

*CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006*

**RULE BOOK**

**of**

**PIKA WIYA HEALTH SERVICE ABORIGINAL  
CORPORATION ICN 7355**

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## PREAMBLE

In the early 1970s, a group of Aboriginal women meeting in Port Augusta heard word of a sick man in the sandhills outside town. One of the women was a nurse and together the group travelled to where the man lay, too weak to move and did what they could. In the days and weeks that followed the women learned of others suffering from injuries and illnesses, and decided that Port Augusta needed a Health Service specifically for the Aboriginal community

State and Federal governments were not interested but the women were undeterred. They wrote to the World Council of Churches in Geneva, Switzerland to explain their plight and ask for help. The Council were moved by the request and granted enough funding to establish the Aboriginal medical Service, Port Augusta

The Aboriginal Medical Service in Redfern, New South Wales offered assistance in spite of that service's own struggles. A doctor was loaned to Port Augusta and was able to travel from Redfern intermittently. Resources were scarce. Bandages were washed and reused and when visiting, the doctor slept on the floor of the Clinic

Years passed, but the persistence shown by those first women remained. The service grew and grew and was incorporated in December 1984 as Pika Wiya Health Service Inc

- 1976 - 1984 Incorporated under Aboriginal Community Affairs Panel
- 1984 - 2011 Incorporated under South Australia Health Commission
- 2011 - current Aboriginal Community Controlled and Managed

Now known as Pika Wiya Health Service Aboriginal Corporation, the organisation operates from premises in Port Augusta and also has clinics in the Davenport, Copley and Nepabunna communities as well as provides services to broader communities.

The values and ethics of Pika Wiya are:

- Believe – We are making a difference together
- Consult – We engage our community to understand their needs
- Respect of each other – We respect each other, our differences, and what makes us a community
- Respect of culture – We acknowledge and respect that in our catchment area are people of many Aboriginal nations, and we respect their cultural history, identity and lore.
- Trust, honesty and integrity – We are the custodians of the health of our community. We are entrusted with their future, and will fiercely protect it. This means that no one is above scrutiny, and we will hold ourselves to the highest possible standards.

## PART A – INTRODUCTION

### 1. DICTIONARY

In this Rule Book:

**Aboriginal Person** means an individual who:

is of the Aboriginal race of Australia, or is a descendant of an indigenous inhabitant of the Torres Strait Islands (or both); and

is recognised by the Aboriginal and / or Torres Strait Islander community from

which they originated as an Aboriginal and / or Torres Strait Islander person;  
and

identifies as being of the Aboriginal race of Australia, and/or as being a descendant of an indigenous inhabitant of the Torres Strait Islands.

The terms Aboriginal People, Aboriginal community and Aboriginal organisation have corresponding meanings.

**Aboriginal Community Controlled Health Service** means an incorporated Aboriginal organisation, initiated by a local Aboriginal community, based in a local Aboriginal community, governed by an Aboriginal body which is elected by the local Aboriginal community and delivering a holistic and culturally appropriate health service to the community that controls it.

**Aboriginal Health** (or related expression) encapsulates physical, emotional, spiritual and cultural health and wellbeing of Aboriginal persons and the communities they live in.

**Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* as amended from time to time and as it applies to the Corporation, and reference to a **section** is to a section of that legislation and includes any section that substantially replaces that section and deals with the same matter.

**AGM** has its meaning in the Act.

**Board** means the Directors meeting or making decisions as Directors.

**Business Day** means a day other than:

(a) a Saturday, Sunday;

a day which is a public holiday or bank holiday; or

a day that falls between any 22 December and the next following 3 January.

**Catchment Area** means the area serviced by the Port Augusta City Council, Davenport Community and District Council of Flinders Ranges (inclusive of Quorn and Hawker). It includes the townships of Marree, Leigh Creek, Woomera, Roxby Downs, Andamooka, Copley Nepabunna, and the Aboriginal Community homelands managed by the Yartawarli Aboriginal Corporation as delineated on the map annexed to this Rule Book at Annexure A.

**Chairperson** means at any time the chairperson of the Corporation appointed to that office by the Board under clause 56.

**contact person** means at any time a person appointed by the Board of a corporation registered as small or medium, to perform the duties of a contact person of the Corporation.

**Corporation** means the Pika Wiya Health Service Aboriginal Corporation ICN 7355.

**Director** means at any time a director of the Corporation.

**Directors** mean all or some of the Directors acting as such.

**Member** has the same meaning as in section 138-1, provided that Member satisfies all the following requirements to the reasonable satisfaction of the Board at the time they apply for membership:

(a) they are an Aboriginal Person; and

they are at least 18 years of age at the time of lodging their membership application; and

their principal place of residence is, and has been for at least 12 continuous months, in the Catchment Area; and

and whose application for membership as a Member was approved by the Board.

**General Meeting** means a meeting of the Members, and includes any AGM.

**ICN** means Indigenous Corporation Number given by the Registrar on registration of the Corporation.

**ORIC** means the Office of the Registrar or Indigenous Corporations.

**Registrar** means the Registrar of Aboriginal and Torres Strait Islander Corporations.

**Replaceable Rule** means any provision of those sections and sub-sections of the Act which are designated under section 60-1 as "replaceable rules" and so capable of being displaced or modified by a Corporation's Rule Book under section 60-5.

**Regulations** means the *Corporations (Aboriginal and Torres Strait Islander) Act Regulations 2017*.

**Rule Book** means the constitution of the Corporation.

**Secretary** means at any time a person appointed by the Board to perform the duties of a secretary of the Corporation.

Subject to the above, expressions in this Rule Book have the same meaning as in a provision of the Act which deals with the same matter.<sup>1</sup>

## 2. INTERPRETATION

In this Rule Book: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; another grammatical form of a defined word has a corresponding meaning.

## 3. NAME OF THE CORPORATION

3.1 The name of the Corporation is Pika Wiya Health Service Aboriginal Corporation ICN 7355.

3.2 This document is the Rule Book of the Corporation.<sup>2</sup>

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<sup>1</sup> Section 700-1 contains many, but not all, statutory definitions.

<sup>2</sup> By section 60-10, the Rule Book takes effect as a contract between the Corporation, its Member(s) and Director(s) and Secretary.



#### **4. REPLACEABLE RULES<sup>3</sup>**

This Rule Book displaces all the Replaceable Rules.

#### **5. ACT<sup>4</sup>**

Despite any other provision in this Rule Book:

- 5.1 if the Act prohibits a thing being done, the thing may not be done;
- 5.2 if the Act requires a thing to be done, authority is given for that thing;
- 5.3 if a provision of this Rule Book is or becomes inconsistent with the Act (other than a Replaceable Rule), that provision must be read down or failing that severed from this Rule Book to the extent of the inconsistency.

#### **6. ACNC ACT**

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

- 6.1 if the ACNC Act prohibits a thing being done, the thing may not be done;
- 6.2 if the ACNC Act requires a thing to be done, authority is given for that thing;
- 6.3 if a provision of this Rule Book is or becomes inconsistent with the ACNC Act, that provision must be read down or failing that severed from this Rule Book to the extent of the inconsistency.

### **PART B – THE CORPORATION**

#### **7. OBJECTS<sup>5</sup>**

The sole objects for which the Corporation is registered under the Act and must be operated are to:

- 7.1 improve health outcomes for Aboriginal people living in the Catchment Area;
- 7.2 support and advance the social, physical and mental health of Aboriginal people living in the Catchment Area;
- 7.3 improve the wellbeing and the quality of life of Aboriginal people living in the Catchment Area;
- 7.4 promote and increase education and workforce participation of Aboriginal people living in the Catchment Area in Aboriginal Health and associated

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<sup>3</sup> Section 63-1 states that an Aboriginal and Torres Strait Islander Corporation's internal management may be governed by replaceable rules, by the rules in the corporation's Rule Book that modify or replace some or all of the replaceable rules and by the other rules dealing with internal governance of the corporation that are in the corporation's Rule Book. By section 60-5, a Rule Book can displace or modify a replaceable rule. Section 57-5 sets out a table of the provisions of the Act that deal with internal governance rules of a corporation and how the replaceable rules operate.

<sup>4</sup> The Act contains many mandatory rules regulating the affairs of corporations. Those rules are not reproduced or, in the main, signposted in this document. The rules of the common law and principles of equity also apply and are not now reproduced or signposted.

<sup>5</sup> Section 66-1(2) requires a Rule Book to set out a Corporations' objects. However, an act of a Corporation is not invalid merely because it is contrary to or beyond any such objects (section 72-10(2)).

activities, professions and employment; and

- 7.5 advance the social, spiritual, cultural and economic status of, and pursue better outcomes for our community, encompassing all aspects of primary health care and Aboriginal Health.

## **8. POWERS<sup>6</sup>**

- 8.1 Subject to the Act, and the provisions of the Rule Book, the Corporation has all powers granted to Corporations by the Act.
- 8.2 The Corporation must exercise its powers in furtherance of its objects.
- 8.3 Notwithstanding this, the Directors shall not in any way dispose of, charge, mortgage, pledge, encumber or otherwise deal with any asset of the Corporation which consists of or includes land and/or buildings (other than sheds and storage facilities), without first obtaining approval of the Members by way of a special resolution of Members at a properly convened General Meeting.

