails to resolve the Dispute;

then the party serving the notice of Dispute will be entitled to commence any

proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

The procedure in clause 34.1 will not apply in respect of proceedings for urgent or interlocutory relief.

Schedule 1 – Founding Members

1. Ballarat & District Aboriginal Cooperative Ltd
2. Bendigo and District Aboriginal Co-Operative Ltd
3. Dandenong & District Aborigines Co Operative Ltd
4. Dhauwurd-Wurrung Elderly & Community Health Service Inc
5. Gippsland & East Gippsland Aboriginal Co-Operative Ltd
6. Goolum Goolum Aboriginal Co Op Ltd
7. Gunditjmara Aboriginal Co-Op Ltd
8. Mallee District Aboriginal Services Limited
9. Murray Valley Aboriginal Co-Operative
10. Njernda Aboriginal Corporation
11. Ramahyuck District Aboriginal Corporation
12. Rumbalara Aboriginal Co-Operative Limited
13. Wathaurong Aboriginal Co-Operative Ltd
14. Winda-Mara Aboriginal Corporation

Schedule 2 - Appointment of Proxy

(see clause 14.2)

Victorian Aboriginal Children and Young Peoples Alliance Ltd ACN

The Member, (name)

of (address)

being a member/members of the abovenamed Company hereby appoint

..... (name)

of (address)

as our proxy to vote for us on our behalf at the meeting of the members of the Company to be held on the day of 20 and at any adjournment of that meeting.

[TO BE INSERTED IF DESIRED] This form is to be used in favour of / against the resolution (Strike out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed:

Name:

Dated:

This notice must be returned to Victorian Aboriginal Children and Young Peoples Alliance Ltd ACN

[ADDRESS/EMAIL ADDRESS/FAX No]

by [TIME] on [DATE]

[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME FOR THE MEETING]

Schedule 3 - Appointment of Representative
(see clause 15.2)

**Victorian Aboriginal Children and Young Peoples Alliance Ltd
ACN**

The Member: (name)
of (address)
being a member of the above named Company hereby appoint
..... (name)
of (address)
..... (office) as our Representative to attend and vote for us on
our behalf at the meeting of the members of the Company to be held on the day of 20
and at any adjournment of that meeting.

[TO BE INSERTED IF DESIRED] This form is to be used in favour of/against the resolution (Strike
out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed:

Name:

Position:

Dated:

This notice must be returned to Victorian Aboriginal Children and Young Peoples Alliance Ltd ACN
[ADDRESS/EMAIL ADDRESS/FAX No]
by [TIME] on [DATE]
**[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME
FOR THE MEETING]**