



Constitution

Approved by Members at a Special General Meeting held on 6 October 2023

Australian College of Midwives

A Public Company Limited by Guarantee

ACN: 602 176 901

Constitution of Australian College of Midwives

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Part I – Preliminary

1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

ACM means the not for profit company limited by guarantee operating under the name of the Australian College of Midwives with an ACN of 602 176 901.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) .

Adoption Date means the date on which a Special Resolution for the approval and adoption of this constitution is passed in a general meeting of the ACM.

Appointed Director has the meaning given to that term in clause 30.2 (b).

Affiliate Member means a member of the ACM who meets the requirements for admission as an Affiliate Member as set out in clause 7.5.

Auditor means the ACM's auditor or Reviewer (as the case may be).

Board means all or some of the directors acting as the board of directors of the ACM.

Branch means any Branch of the ACM established under clause 47.

Chair means the President, as provided for in clause 21.

Chief Executive Officer means the highest ranking employed officer responsible for the day-to-day management of the ACM, as appointed by the Directors.

Constitution means the constitution of the ACM as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time.

Director means a person occupying the position of director of the ACM.

Existing Members means the members of the ACM as at the Adoption Date.

Full Member means a member of the ACM who meets the requirements for admission as a Full Member as set out in clause 8.1.

Governance Policies means the policies developed and adopted by the Board for the management of the ACM and its affairs.

Graduate means any person who has completed their studies in the six months prior to application for membership from an approved program of study leading to initial registration as a Midwife.

Graduate Member means a member of the ACM who meets the requirements for admission as a Graduate Member as set out in clause 8.2.

Member means a Member of the ACM under clause **Error! Reference source not found.** and includes Full Members, Graduate Members, and Affiliate Members and any subcategories.

Midwife means any person registered by an approved registering body to practise midwifery in Australia.

Midwifery Director has the meaning given to that term in 30.2 (a).

Objects means the objects of the ACM set out in clause 4.

Office Bearer has the meaning given by clause 34.

Pre-poll is the means, as determined by the Board from time to time, by which all Members are provided the opportunity to cast a vote prior to the relevant general meeting to which they apply.

President means the president of the ACM.

Register means the register of Members of the ACM.

Registered Entity means a body corporate registered under the ACNC Act.

Resolution means a resolution passed by the affirmative vote of more than 50% of Members at a meeting of Members, either in person, by Pre-poll or by proxy.

Reviewer means a reviewer under the ACNC Act.

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the ACM.

Special Resolution means a resolution passed by the affirmative vote of more than 75% of Members at a meeting of Members, either in person, by Pre-poll or by proxy.

Student means any person who is studying towards initial registration as a Midwife.

Student Member means a member of the ACM who meets the requirements for admission as a Student Member as set out in clause 8.4 (e).

Tax Act means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the ACM.

West-Central Director has the meaning given to that term in clause 30.2 (a) (ii)

- 1.2 In this Constitution, except where the context otherwise requires, a word or expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the word or expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that word or expression has the same meaning as in that provision.

2. Interpretation

- 2.1 In this Constitution, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
 - (g) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
 - (h) a reference to **applicable law** includes the applicable law and any applicable authorisation or licence granted thereunder.
- 2.2 Headings are for ease of reference only and do not affect interpretation.

3. Previous constitutions

- 3.1 This Constitution replaces the 31 October 2020 Constitution of the ACM.

Part II – Objects

4. Objects

- 4.1 The ACM is the peak professional organisation for Midwives in Australia, striving to assist Midwives to reach their full potential and to promote evidence-based maternity care in the interest of women and their families. To this end the ACM's objects are:
- (a) promote and provide education, advice, professional recognition and support for Midwives, and Students;
 - (b) with reference to the International Confederation of Midwives' International Definition of the Midwife, inform and contribute to standards, structures and implementation of midwifery research, education and practice in Australia;
 - (c) facilitate broader community access to information, advice and services concerning maternity care, particularly midwifery service and career options; and
 - (d) develop and maintain relationships and partnerships with maternity care stakeholders - including all levels of government, organisations and individuals, both nationally and internationally - to promote the above objects.
- 4.2 And for the avoidance of doubt and for the purpose of section 150(1) (a) of the Corporations Act, it is confirmed that this Constitution requires the ACM to pursue charitable purposes only and to apply its income in promoting those purposes.
- 4.3 The ACM may only exercise the powers in section 124(1) of the Corporations Act to carry out the objects in this clause and do all things incidental or convenient in relation to the exercise of power under this clause.