## **9. MEMBERS LIABILITY**

The Members of the Corporation are not required to pay the Corporations' debts if the Corporation is wound up.

## **10. NOT-FOR-PROFIT STATUS**

The assets and income of the Corporation must be applied solely in furtherance of its objects and no portion may be distributed directly or indirectly to the Members, except as *bona fide* compensation for services rendered, goods supplied or expenses incurred on behalf of the Corporation.

## **11. TAXATION STATUS**

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

- 11.1 for the income and gains of the Corporation to be exempt from income tax;
- 11.2 to be endorsed as a deductible gift recipient under the *Income Tax Assessment Act 1997*;
- 11.3 for the Corporation to qualify for any concession under any tax law of Australia or of any State or Territory of Australia.

## **PART C – MEMBERS**

## **12. NUMBER OF MEMBERS**

The Corporation must have a minimum of 5 Members, unless the Registrar approves a smaller number under section 77-5(2), (3) or (4).

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<sup>6</sup> Section 96-1 grants broad powers to a Corporation.

### **13. MEMBERSHIP FEES**

13.1 The Corporation must not impose fees for membership of the Corporation.

### **14. REGISTER OF MEMBERS**

14.1 In addition to the information sections 180-5 and 180-15 requires, the register of members and former members kept by the Corporation under sections 180-1(1) and 180-10(1) must contain the following information about each Member:

14.1.1 the date and summary reason/s why the Member's membership was cancelled;

14.1.2 the date the Member resigned.

14.2 The register of members may also state an electronic address to which notices from the Corporation may be sent to the Member.

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

14.4 An applicant does not become a Member under clause 16, until the Member is entered on the register of members. The Board must update the register of members within 14 days of approving the application for membership.

### **15. MEMBER'S RIGHTS**

15.1 A Member has right to:

15.1.1 vote (personally, by attorney or proxy) at any General Meeting;

15.1.2 receive notice of, attend and speak at all General Meetings;

15.1.3 be made a Director (if the member is eligible to become a Director);  
and

15.1.4 all other rights granted under the Act.

### **16. MEMBERSHIP IS NOT TRANSFERRABLE**

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

### **17. MEMBER ELIGIBILITY**

Any individual is eligible to become a Member if the individual:

17.1 is at least 18 years of age;

17.2 is an Aboriginal Person;<sup>7</sup> and

17.3 their principal place of residence is, and has been for at least 12 continuous months prior to their application to become a Member, in the Catchment

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<sup>7</sup> As defined in Clause 1 of this Rule Book.

Area.<sup>8</sup>

## 18. HOW TO BECOME A MEMBER

- 18.1 Any individual may become a Member if:
- 18.1.1 they meet the eligibility criteria for the membership to the reasonable satisfaction of the Board;
  - 18.1.2 they make an application for membership in such form and with supporting evidence acceptable to the Directors acting reasonably; and
  - 18.1.3 the Board in its discretion approves the application for the membership being applied for; and
  - 18.1.4 the Board records the approval in minutes of a Board meeting; and
  - 18.1.5 the Board notifies the approval to the applicant.
- 18.2 The Board may, acting reasonably, request documentation or supporting material to confirm the eligibility of an applicant for membership.
- 18.3 If the Board does not accept the application for membership, the Board must provide the applicant with reasons behind its decision.
- 18.4 An applicant for membership dissatisfied with a decision of the Board under this clause may appeal the decision to a General Meeting under clause 20. If the General Meeting upholds an appeal on a decision to reject an application for membership, the Board must re-assess the application in light of the Members' decision.
- 18.5 Applications for Membership may be submitted at any time, however if an application is received after notice of a general meeting has been called, the Board may only consider that application after that general meeting.<sup>9</sup>
- 18.6 If there is genuine uncertainty whether an applicant is an Aboriginal Person (as that expression is defined in this Rule Book) the Board may approve the application only:
- 18.6.1 after the Corporation (via the Secretary) has made enquiry of other relevant bodies, including the relevant Link Up service (or successor organisation); and
  - 18.6.2 if the Directors are satisfied, on the balance of probabilities, the applicant is an Aboriginal person; and
  - 18.6.3 by 75% resolution of all Member Directors in office entitled to vote on that resolution.

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<sup>8</sup> As defined in Clause 1 of this Rule Book.

<sup>9</sup> A meeting is deemed to be 'called' when the Corporation sends notice of a meeting, including its agenda, to its members. This means that, for example, if notice of a General Meeting is sent out on the 1<sup>st</sup> of February for a meeting to be held on the 22<sup>nd</sup> of February, any applications received between 1 February and 22 February could not be approved until after the 22 February meeting is held. If, however, an application was received on 31 January 2022, the Board can approve it at any time (including between 1 February and 22 February) as it was received before notice had been sent out.

- 18.7 A person having resigned as a Member may nevertheless make a fresh application for membership in the usual way.

## **19. MEMBER'S RESPONSIBILITIES**

- 19.1 Each member of the Corporation has the following responsibilities:
- 19.1.1 to comply with the CATSI Act and this Rule Book;
  - 19.1.2 to notify the Corporation of any change in their principal place of residence, mailing or electronic address in accordance with clause 23;
  - 19.1.3 to comply with the applicable policies;
  - 19.1.4 to abide by any Code of Conduct adopted by the Board;
  - 19.1.5 to not behave in a way that significantly interferes with the operation of the Corporation or of Board Meetings or General Meetings.

## **20. CANCELLATION OF MEMBERSHIP**

- 20.1 Where a Member fails to notify the Corporation of any change to their principle place of residence and the Corporation is not able to contact the Member for a continuous period of 2 years having made 2 or more reasonable attempts to contact the Member during that period, membership of a Member may be cancelled in accordance with section 150-25 of the Act.
- 20.2 The Board may cancel the membership of a Member by so notifying the Member if in the opinion of a majority of the Directors, the Member:
- 20.2.1 without having given apology, does not attend (personally or by proxy) at 3 consecutive AGMs; or
  - 20.2.2 does not meet the requirements for a Member other than if found not to be an Aboriginal person, in which case the procedure in section 150-30 will apply;
- provided that:
- 20.2.3 at least 20 Business Days before the Board meets to decide the matter the Corporation gives the Member notice of written particulars of the alleged reasons for cessation and an opportunity to be heard or to make a written submission to the Corporation within 14 days of receiving the notice from the Board;
  - 20.2.4 after considering any submission by the Member, the Corporation notifies the Member of the decision to expel the Member.
- 20.3 A Member dissatisfied with a decision of the Board in relation to themselves under this clause may appeal the decision to a General Meeting under clause 21.
- 20.4 A Member whose membership is cancelled under clause 20.2 may not make application for membership, nor have their membership application considered or approved by the Board for 24 months, even if they are otherwise eligible for

membership under this Rule Book.

## **21. APPEALS TO A GENERAL MEETING**

- 21.1 An applicant or Member dissatisfied with a decision of the Board regarding matters related to their membership (of an application for a membership) may appeal the decision to the next General Meeting called by the Company by giving notice of appeal to the Corporation within 10 Business Days of being notified of the Board's decision.
- 21.2 If a Member gives notice under clause 20.1:
- 21.2.1 a decision of the Board under clause 19 in relation to that Member is of no effect pending that next General Meeting; and
  - 21.2.2 the Board's decision being appealed must be referred to on the notice calling the next General Meeting; and
  - 21.2.3 the Board's decision being appealed from must be confirmed or overturned at the next General Meeting, and if a motion to overturn the decision is put and fails at the General Meeting the decision is taken to be confirmed and takes immediate effect.
- 21.3 If an applicant or Member so appeals a decision, the Board may reverse its original decision at any time before the appeal is put to a vote at a General Meeting.

## **22. RESIGNATION BY A MEMBER**

Any Member may resign membership by written notice given to the Corporation.

## **23. CEASING TO BE A MEMBER**

A person ceases to be a Member if the person:

- 23.1 dies;
- 23.2 ceases to have a permanent place of residence in the Catchment Area for a period of 12 consecutive months;
- 23.3 resigns as a Member in accordance with this Rule Book;
- 23.4 is disqualified from Membership by Court order or legislative act; or
- 23.5 is removed as a Member by a provision of this Rule Book.

## **24. CONTACT DETAILS OF MEMBERS**

- 24.1 Every Member must notify any change in their principal place of residence, by mail or electronic address to the Corporation within 28 days, and any such change must be promptly entered on the register of members.
- 24.2 The latest mailing or electronic address in the register of members is taken to be the Member's registered address for all purposes.

## PART D – GENERAL MEETINGS

### 24. AGM/S

- 24.1 Under section 201-150(1), an AGM must be held within 5 months after the end of the financial year of the Corporation.
- 24.2 The Corporation may apply to the Registrar, under section 201-155(2), to extend the period within which the Corporation must hold an AGM provided the application is made before the end of that period.
- 24.3 The Corporation must make the register of members available for inspection (without charge) by Members at the AGM.