Part III – Income and property of the ACM

5. Income and property of the ACM

- 5.1 The income, profits and assets of the ACM will only be applied towards the promotion of the Objects, and the ACM will not be carried on for the profit or gain of the Members, neither while it is operating nor on a winding up.
- 5.2 No income, profits or assets (whether in money, property or other benefits) will be paid, distributed or transferred directly or indirectly to any Member of the ACM except, subject to clause 42, for payments to a Member as genuine compensation for services provided to, or reasonable expenses incurred on behalf of, the ACM, or such other payments, distributions or transfers as may be permitted by applicable laws, or as payment of salaries and expenses of employees of the ACM.

6. Receipts

- 6.1 If the ACM accepts a gift, contribution or donation of money or property, the ACM must give the donor a receipt, and otherwise comply with all applicable laws in relation to any such gift, contribution or donation, including without limitation the Applicable Not-for-Profit Laws.

Part IV – Membership

7. Categories of Membership

- 7.1 The Members of ACM are persons who are admitted to membership by the Board from time in accordance with this Constitution.
- 7.2 The number of Members with which the ACM proposes to be admitted to membership is unlimited.

- 7.3 The categories of membership of ACM shall be:
- (a) Full Members;
 - (b) Graduate Members;
 - (c) Affiliate Members; and
 - (d) Any such category (or subcategory) that the Board determines from time to time.
- 7.4 A person admitted to the category of Full Member may be admitted within the subcategory of Life Member.
- 7.5 A person admitted to the category of Affiliate Member may be admitted within one of the following subcategories:
- (i) Retired Member;
 - (ii) Student Member; or
 - (iii) Pacific Island
- 7.6 Applications for membership of the ACM must specify the category of membership for which the applicant is applying and be in a form approved by the Board in its absolute discretion, including a form requiring an acknowledgement signed by the applicant (including by electronic signature) that the applicant agrees to the terms and conditions of the membership type they have applied for, including a minimum membership period of one year.
- 7.7 The Board may in their absolute discretion:
- (a) determine whether to accept an applicant as a Member; and
 - (b) (if the application is accepted), determine the designation of an applicant's category of membership.
- 7.8 If an application to become a Member is accepted, the ACM must:
- (a) give written notice of the acceptance of the applicant; and
 - (b) enter the name and details of the applicant in the Register as per clause 9 whereupon the applicant becomes a Member of the ACM.
- 7.9 If an application to become a Member is rejected, the ACM must:
- (a) give written notice of the rejection to the applicant; and
 - (b) provide reasons for its determination.

8. Membership Eligibility

- 8.1 Full membership of the ACM shall be open to any person eligible for general or non-practising registration as a midwife with the Nursing and Midwifery Board of Australia and confers the following entitlements:
- (a) receipt of Full Member services;
 - (b) the right to attend and vote at meetings of Members in person, by Pre-poll or by proxy; and
 - (c) eligibility to be appointed as a Director.
- 8.2 Graduate membership of the ACM shall be open to any person who has within the previous six months graduated from an approved midwifery program of study by the Nursing and Midwifery Board of Australia for general registration and confers the following entitlements:
- (a) receipt of Graduate Member services;
 - (b) the right to attend and vote at meetings of members either in person, by Pre-poll or by proxy; and
 - (c) eligibility to be appointed as a Director.

- 8.3 Affiliate membership of the ACM shall be open to any person who is registered as non-practising with the Nursing and Midwifery Board of Australia or otherwise not eligible for another category of membership and confers the following entitlements:
- (a) receipt of Affiliate Member services;
 - (b) the right to attend but no rights to vote at meetings of Members: and
 - (c) ineligible to nominate as a Director.
- 8.4 There are three subcategories of Affiliate membership:
- (d) Retired membership of the ACM shall be open to any person who has previously been eligible for general registration as a midwife with the Nursing and Midwifery Board of Australia and is not currently receiving any remuneration from paid employment.
 - (e) Student membership of the ACM shall be open to any person who is currently enrolled in an approved program of study by the Nursing and Midwifery Board of Australia for general registration as a midwife.
 - (f) Pacific Island membership is open to any person who is registered as a midwife in a Small Pacific Island Country as defined by the Pacific Islands Forum who is working as a midwife, midwifery educator or midwifery manager.
- 8.5 An change to membership voting entitlements or eligibility to be appointed as a Director as provided in this Constitution will occur in accordance with the requirements of the Corporations Act.
- 8.6 A Member must renew membership of the ACM annually by paying the annual membership fee, which falls due on the anniversary of the date of becoming a Member of the ACM, or as otherwise determined by the Board.
- 8.7 The Board shall determine the membership fees, the time of payment of such fees, the specific requirements for admission to membership, and the specific services received in respect of each membership category of the ACM, from time to time.
- 8.8 A right, privilege or obligation which a person has by reason of being a Member of the ACM:
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates upon cessation of the person's membership.