### 25. BUSINESS OF AGM

- 25.1 The business of an AGM may include any of the following, even if not referred to in the notice of meeting:
  - 25.1.1 confirmation of the minutes of the previous General Meeting;
  - 25.1.2 the consideration of the reports under clause 72;
  - 25.1.3 the election of Directors;
  - 25.1.4 the appointment and remuneration of the Auditor (if any);
  - 25.1.5 checking the details on the Register of Members;
  - 25.1.6 asking questions about management of the Corporation and asking questions of the Corporation's Auditor (if any);
  - 25.1.7 considering the business or resolutions in the notice of meeting.

### 26. CALLING OF A GENERAL MEETINGS<sup>10</sup>

- 26.1 The Directors may call a General Meeting.
- 26.2 The Directors must call a General Meeting on request of at least the required number of Members if section 201-5(1) so requires.<sup>11</sup>
- 26.3 Members may call a General Meeting if section 201-5(4) allows.

### 27. NOTICE OF A GENERAL MEETING

- 27.1 Notice of a General meeting must:
  - 27.1.1 be in writing and presented in a clear, concise and effective manner;
  - 27.1.2 set out the place, time and date (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);

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<sup>10</sup> Members (section 201-40(4) stipulates the required number of members) might also requisition a particular resolution at a general meeting under section 201-40(1). A meeting must be held for a proper purpose (section 201-55) and at a reasonable time and place (section 201-60). Section 201-65 might allow a meeting by telephone or video conference.

<sup>11</sup> Section 201-5(4) sets out the required number of members for the directors to hold a General Meeting.

- 27.1.3 state the general nature of the meeting's business; and
  - 27.1.4 if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - 27.1.5 be given individually to each Member entitled to vote at the meeting, and to each Director and to the auditor as section 201-25(1) and section 201-30(1) respectively require;
  - 27.1.6 be given in a manner section 201-25(3) and section 201-25(4) allows, including via email if a Member has nominated an electronic address for service; and
  - 27.1.7 be given such number of days before the meeting as section 201-20(1) requires.<sup>12</sup>
- 27.2 A notice of a General Meeting sent by post is taken to be given 3 calendar days after it is posted. A notice of meeting sent by fax, email or other electronic means, is taken to be given on the Business Day after it is sent.
- 27.3 When a General Meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 20 Business Days or more.

## **28. POSTPONEMENT OR CANCELLATION OF A GENERAL MEETING**

- 28.1 A General Meeting may be postponed or cancelled at any time before the day of the meeting:
- 28.1.1 if called by the Board on the request of Members under section 201-5(1), by those Members so notifying the Corporation;
  - 28.1.2 if called by the Board of its own volition, by the Board as it may determine if, in the reasonable opinion of the Directors, there are exceptional reasons for doing so (such as the death of a community member or a natural disaster) (**Exceptional Circumstances**).
- 28.2 The Corporation must give notice of the postponement or cancellation to all persons entitled to receive notice of that General Meeting.
- 28.3 A cancelled General Meeting must be held within two months of the date that the meeting was due to occur, or within two months of the date when the Exceptional Circumstances cease, whichever is later.
- 28.4 The Directors must give reasonable notice of the cancellation and the rescheduled meeting to each Member individually.

## **29. QUORUM OF A GENERAL MEETING**

- 29.1 Subject to clause 29.5, or any contrary provision in the Act, the quorum for a General Meeting is 10% of Members, or 20 Members, whichever is fewer.

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<sup>12</sup> At least 21 days unless all members agree beforehand for an AGM or at least 95% of Members agree for a General Meeting. Short notice is not allowed for meetings at which it is proposed for a Director to be appointed or removed or at which it is proposed for an Auditor to be removed.



- 29.2 The quorum must be present at all times during the General Meeting.
- 29.3 In determining whether a quorum is present, count individuals attending as proxy. If an individual attends in 2 or more capacities, count them only once.
- 29.4 A General Meeting that does not have a quorum present within 1 hour after the time for the meeting set out in the notice of meeting:
- 29.4.1 is adjourned to the date, time and place the Board specifies. If the Board does not specify 1 or more of those things, the meeting is adjourned to:
- if the date is not specified — the same day in the next week; and
- if the time is not specified — the same time; and
- if the place is not specified — the same place.
- 29.5 At a resumed General Meeting, the quorum is at least 7 Members. If no quorum is present at the resumed General Meeting within 1 hour after the time for the meeting, the General Meeting is dissolved.

### **30. MEMBERS' RESOLUTIONS**

- 30.1 The Members can propose that a resolution be considered at the next General Meeting to be called in accordance with section 201-40 of the Act:
- 30.2 The Corporation must give Notice of the Resolution to all people entitled to in accordance with clause 27.1.5.
- 30.3 The Corporation must consider the resolution at the next meeting which is being held at least 28 days after the Notice of Resolution has been received by the Corporation.

### **31. CHAIR OF A GENERAL MEETING**

- 31.1 The chair of a General Meeting must be, in descending order of priority:
- 31.1.1 the Chairperson if present and willing to chair the General Meeting; or
- 31.1.2 a Member elected by the Directors present at the General Meeting; or
- 31.1.3 a Member elected by the Members present at the General Meeting.

### **32. GENERAL CONDUCT OF A GENERAL MEETING**

- 32.1 The chair of a General Meeting has general conduct of the General Meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.
- 32.2 The chair of a General Meeting may determine immediately before or during the General Meeting that persons attending the General Meeting (or part of the General Meeting) should:
- 32.2.1 be only the Directors, the Secretary, the auditor, the Members, the Chief Executive Officer of the Corporation and persons attending as

- an attorney or proxy of a Member;
  - 32.2.2 comply with any reasonable identification or security measures as the chair considers appropriate;
  - 32.2.3 not record or broadcast the meeting, except as permitted by the chair acting reasonably; or
  - 32.2.4 not possess any item that the chair considers may be dangerous, offensive or likely to cause disruption.
- 32.3 The chair may refuse a person admission to, or require a person to leave and not return to, a General Meeting if the person fails to comply with a determination of the chair authorised by this clause.
- 32.4 Subject to the above, a Director, the Secretary, the auditor, any Member, the Chief Executive Officer and any person attending as a proxy of a Member is each entitled to attend and be heard at any General Meeting.
- 32.5 The chair's determination on a procedural matter is final.

### **33. ADJOURNMENT OR CANCELLATION OF A GENERAL MEETING**

- 33.1 The chair must adjourn a General Meeting if Members present with a majority of votes at the General Meeting agree or direct that the chair must do so. The chair may adjourn a General Meeting with the meeting's consent on a show of hands.
- 33.2 A poll cannot be demanded on a resolution concerning the adjournment of a General Meeting except by the chair.<sup>13</sup>
- 33.3 Only unfinished business is to be transacted at a General Meeting resumed after an adjournment.

### **34. BUSINESS OF A GENERAL MEETING**

- 34.1 The business of a General Meeting is to:
- 34.1.1 confirm the minutes of the previous General Meeting;
  - 34.1.2 consider all matters contained in the Notice of General Meeting.
- 34.2 A General Meeting is not competent to deliberate upon or vote upon a motion for a resolution not set out in the notice of meeting, except:
- 34.2.1 a motion for a procedural resolution, for example to appoint a chair, demand a vote by poll, or to adjourn; or
  - 34.2.2 as the Act (in particular section 201-160) may allow or require.

To avoid doubt, this provision does not prevent a motion to amend a resolution set out in the notice of meeting, where such amendments are minor or typographical.

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<sup>13</sup> Section 201-130(2)(b) allows the Rule Book to exclude a poll on an adjournment

## **35. VOTING AT A GENERAL MEETING**

- 35.1 At a General Meeting, each Member has one vote, both on a show of hands and a poll.
- 35.2 The chair of a General Meeting has a casting vote, and also a vote in their capacity as a Member.
- 35.3 A vote the Act requires the Corporation to disregard must not be counted.
- 35.4 A challenge to a right to vote at a General Meeting:
  - 35.4.1 may only be made at the General Meeting; and
  - 35.4.2 must be determined by the chair, whose decision is final.
- 35.5 A resolution put to the vote at a General Meeting must be decided on a show of hands unless a poll is demanded.<sup>14</sup>
- 35.6 Before a vote is taken the chair must inform the General Meeting whether any proxy votes have been received, and how the proxy votes are to be cast.
- 35.7 On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 35.8 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 35.9 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 35.10 The validity of a resolution is not affected by the failure of an attorney or proxy of a Member to vote in accordance with the instructions of the Member.

## **36. VOTING BY PROXY**

- 36.1 A Member may appoint another member as proxy to attend, speak and / or vote on their behalf at a General Meeting, but only as directed in the proxy instrument.
- 36.2 A proxy appointment is required to contain the Member's name and address, the Corporation's name, the proxy's name, the meeting that the proxy is attending, how the proxy is instructed to vote on each resolution on the notice paper, and must be signed by the Member.
- 36.3 The Corporation must receive the completed Proxy Appointment Form, annexed to the notice of meeting at least 48 hours before the General Meeting.
- 36.4 A person must not be a proxy for more than one Member.
- 36.5 Where a Member has not personally attended an AGM in the preceding two

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<sup>14</sup> Section 201-135 sets out who can demand a poll, and when it may be demanded

years, that Member is ineligible to appoint a proxy.

## **PART E – APPOINTMENT & REMOVAL OF DIRECTORS**

### **37. CLASSES OF DIRECTORS**

37.1 There shall be two classes of Directors being:

37.1.1 Member Directors; and

37.1.2 Independent non-member specialist Directors (**INMS Director**).

### **38. COMPOSITION OF THE BOARD OF DIRECTORS**

38.1 The Board shall be comprised as follows:

38.1.1 a maximum of seven Member Directors; and

38.1.2 a maximum of two INMS Directors

(both **Directors**).

38.2 A Member Director must<sup>15</sup>:

38.2.1 be at least 18 years old;

38.2.2 be a Member of the Corporation;

38.2.3 have consented in writing to be appointed as a Director of the Corporation;

38.2.4 have met all legal requirements to be a Director of the Corporation, including having applied for a Director Identification Number;

38.2.5 within three months of appointment, obtain a National police check and State Department of Human Services Working with Children /Vulnerable Person-related employment check (**Screening Checks**) disclosing:

(a) any matter related to fraud or dishonesty offences;

(b) any conviction for a criminal offence against children or vulnerable people;

(c) or any other criminal offence that has a maximum term of imprisonment of 2 years or more

(each a **Relevant Offence**)

committed by that Member Director anywhere in Australia.

38.2.6 If a Screening Check:

(a) is not provided to the Board within three months of appointment

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<sup>15</sup> Section 246-5(4).

(and the Member Director fails to provide a Screening Check or else evidence of having made an application for a Screening Check within 5 Business Days of receiving written notice from the Board stating that no Screening Check has been received); or

(b) the Screening Check records a Relevant Offence within the last 10 years,

the Member Director's appointment is terminated immediately.

38.2.7 The costs of obtaining the Screening Check are to be paid by the Corporation.

38.2.8 have taken part in corporate governance training in the 12 months prior to being appointed (including being re-appointed) to the Board, or else agree to do so within 12 months of being appointed to the Board. If the Board sends a notice in writing to a Director alleging that they have not met this requirement, and the Director fails to provide evidence of having enrolled in a corporate governance course within at least one month of receiving that notice (the training to be completed within three months of that confirmation), the Member Director's appointment is terminated immediately.

38.3 Subject to clause 38.4, of the Member Directors:

38.3.1 at least one must be from a remote area (being Copley, Nepabunna, Maree, Leigh Creek, Andamooka or Roxby Downs); and

38.3.2 at least one should be no older than 30 years of age at the time they first take office.

38.4 In the event that there is no candidate meeting one or other of the eligibility criteria specified in clause 38.3, a candidate who otherwise meets the eligibility criteria to be a Member Director may be elected or appointed into that position.

38.5 An INMS Director must:

38.5.1 be at least 18 years old;

38.5.2 an Australian resident;

38.5.3 not be an employee of the Corporation;

38.5.4 not immediate family to a member of the Corporation (as defined at clause 39.6);

38.5.5 has demonstrated skills and experience in financial management, corporate governance, accounting or health services delivery;

38.5.6 not be a Member of the Corporation;

38.5.7 have met all legal requirements to be a Director of the Corporation, including having applied for a Director Identification Number;

38.5.8 within three months of appointment, obtain a National police check and State Department of Human Services Working with Children

/Vulnerable Person-related employment check (**Screening Checks**) disclosing:

- (a) any matter related to fraud or dishonesty offences;
- (b) any conviction for a criminal offence against children or vulnerable people;
- (c) or any other criminal offence that has a maximum term of imprisonment of 2 years or more

(each a **Relevant Offence**)

committed by that INMS Director anywhere in Australia.

38.5.9 If a Screening Check;

- (a) is not provided to the Board within three months of appointment (and the Member Director fails to provide a Screening Check or else evidence of having made an application for a Screening Check within 5 Business Days of receiving written notice from the Board stating that no Screening Check has been received); or
- (b) records a Relevant Offence within the last 10 years other than a minor traffic offence,

the Member Director's appointment is terminated immediately.

38.6 The costs of obtaining the Screening Check are to be paid by the Corporation.

## **39. QUALIFICATIONS TO BE A DIRECTOR**

39.1 Subject to section 246-1(2) subsections (a) and (b), a Director must not be a person disqualified from managing a corporation under Part 6-5 of the Act or other law.

39.2 A Director must not have at any time have been found guilty (whether or not convicted) of a Relevant Offence within the past 10 years.

39.3 A Director must not be an employee of the Corporation.

39.4 A Director must not have had their employment with the Corporation terminated due to poor performance or serious and wilful misconduct,<sup>16</sup> or have resigned during a period of formal performance management within the 12 month period prior to their applying to be a Director.

39.5 A Director must not have a member of his/her immediate family who holds a position (whether as an employee or contractor) with the Corporation as Chief Executive Officer, Deputy Chief Executive Officer, finance manager, clinical services manager or human resources manager (or similar positions by another title).

39.6 No more than one person from an immediate family shall be eligible to be

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<sup>16</sup> The Fair Work Regulations define serious misconduct as wilful and deliberate behaviour that is inconsistent with the continuation of the employment contract or causes serious and imminent risk to the reputation, viability or profitability of the business, or health and safety of a person.

appointed or hold office as a director.

- 39.7 In this clause **immediate family** means any living person related in any of the following ways: grandfather, grandmother, father, mother, husband, wife, de-facto, son, daughter, sister, brother or step-children. For the avoidance of doubt immediate family does not include relatives by marriage.

#### **40. SKILLS OF DIRECTORS**

- 40.1 The Members have the right to know the skills, knowledge, ability and aptitude of any candidate for appointment as a Director. Nominations for Directors must include a statement by the candidate detailing these matters.
- 40.2 The Corporation must seek out candidates for directorships those individuals who are Members or likely meet the requirements for a Member, can commit to attending and participating in scheduled meetings of the Board, and either:
- 40.2.1 have experience in the governance, management, planning or delivery of Aboriginal health services; or
  - 40.2.2 have experience in the governance, management, planning or delivery of other Aboriginal and not-for-profit services; or
  - 40.2.3 have a professional background in health; or
  - 40.2.4 understand the health needs of the Aboriginal community in the Catchment Area; or
  - 40.2.5 can contribute to the development of culturally appropriate health services and programs; or
  - 40.2.6 have skills, knowledge and experience in Aboriginal cultural matters, finance, human resources management, industrial relations, physical resources management, strategic planning, marketing and promotion or any other relevant field; or
  - 40.2.7 are actively and positively involved in the Catchment Area with the Aboriginal community; or
  - 40.2.8 are respected by the general membership and the wider community and can represent the Corporation with cultural integrity.

#### **41. DUTIES OF DIRECTORS'**

- 41.1 The Directors, Secretary, other officers and employees must comply with the duties imposed on them by the Act and the general law. These may include, for example:
- 41.1.1 a duty of care and diligence;
  - 41.1.2 a duty of good faith;
  - 41.1.3 a duty of disclosure of personal interests;
  - 41.1.4 a duty not to improperly use position or information; and

41.1.5 a duty to prevent insolvent trading.

## **42. APPOINTMENT OF MEMBER DIRECTORS BY THE CORPORATION<sup>17</sup>**

42.1 Subject to the other provisions of this Rule Book, the Corporation may by resolution appoint a person as a Member Director only if at least 2 Business Days before the General Meeting concerned that person gave to the Corporation at its registered office:

42.1.1 (if not already a Director) their signed consent to act as a Director<sup>18</sup>; and

42.1.2 a statement confirming that they are eligible to be appointed as a Director under the terms of this Rule Book.

42.2 If when the Corporation is to call a General Meeting there are more candidates for appointment as a Member Director than the number of vacancies on the Board expected at that General Meeting, then the notice of that General Meeting shall inform Members that there will be an election held at the General Meeting.

42.3 Voting at elections shall be by optional preferential voting.

42.4 At the relevant General Meeting, each Member entitled to vote shall be provided with a form that:

42.4.1 lists separately the names of all the candidates in the order in which drawn by lot by the Secretary or their delegate (or failing the Secretary, by a person under the direction of the Board);

42.4.2 has an open square next to the name of each candidate;

42.4.3 prominently informs:

there are more candidates for appointment as a Member Director at the General Meeting than expected vacancies on the Board;

a Member may vote for a candidate by placing the number '1' in the square next to their most preferred candidate's name, the number '2' next to their next-most preferred candidate, and so on until they have either indicated all candidates they wish to vote for, or there are no further candidates remaining on the ballot;

a Member is not required to number all of the boxes to cast a valid ballot, and that their vote will be extinguished only after all nominated preferences have been allocated;

42.4.4 a Member who indicates with a tick or a cross only one candidate will be treated as a first preference vote, but that a Member who ticks or places a cross next to multiple candidates will have their vote deemed invalid.

42.4.5 those candidates with the greatest number of votes at the General Meeting (as determined by the distribution of preferences) will be

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<sup>17</sup> A Director must be an individual at least 18 years of age (section 246-1(1)) and consent in writing to act (section 246-10(1)). Under section 246-35(1) an act done by a Director may be effective even if their appointment is invalid.

<sup>18</sup> See section 246-10.



appointed as Member Directors until all vacancies are filled, and in case of competition between candidates having equal votes, the successful candidate will be determined by the drawing of lots.

- 42.4.6 If two immediate family members are nominated for election, and each would be elected following the distribution of preferences, only that member of the immediate family with the highest number of votes will be elected.