9. Register of Members

- 9.1 The ACM shall maintain a register of all Members.
- 9.2 The following shall be entered in the Register in respect of each Member:
- (a) the full name of the Member;
 - (b) the address or electronic mail address if any, of the Member;
 - (c) the date of admission to and cessation of membership;
 - (d) the category of membership; and
 - (e) such other information as the ACM may require.
- 9.3 A Member must promptly notify the Secretary in writing of:
- (a) any change in their qualification to be a Member; and
 - (b) a change in their name, address or electronic mail address.
- 9.4 Access to the Register of Members shall be at the discretion of the Board subject to the Corporations Act and the *Privacy Act 1988* (Cth) and any other applicable law and only for the purposes for which it was collected.

10. Members' liabilities

- 10.1 The liability of a Member to contribute towards the payment of debts and liabilities of the ACM or the costs, charges and expenses of the winding up of the ACM as per clause 50 is limited to \$2.00.

11. Members' Obligations

- 11.1 A Member will, subject to this Constitution, remain a Member of the ACM provided they maintain membership in accordance with this Constitution.
- 11.2 A Member must comply with any Code of Conduct, agreed ethical principles, policies and procedures as determined by the Board, as if part of this Constitution.

12. Special recognition of Members

- 12.1 The Board shall have the option of granting special recognition upon Members or non-Members of the ACM in accordance with ACM Governance Policies.
- 12.2 Any persons who on 26 July 2014 have been designated as Life Members, Fellows, Distinguished Fellows or Honorary Fellows of the ACM, shall continue to be so designated for their lifetimes, or until voluntarily resigned by the person, or revoked by the Board of the ACM in accordance with ACM Governance Policies.

13. Cessation of membership

- 13.1 Subject to this clause 13, a person immediately ceases to be a Member of the ACM if the person:
- (a) dies;
 - (b) fails to renew membership of the ACM as required by this Constitution;
 - (c) resigns from membership of the ACM by giving written notice to the ACM;
 - (d) commits an act resulting in the person's deregistration as a Midwife;
 - (e) is expelled from the ACM under clause 14.
- 13.2 The resignation of a Member is deemed to take effect 31 days from the date of receipt of the notice of resignation, or such later date as is provided on the notice, provided membership has been effective for a minimum of one year.
- 13.3 Where the minimum membership period requirement of one year has not been met, the resignation of a member is to take effect no earlier than 365 days from the membership subscription date and the Member will be charged the remaining amount of the membership fee payable to the ACM for that period where applicable provided that a change of category of membership shall for the purpose of this subclause be treated as a continuing single membership.

14. Disciplining of Members

- 14.1 Following a report from a complainant and where the Board is of the opinion that a Member:
- (a) has persistently refused or neglected to comply with a provision of this Constitution; or
 - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the ACM; the Board may, by a simple majority resolution (**Disciplinary Resolution**):
 - (c) expel the Member from the ACM; or
 - (d) suspend the Member from such rights and privileges of membership of the ACM as the Board may determine for a specified period subject to a further resolution being passed to confirm the Disciplinary Resolution.
- 14.2 A Disciplinary Resolution of the Board under clause 14.1 is of no effect unless the Board, at a meeting held not earlier than fourteen days and not later than twenty-eight days after service on the Member of a notice under clause 14.3, confirms the Disciplinary Resolution in accordance with clause 14.4.