#### **43. APPOINTMENT OF DIRECTORS BY THE BOARD**

- 43.1 INMS Directors shall be appointed by the Board.
- 43.2 Subject to the other provisions of this Rule Book, if a vacancy on the Board occurs, the Board may fill that vacancy by appointing a person qualified to fill that position (as a Member Director or INMS Director as the case may be) as a Director for the remainder of the term of the vacant position.
- 43.3 If at a last preceding General Meeting an eligible person unsuccessfully sought appointment as a Member Director but recorded the highest number of votes (disregarding votes of any successful candidate) as recorded in records of the Corporation, in the first instance the Board must offer appointment to that person.
- 43.4 The Board may appoint a Director in order to make up a quorum for a Board meeting even if the total number of Directors in office is not enough to make up that quorum, but only for the purposes of calling a meeting of members, or filling a casual vacancy.
- 43.5 If at any time:
- 43.5.1 there are at least 3 vacancies on the Board for at least 40 Business Days;
- 43.5.2 the Board has sent a notice to the Members asking for candidates to fill those positions;
- 43.5.3 there are insufficient eligible nominees to fill the vacant positions,
- the Board may admit as a Member or other person who is an Aboriginal person but otherwise does not satisfy all the requirements for a Member, for the purpose of appointing the person as a Director to fill a casual vacancy. However, a person so appointed is not eligible to be appointed as a Director at the next AGM unless at the time, the person satisfies all the requirements for a Member and a majority of the Members approve.

#### **44. NOTIFYING THE REGISTRAR**

- 44.1 The Corporation must notify the Registrar of a Director's appointment and personal details within 28 days of being appointed.

#### **45. TERM LIMIT OF DIRECTORS**

- 45.1 The term of a Director shall be:
- 45.1.1 if Pika Wiya receive approval under section 310-5 of the Act to have

terms longer than 2 years, a term of office of 36 months or the conclusion of the AGM next held after those 36 months expire, whichever is the later (unless they vacate the office in the meantime);  
or

45.1.2 if Pika Wiya do not receive approval under section 310-5 of the Act to have terms longer than 2 years, or if such approval is withdrawn, a term of 24 months.<sup>19</sup>

45.2 INMS Directors are appointed for the term specified in writing by the Directors in their appointment. The term of appointment cannot exceed 24 months, but they can be reappointed at the expiry of their appointment.

## **46. REMOVAL OF DIRECTORS**

46.1 The Members may remove a Member Director in the following way:

46.1.1 a notice for a resolution to remove a Director must be given to the Corporation at least 21 days before the meeting;

46.1.2 the Corporation must give the Director concerned a copy of the notice as soon as possible;

46.1.3 the Director can give the Corporation a written statement and speak at the meeting. The statement must be given to everyone entitled to notice of the meeting.

46.2 The Directors may remove Directors in the following way:

46.2.1 the Directors can only remove a Director if the Director fails to attend three or more consecutive Board Meetings without a reasonable excuse;

46.2.2 the Directors must give the Director a notice in writing at the address recorded in the register of members and they must give the Director 14 days to object in writing;

46.2.3 if the Director objects, they cannot remove the Director. The Director can only then be removed at a General Meeting by ordinary resolution.

## **47. RESIGNATION OF A DIRECTOR**

A Director may resign as a Director by giving notice of resignation in writing to the Corporation.<sup>20</sup>

## **48. VACATING THE OFFICE OF DIRECTOR**

A person ceases to be a Director:

48.1 if and when the Act requires;<sup>21</sup> or

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<sup>19</sup> Section 246-25 of the Act limits the term of a director to a period of 24 months unless an exemption under section 310-5 of the Act is given by ORIC. In absence of this approval, the term limit of a Director will be 24 months.

<sup>20</sup> Section 249-5.

<sup>21</sup> A person ceases to be a Director if the person becomes disqualified from managing corporations under Part 6-5 of the Act.

- 48.2 if and when they cease to be a Member; or
- 48.3 if and when any provision of this Rule Book requires; or
- 48.4 if and when clause 47 permits; or
- 48.5 if absent from scheduled Board meetings for 3 consecutive scheduled Board Meetings without leave of absence from the Board and where the Board has not, within 10 Business Days of having been served by a Director or a Secretary or a contact person (if applicable) a notice giving particulars of the absence, determined that leave of absence be granted.
- 48.6 Subject to the Act and the other provisions of this Rule Book, that person is eligible for reappointment as a Director.
- 48.7 The Corporation must notify the Registrar of the Director's details within 28 days after they cease being a Director.

#### **49. NO ALTERNATE DIRECTORS**

A Director may not appoint an alternate director.

#### **50. NO PROXY DIRECTORS**

A Director may not appoint a person to vote on their behalf at any Board meeting.

### **PART F – DIRECTORS' REMUNERATION<sup>22</sup>**

#### **52. REMUNERATION OF DIRECTORS**

- 52.1 Unless otherwise allowed for under this Rule Book, the Directors may only be paid for goods or services provided to the Corporation in good faith and where conflicts of interest are appropriately disclosed.
- 52.2 The Directors are to be paid the remuneration (if any) the Board determines by resolution,<sup>23</sup> subject to:
  - 52.2.1 any maximum amount of remuneration set by the Members in a general meeting;
  - 52.2.2 the Corporation having sufficient funds that are able to be used for the purpose of paying remuneration to Directors; and
  - 52.2.3 any limitations contained in this Rule Book or the Act.
- 52.3 A determination by the Board under this clause may, for example:
  - 52.3.1 stipulate remuneration be payable per attendance by a Director at Board meetings, up to a maximum amount per Director per 12 months;

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<sup>22</sup> Part 6-6 of the Act must be considered. See section 287-1 in particular.

<sup>23</sup> Under general law, a director has no right to demand remuneration. In this context, remuneration means directors' fees, not wages or salaries paid to employees who happen to also be directors. The fixing of wages and salaries is usually a matter solely for the directors. The members may be entitled to require disclosure of the directors' remuneration under section 202B.

- 52.3.2 recognise extraordinary contributions made by a Director to a particular project.
- 52.4 Where remuneration is based on meeting attendance, a Director must attend at least 85% of the relevant meeting to receive remuneration.
- 52.5 Remuneration will never be paid for meetings that do not proceed due to lack of quorum (though travel expenses may be reimbursed).
- 52.6 The Board must disclose to Members at each AGM:
  - 52.6.1 the remuneration paid to each Director;
  - 52.6.2 the meetings they attended at least 85% of in comparison to the number of meetings they were eligible to attend;
  - 52.6.3 any other basis upon which remuneration was paid to that Director.

### **53. EXPENSES OF DIRECTORS**

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

- 53.1 in attending any Board meetings, meetings of committees, or General Meetings;
- 53.2 in connection with the Corporation's business.

## **PART G – CHAIRPERSON**

### **54. CHAIRPERSON**

There must be a Chairperson.

### **55. QUALIFICATION FOR A CHAIRPERSON**

Only a Director may be a Chairperson.

### **56. APPOINTMENT OF A CHAIRPERSON**

- 56.1 A Chairperson is to be appointed by the Board from within the Directors. If persons more than one nominate for the office of Chairperson, the Directors may:
  - 56.1.1 request the nominees speak on behalf of themselves as to their suitability for the office;
  - 56.1.2 decide the appointment by secret ballot of the Directors.
- 56.2 If a resolution to appoint a Chairperson between 2 or more candidates results in a tied vote, those with the highest equal vote/s may decide the matter by the drawing of lots between themselves or by withdrawing their own candidacy or, with approval of the Board, come to some *ad hoc* arrangement as regards the office being contested.

- 56.3 A Chairperson is to be appointed for a term of up to 12 months (unless removed from office earlier under clause 57.3) or at the end of the next AGM after their appointment to the office, whichever is the later, but the Board may agree for shorter terms.
- 56.4 A Chairperson having served for more than 48 consecutive months may not be appointed the same office in which they served, unless either:
- 56.4.1 no other Director nominates for that office upon the Chairperson having served 2 consecutive terms vacating that office; or
- 56.4.2 12 months have elapsed since the person held the same office.
- 56.5 A Chairperson remains liable to vacate the office of Director as would any other Director.
- 56.6 If at any time a casual vacancy exists in the office of Chairperson, the Board must appoint promptly a Director to the office vacated.
- 56.7 If at any time no Director is willing to hold office as Chairperson, the functions of the office are assumed by the Board.

## **57. VACATING THE OFFICE OF CHAIRPERSON**

A Chairperson vacates the office if and when:

- 57.1 their term expires;
- 57.2 they give written notice of resignation of the office to the other Directors or the Secretary; or
- 57.3 removed by resolution of the Board after being afforded natural justice; or
- 57.4 they cease to be a Director (disregarding a retirement as a Director and reappointment as a Director at the same General Meeting).

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

## **58. APPEAL AGAINST REMOVAL OF A CHAIRPERSON**

- 58.1 A Chairperson removed from that office by the Board may appeal the removal to a General Meeting under clause 20, with necessary changes, provided that the appeal is supported by the signatures of at least 20 Members.
- 58.2 At such General Meeting, the Corporation may overturn the removal.

## **59. FUNCTIONS OF THE CHAIRPERSON**

- 59.1 A Chairperson has the following functions:
- 59.1.1 to chair Board meetings, General Meetings and, if on a committee (or sub- committee) chair their meetings;
- 59.1.2 to act as a liaison between the Board and the CEO;
- 59.1.3 to act as spokesperson for the Corporation in dealings with government

or the media; and

59.1.4 to exercise such delegations as approved by resolution of the Board.

## **PART H – BOARD MEETINGS**

### **60. BOARD MEETINGS**

- 60.1 Subject to the Act and this Rule Book, the Directors may meet together, adjourn and regulate their meetings as they think fit.<sup>2418</sup>
- 60.2 Any Director may call a Board meeting.
- 60.3 The Secretary must at the request in writing of a Director, call a Board meeting.
- 60.4 Scheduled Board meetings are to be determined by the Board in or about May of the previous financial year, it being expected the Board would meet at least 6 times per financial year. A scheduled meeting may be cancelled with 75% majority consent of Directors in office if there is insufficient business for that meeting.

### **61. NOTICE OF A BOARD MEETING**

Unless all Directors entitled to vote at the Board meeting agree otherwise, a person calling a Board meeting must give to each Director individually a notice of meeting that:

- 61.1 sets out the place, date and time for the Board meeting (and, if the Board meeting is to be held in 2 or more places, the technology that will be used to facilitate this) - it being presumed that a Board meeting would be held in-person, at the Corporation's principal business office, and at a time convenient to most Directors; and
- 61.2 states the general nature of the Board meeting's business; and
- 61.3 is accompanied by relevant information so far as reasonably available (if not already given to the Director); and
- 61.4 is given at least 5 Business Days before the Board meeting (or such other period as all the Directors in office may as a matter of general policy otherwise determine).

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

### **62. CHAIR OF A BOARD MEETING**

- 62.1 The chair of a Board Meeting must be, in descending order of priority:
- 62.1.1 the Chairperson if present and willing to chair the Board Meeting; or

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<sup>24</sup> Section 212-10 may allow a meeting by telephone, or by video conference.

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

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

### **63. QUORUM OF A BOARD MEETING**

63.1 Unless the Board otherwise determines, the quorum for a Board meeting is a majority of the Directors and at all times at least one more Member Director than the number of INMS Directors present.

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

63.3 Except as section 268-20(2) may allow, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be counted in a quorum while such matter is being considered.

### **64. DECLARATION OF MATERIAL PERSONAL INTEREST**

64.1 A Director's material personal interest in a matter that relates to the affairs of the Corporation must be notified to the other Directors if section 268-1(1) so requires.<sup>25</sup>

64.2 The Secretary must maintain a register of standing conflicts of interest, and have that register available at each Board meeting.<sup>26</sup>

### **65. VOTING AT A BOARD MEETING**

65.1 Except as section 268-20(4) may allow, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not vote on the matter.

65.2 Subject to clause 65.1:

65.2.1 each Director has 1 vote;

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

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

### **66. DIRECTOR'S INTERESTS**

66.1 A Director, an entity in which a Director has a personal interest or an immediate family member of a Director, may only receive a financial benefit from the Corporation with the approval of Members following the procedure in clause 51.

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<sup>25</sup> Section 268-1(1) provides for mandatory disclosure of interests, subject to exceptions in section 268-1(3).

<sup>26</sup> Section 268-10(1) allows a Director to give to the other Directors a standing notice of personal interest.

## **67. CIRCULATING RESOLUTIONS OF DIRECTORS**

- 67.1 The Directors may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution (and being not less than the number required for a quorum at a Board meeting) either:
- 67.1.1 sign a document containing a statement that they are in favour of the resolution set out in the document; and / or
  - 67.1.2 if the proposed resolution is stated in, or attached to, an email sent to the Director, the Director sends a reply email to the sender agreeing to that resolution, which reply email states or has attached the text of the resolution.
- 67.2 The resolution is passed when the last Director required to make up a majority signs, or sends the reply email.
- 67.3 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. Separate emails may be sent for agreement of Directors if the wording of the resolution is identical in each email.
- 67.4 A document or email referred to in this clause must be sent to every Director who is entitled to vote on the resolution.

## **PART I – BOARD'S POWERS**

### **68. EXECUTIVE POWER<sup>27</sup>**

- 68.1 The business of the Corporation is to be managed by or under the direction of the Board.
- 68.2 The Board may exercise all the powers of the Corporation except any powers the Act or this Rule Book requires the Corporation to exercise in General Meeting.
- 68.3 If less than a quorum of Directors is then in office, the Director/s remaining may exercise all the powers and duties of the Board pending the appointment of additional Directors, provided that they act with reasonable expedition to appoint a quorum of Directors.

### **69. DELEGATION OF POWERS<sup>28</sup>**

- 69.1 As section 274-10(1) allows, the Board may delegate any of its powers to one or more Directors, a Board sub-committee or the CEO of the Corporation.

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<sup>27</sup> By section 99-5 a contract or other document need not be executed under common seal. Outsiders dealing with the Corporation may be entitled under section 104-1 to assume certain matters internal to the Corporation. In exercising any of their powers, each Director must have regard to their fiduciary duty to the company, their common law duties to the company and their statutory duties to the company. The most significant statutory duties are in section 265-1 (care and diligence), section 265-5 (good faith), section 265-10 (use of position), section 265-15 (use of information) and section 588G of the Corporations Act 2001 (prevention of insolvent trading) as applied under section 521-1.

This provision means that generally the Directors, and not the Members, have the decision how and when the Corporation should exercise its various powers, such as to engage or dismiss staff, acquire premises, borrow money and grant security. Only if there are no Directors capable of acting, or the Act specifically requires approval of the Members, would the Members have the decision, absent other rule in the Rule Book.

<sup>28</sup> Section 265-50 may make Directors liable for the exercise of a power by their delegate.



- 69.2 A delegation of powers by the Board:
- 69.2.1 may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;
  - 69.2.2 may be concurrent with, or to the exclusion of, the exercise by the Board of those powers.
- 69.3 A delegate must exercise the powers delegated in accordance with any directions **GIVEN** by the Board.<sup>29</sup> Such directions may include that a decision, or kind/s of decision, of the delegate is not effective unless approved by a resolution of the Board.
- 69.4 At any time, the Board may modify or revoke a delegation.
- 69.5 A committee may be comprised of such persons from within or outside the Corporation as the Board may think appropriate.
- 69.6 A committee must have a Committee Plan that outlines the following:
- 69.6.1 the role of the committee;
  - 69.6.2 the membership requirements;
  - 69.6.3 anticipated milestone dates; and
  - 69.6.4 any other information the delegate of that committee deems necessary.
- 69.7 The Board should appoint the members of any committees annually, or as desired to fill any casual vacancy.
- 69.8 The Board may remove any person from a committee for just cause.

## **70. DIRECTOR PORTFOLIOS**

Without limiting clause 69, the Board may vest in a particular Director or Directors an area of responsibility, such as, for example, community engagement or liaison with other health-related organisations.

## **71. SECRETARY / CONTACT PERSON**

- 71.1 The Corporation must appoint a Secretary (if registered as a large corporation) or a contact person (if registered as a small or medium corporation), whichever is applicable.
- 71.2 The Secretary or contact person must be at least 18 years old.
- 71.3 A Secretary or contact person is appointed by the Board.
- 71.4 A Director cannot be the Secretary or contact person.
- 71.5 The Directors decide the terms and conditions (and remuneration if any) of an

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<sup>29</sup> Section 274-10(2).

appointed Secretary or contact person.

- 71.6 The Secretary or contact person must pass on any correspondence received to at least one Director within 14 days.
- 71.7 The Secretary or contact person must give the Corporation their written consent prior to being appointed.
- 71.8 The Corporation must send the Registrar the personal details of a Secretary or contact person within 28 days of appointment.

## **72. REPORTING**

- 72.1 The Corporation must prepare for each financial year and in accordance with Regulations:
  - 72.1.1 a general report in accordance with section 330-5<sup>30</sup> to be lodged with the Registrar;<sup>31</sup>
  - 72.1.2 a financial report<sup>32</sup> in accordance with section 333-10(3);
  - 72.1.3 directors' report<sup>33</sup>; and
  - 72.1.4 any other reports that are required by the Registrar.
- 72.2 The Corporation must give to the Members, upon request, such reports as the Act requires.<sup>34</sup>

## **PART J – COMMERCIAL TRANSACTIONS**

### **73. FINANCIAL YEAR**

The Corporation's financial year ends on 30 June.

### **74. ANNUAL BUDGETS**

- 74.1 At all times, the Corporation must have an Annual Budget approved by the Board as recorded in minutes of Board meetings.
- 74.2 The Board may modify an Annual Budget at any time. Anything approved by the Board outside an Annual Budget modifies the Annual Budget to that extent.
- 74.3 In or about July of each year, the CEO (or nominated officer) must give to the Board a draft Annual Budget for the next financial year.
- 74.4 The Board should aim to approve a final Annual Budget for a next financial year no later than August of that financial year.
- 74.5 If on 1 July of any year the Board have not approved an Annual Budget for that financial year, the last Annual Budget carries over to that financial year until

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<sup>30</sup> The general report must also contain any other information required by the Regulations, see Division 1 and Division 2.

<sup>31</sup> Section 330-10. The general report must also contain any other information required by the Regulations, see Division 1 and Division 2.

<sup>32</sup> Section 333-5(3)(a).

<sup>33</sup> Section 333-5(3)(b).

<sup>34</sup> As required under section 342-5.

the Board approves a replacement Annual Budget.

## **75. MANAGEMENT REPORTS**

Not later than 3 Business Days before a meeting, management must give to each Director individually a report of the Corporation's operations in the preceding month and that addresses or includes:

- 75.1 any matter that the Board has previously directed be included;
- 75.2 a statement of financial performance (including cash flows) of that preceding month and of the financial year up to the end of that preceding month showing the actual, budget and variance amounts;
- 75.3 a copy of any information given by the Corporation to government.

## **76. AUDIT**

76.1 The Corporation must appoint an Auditor to ensure that any requirements set out in the Act<sup>35</sup> and Regulations relating to the examination or auditing of the Corporation's financial records are complied with.

## **77. TREASURER OR CFO**

- 77.1 At any time, the Board may appoint a person as treasurer or chief financial officer of the Corporation with such functions, powers and duties as may be agreed between the Corporation and the person.
- 77.2 A person appointed under this clause is subject to such directions as the Board may give to the person, but in the case of a chief financial officer only to the extent necessary to provide the Board with information reasonably required to confirm that the Corporation is not insolvent (in all other matters, the chief financial officer shall be answerable to the Chief Executive Officer).
- 77.3 Subject to any contract in place, the Board may revoke or vary an appointment of a treasurer, and may remove them from office.

## **PART K – RECORDS**

### **78. MINUTES**

The Corporation must keep minute books of General Meetings, Board meetings, resolutions passed by the Directors without a meeting as section 220-5 requires.

### **79. RECORDS TO BE KEPT**

- 79.1 The Corporation must keep financial records as section 322-10 or other law requires and for the period of time section 322-10(2) or other law requires.
- 79.2 The Corporation must keep a copy of the Rule Book and records about officers, secretary or contact person as section 322-5 requires.

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<sup>35</sup> See section 333-15(2) of the Act and sections 24 and 28 of the Regulations.

## **80. DIRECTOR'S RIGHT OF ACCESS**

- 80.1 A Director may inspect and take copies<sup>36</sup>:
- 80.1.1 of the financial records of the Corporation as section 322-25 allows; and
  - 80.1.2 of the books of the Corporation (other than financial records) as section 274-15(1) allows.
- 80.2 A person who ceased to be a Director may inspect and take copies of the books (including financial records) of the Corporation:
- 80.2.1 as section 274-15(2) allows; and / or
  - 80.2.2 as a contract made between the person and the Corporation may allow; and / or
  - 80.2.3 as a resolution of the Board may in any particular case allow.

## **81. MEMBER'S RIGHT OF ACCESS<sup>37</sup>**

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

- 81.1 a resolution of the Board; or
- 81.2 a resolution passed at a General Meeting; or
- 81.3 the Act, other law, or by a court having jurisdiction to do so.

## **PART L – OTHER MATTERS**

### **82. APPLICATION OF FUNDS**

- 82.1 The Directors can use the money and property of the Corporation, not subject to any special trust or conditions by funders, to carry out its business.
- 82.2 The Directors must not give the money and property to Members of the Corporation or other persons.
- 82.3 This clause 82 does not stop the Corporation from making reasonable payments:
- 82.3.1 to a member in their capacity as an employee (for example, wages); or
  - 82.3.2 to a Member under a contract for goods or services provided.

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<sup>36</sup> To the extent that section 376-1(5) and section 274-15(3) allows.

<sup>37</sup> Section 175-1(1) allows a Member to apply to the Court for an order to inspect the books. By section 180-25(1), but subject to section 183-1, any person has a right to inspect the register of Members. By section 220-10 a Member has a right to inspect the minutes of meetings of Members, the way in which they are made available to them will depend on the registered size of the Corporation.

### **83. GIFT RECIPIENT FUND**

- 83.1 The Corporation shall maintain for the main purpose of the Corporation a gift fund on the following conditions:
- 83.1.1 the gift fund is named 'Pika Wiya Health Service Aboriginal Corporation Gift Fund' (**Gift Fund**);
  - 83.1.2 the Gift Fund can receive gifts of money or property for the purposes of the objects of the Corporation;
  - 83.1.3 the Gift Fund can have credited to it any money received by the Corporation because of those gifts.
- 83.2 The Gift Fund cannot receive any money or property other than that stated at clause 83.1.
- 83.3 The Corporation shall use gifts made to the Gift Fund and any money received solely for the furtherance of the Objects of the Corporation.
- 83.4 Receipts issued for gifts to the Gift Fund must state:
- 83.4.1 the full name of the Corporation;
  - 83.4.2 the Australian Business Number (if applicable) and the Indigenous Corporation Number (ICN) of the Corporation; and
  - 83.4.3 the fact that the receipt is for a gift.
- 83.5 As soon as:
- 83.5.1 the Gift Fund is wound up; or
  - 83.5.2 the Corporation's endorsement as a deductible gift recipient is revoked under section 426-55 of the *Taxation Administration Act 1953*,
- then any surplus assets of the Gift Fund must be transferred to another fund, authority or institution, which has similar objectives to the corporation. This body must also be able to receive tax deductible gifts under division 30 of the Income Tax Assessment Act 1997.

### **84. AMENDMENT OF THE RULE BOOK**

- 84.1 By section 69-5(1)(a) the Corporation may amend its Rule Book by special resolution in a General Meeting or an AGM.
- 84.2 The proposed changes must be set out in the notice of the Meeting.
- 84.3 Within 28 days of the Special General Meeting, the Corporation must provide the Registrar with:
- 84.3.1 a copy of the special resolution; and
  - 84.3.2 a copy of those parts of the minutes of the meeting at which the special resolution was passed that relate to the passing of the special resolution; and

84.3.3 a Directors' statement in accordance with section 69-20(5); and

84.3.4 a copy of the Rule Book change.

84.4 A Rule Book change under this clause 84 takes effect on the day that the change is registered by the Registrar.

## **85. CIRCUMSTANCES NOT PROVIDED FOR**

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

## **86. REGISTERED OFFICE OR DOCUMENT ACCESS ADDRESS**

86.1 If the Corporation is registered as a large corporation, it must have a registered office which will be at the principal business office of the Secretary.

86.2 If the Corporation is registered as a small or medium corporation, it must keep certain documents available for inspection at a document access address.

## **87. THE SEAL**

If the Corporation has a common seal:<sup>38</sup>

87.1 the seal must set out the Corporation's name and ICN and be kept in the custody of the Secretary or other person approved by the Board;

87.2 the signatures of 2 Directors of the Corporation, or a Director and a Secretary shall attest the fixing of the seal to a document<sup>39</sup> and unless the Board otherwise determines, 1 of those Directors must be the Chairperson.

## **88. MAKING AND EXECUTION OF CONTRACTS**

The Corporation may execute a document under the common seal (if any) or in any other way section 99-5(2) of the Act or any other law may permit.

## **89. DISPUTE RESOLUTION**

89.1 The dispute resolution process is as follows:

89.1.1 if a dispute arises, the parties involved in the Dispute must try to resolve it themselves on an informal basis, in good faith, having regard to the spirit and intent of the Corporation;

89.1.2 if the Dispute is not resolved within ten business days, any party may give a Dispute Notice to the other parties and to the Corporation;

89.1.3 the Dispute Notice must be in writing and provide details in relation to the Dispute.

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<sup>38</sup> Under section 42-25(1) a Corporation may, but need not, have a common seal.

<sup>39</sup> As allowed by section 99-5(1).

89.1.4 The Directors must assist the parties to help reach a resolution to the Dispute within 20 business days after the Corporation receives the Dispute Notice.

89.2 If the Dispute is regarding the Act or the Rule Book, the Directors or any of the parties involved in the Dispute may ask the Registrar for an opinion.

## **90. NOTICES**

90.1 The Corporation may give to a Member or former Member a notice required under this Rule Book or the Act:

90.1.1 by hand delivery to that person; or

90.1.2 by post to the address for the person in the register of members or an alternative address (if any) nominated by the person; or

90.1.3 by fax to the fax number or by email to electronic address (if any) nominated by the person; or

90.1.4 by any other means the Act permits.

90.2 A notice sent by post is taken to be given 3 calendar days after it is posted. A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.

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

## **91. WINDING UP**

91.1 A Member is not required to pay any debts of the Corporation upon winding up.

91.2 If at any time the Corporation was registered under the *Australian Charities and Not-for-profits Commission Act 2012* and the Corporation is wound up:

91.2.1 any surplus assets must not be distributed to a Member or a former Member;

91.2.2 subject to the Act and any other applicable legislation, and any court order, any surplus assets that remain after the Corporation is wound up must be distributed to one or more charities:

with charitable purpose(s) similar to, or inclusive of, the purpose/s in clause 7, and

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

91.2.3 the decision as to the charity or charities to be given the surplus assets must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Corporation may apply to the Supreme Court to make this decision.

91.3 If clause 91.1 does not apply and the Corporation is wound up, the liquidator

may with the sanction of a special resolution of Members:

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

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

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

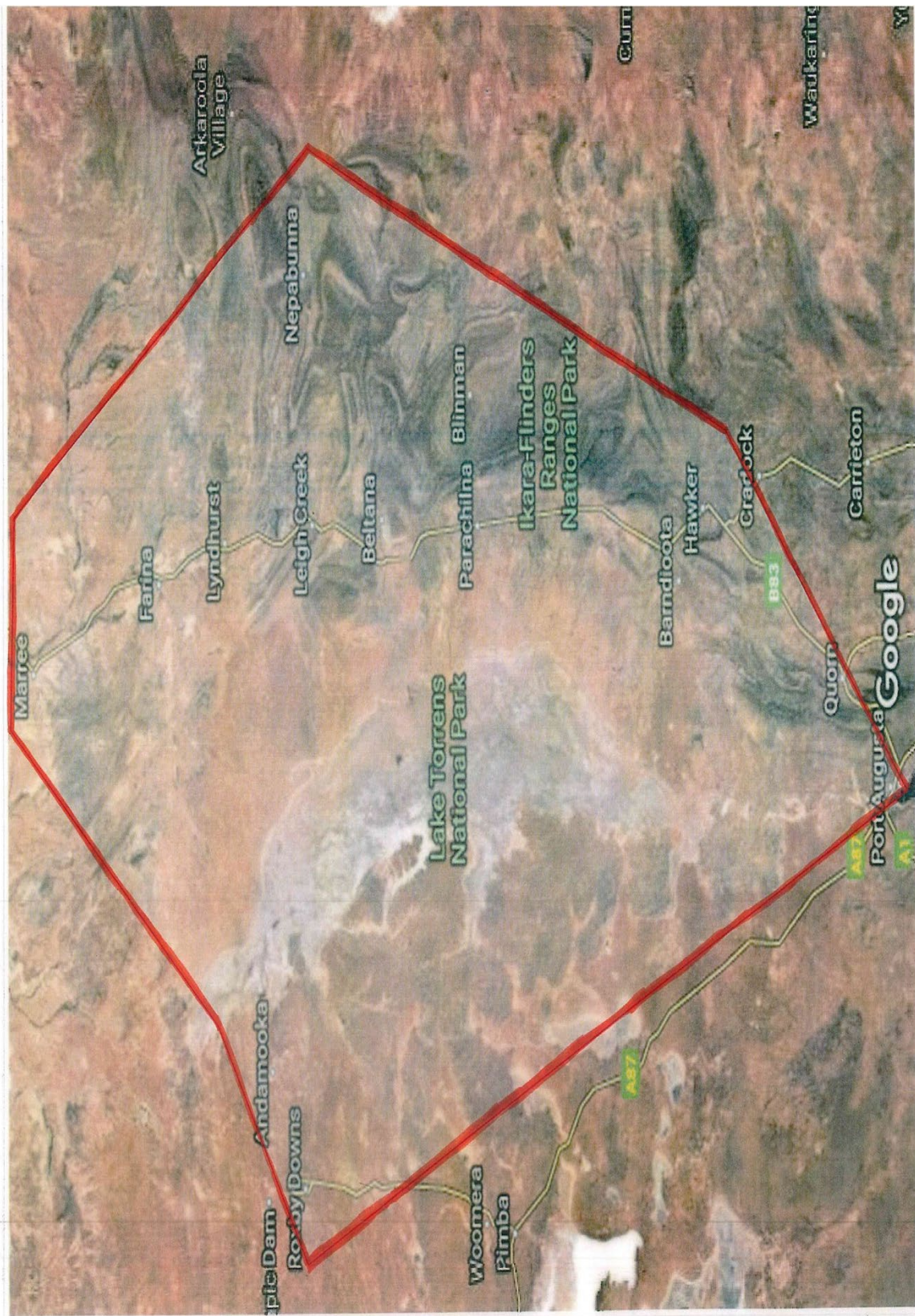


The undersigned (being each person specified in the application for the Corporation's registration under the Act as a person who consents to become a Member) agree to the above as the terms of the Rule Book of the Corporation.

DATED \_\_\_\_\_ 2023

Name: Address: Signature:
Name: Address: Signature:
Name: Address: Signature:
Name: Address: Signature:
Name: Address: Signature:
Name: Address: Signature:
Name: Address: Signature:
Name: Address: Signature:
Name: Address: Signature:

## ANNEXURE A – CATCHMENT AREA



**ANNEXURE B – CANDIDATE STATEMENT**

**NOMINEE DETAILS**

**Full Name** .....

**Date of Birth** .....

**Current Address** .....

.....

**Phone Number** .....

**Email Address** .....

**DECLARATION**

On this.. ..... day of ..... 20..... , I.....

.....

hereby apply to become a Director of Pika Wiya Health Service Aboriginal Corporation ICN 7355 (**Corporation**).

I solemnly and sincerely declare that I am eligible to stand for the position of Member Director as:

1. I am at least 18 years old;
2. I am an Aboriginal person;
3. I am a Member of the Corporation; and
4. I am not disqualified from being a Director, or ineligible to be a Director under the Corporation's
5. Rule Book.
6. I have had a national police clearance in the last 24 months, or else undertake to apply for one within three months of being elected;
7. I have undertaken Board governance training in the last 12 months, or else undertake to complete such training within 12 months of being elected.

.....

Signature of Applicant



**ANNEXURE C – APPLICATION FOR MEMBERSHIP**

**PIKA WIYA HEALTH SERVICE ABORIGINAL CORPORATION ICN 7355  
APPLICATION FOR MEMBERSHIP**

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**APPLICANT DETAILS**

**Full Name** .....

**Date of Birth** .....

**Current Address** .....

.....

**Phone Number** .....

**Email Address** .....

**DECLARATION**

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, I \_\_\_\_\_

---

hereby apply for membership of the Pika Wiya Health Service Aboriginal Corporation ICN 7355.

I solemnly and sincerely declare that I am eligible under clause 17 of the Rule Book being:

1. I am at least 18 years old; and
1. I am an Aboriginal person<sup>1</sup>; and
2. my permanent place of residence is in the Catchment Area<sup>2</sup> and has been for at least 12 months prior to the date of this application.

I declare that I am willing to be bound by the rules of the Rule Book:

.....

Signature of Applicant

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<sup>1</sup> **Aboriginal Person** means an individual who:

- a. is of the Aboriginal race of Australia, or is a descendant of an indigenous inhabitant of the Torres Strait Islands; and
- b. is recognised by the Aboriginal and / or Torres Strait Islander community from which they originated as an Aboriginal and / or Torres Strait Islander person; and
- c. identifies as being of the Aboriginal race of Australia, or as being a descendant of an indigenous inhabitant of the Torres Strait Islands.

<sup>2</sup> **Catchment Area** means the area serviced by the Port Augusta City Council, Davenport Community and District Council of Flinders Ranges. It includes the townships of Marree, Leigh Creek, Woomera, Roxby Downs, Andamooka, Copley and Nepabunna and the Aboriginal Community homelands managed by the Yartawarli Aboriginal Corporation as delineated on the map annexed to this Rule Book at Annexure A.

**APPLICATION FOR MEMBERSHIP – OFFICE USE ONLY**

<b>Application tabled at Directors' Meeting held:</b>	
<b>Date Directors confirmed applicant is eligible for membership:</b>	
<b>Date entered on register of members:</b>	

## ANNEXURE D – CONSENT TO BECOME A DIRECTOR

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I, (full name of person)

---

of (residential address, a postal address is not sufficient)

---

give consent to become a director of the Corporation.

---

I confirm my date of birth is (date of birth)

---

and my place of birth was (place of birth)

---

I acknowledge I am automatically disqualified from managing corporations if I:

1. have been convicted of an offence under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) that is punishable by imprisonment for more than 12 months
2. have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
3. have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
4. am an undischarged bankrupt
5. have signed a personal insolvency agreement and have not kept to the agreement
6. have been disqualified under the *Corporations Act 2001* from managing corporations
7. and I will notify the corporation if any of the above events occur after my appointment

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Signature of person

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Date

---

Note: This form should be completed and given to the Corporation before the person is appointed as a director—section 246-10(1) of the CATSI Act. The period of automatic disqualification is set out in sections 279-5 and 279-10 of the CATSI Act.

## ANNEXURE E – PROXY APPOINTMENT FORM

I, \_\_\_\_\_ *(full name of member)*

of \_\_\_\_\_ *(address of member)*

am a member of Pika Wiya Health Service Aboriginal Corporation *(name of Corporation)*

I appoint \_\_\_\_\_ *(full name of proxy)*

of \_\_\_\_\_ *(address of proxy)*

who is also a member of Pika Wiya Health Service Aboriginal Corporation, as my proxy to vote for me on my behalf at the Special General Meeting of the Corporation to be held on [insert date], and at any adjournment of that meeting.

Signature of member \_\_\_\_\_

Date \_\_\_\_\_

Note: notification of a proxy must be received at PWHS administration office, 40 Dartmouth Street, Port Augusta by [insert date and time].

### Office use only:

Received on (date) \_\_\_\_\_

Eligibility verified by (name of PWHS employee) \_\_\_\_\_