- 14.3 Where the Board passes a Disciplinary Resolution under clause 14.1, the ACM shall, as soon as practicable, cause a notice in writing to be served on the Member:
- (a) setting out the Disciplinary Resolution of the Board and the grounds on which it is based;
 - (b) stating that the Member may address the Board at a meeting to be held not earlier than fourteen days and not later than twenty-eight days after service of the notice;
 - (c) stating the date, place and time of that meeting; and
 - (d) informing the Member that the Member may do either or both of the following:
 - (e) attend and speak at that meeting; or
 - (f) submit to the Board at or prior to the date of that meeting written representations relating to the Disciplinary Resolution.
- 14.4 At a meeting of the Board mentioned in clause 14.2 the Board must:
- (a) give to the Member mentioned in clause 14.1 an opportunity to make oral representations;
 - (b) give due consideration to any written representations submitted to the Board by that Member at or prior to the meeting; and
 - (c) by a simple majority resolution determine whether to confirm or to revoke the Disciplinary Resolution of the Board made under clause 14.1
- 14.5 Where the Board confirms a Disciplinary Resolution under clause 14.2, the ACM must, within seven days after that confirmation, by notice in writing inform the Member of that confirmation and of the Member's right of appeal under clause 15
- 14.6 A Disciplinary Resolution confirmed by the Board under clause 14.2 does not take effect:
- (a) until the expiration of the period within which the Member is entitled to appeal against the Disciplinary Resolution where the Member does not exercise the right of appeal within that period; or
 - (b) where within that period the Member exercises the right of appeal, unless and until the ACM confirms the Disciplinary Resolution in accordance with clause 15.4.

15. Right of appeal of disciplined Member

- 15.1 A Member may appeal to the ACM in general meeting against a Disciplinary Resolution of the Board which is confirmed under clause 14.2 within seven days after notice of the confirming resolution is served on the Member, by lodging with the Secretary a notice to that effect.
- 15.2 Upon receipt of a notice under clause 15.1, the ACM must notify the Board, which shall convene a general meeting of the ACM to be held within twenty-eight days after the date on which the ACM received the notice or as soon as possible after that date.
- 15.3 At a general meeting of the ACM convened under clause 15.2:
- (a) no business other than the question of the appeal is to be transacted;
 - (b) the Board and the Member are to be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
 - (c) the Members present shall vote by secret ballot on the question of whether the Disciplinary Resolution made under clause 14.1 should be confirmed or revoked.
- 15.4 If the meeting passes a Special Resolution in favour of the confirmation of the Disciplinary Resolution made under clause 14.1 that Disciplinary Resolution is confirmed and the Member shall be expelled or suspended, as the case may be.

Part V – General meetings

16. Annual general meetings

- 16.1 The ACM must, at least once in each calendar year and within the period of five months after the expiration of each financial year of the ACM, convene an annual general meeting of its Members at such time and place (including the use of real-time communication technology) as may be determined by the Board.
- 16.2 The Chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about and make comments on the management of the ACM.

17. General meetings

- 17.1 The Board may, whenever it thinks fit, convene a general meeting of the ACM. If there are not sufficient Directors appointed to form a quorum of the Board, any one Director may, subject to clause **Error! Reference source not found.**, convene a general meeting.
- 17.2 If the Board fails to convene a general meeting in accordance with the requirements of the Corporations Act, Members may call and arrange to hold a general meeting in accordance with that Act.
- 17.3 A general meeting convened by Members is to be convened in the same manner in so far as practicable as the annual general meetings are convened by the Board and any Member who thereby incurs expense is entitled to be reimbursed by the ACM for any reasonable expense so incurred.

18. Amending the Constitution

- 18.1 Subject to clause 18.2, Members may amend the Constitution by passing a Special Resolution.
- 18.2 The Members must not pass a Special Resolution that amends this Constitution if passing such a resolution causes the ACM to no longer be a charity.

19. Notice

- 19.1 Notice of a general meeting and the annual general meeting must be given to:
- (a) each Member;
 - (b) the Auditor; and
 - (c) each Director.
- 19.2 Subject to the Corporations Act allowing meetings of Members to be held with shorter notice, at least twenty-one days' notice of an annual general meeting or general meeting shall be given to those entitled to receive notices of meetings.
- 19.3 Every notice of meeting of Members:
- (a) must set out the place, day and time of meeting and if the meeting is to be held in two or more places, the real-time communication technology that will be used to facilitate this;
 - (b) must state the general nature of the business to be transacted at the meeting;
 - (c) where the Board has determined that voting on a particular matter may be cast by Pre-poll, the relevant notice of meeting must contain instructions and voting materials, and must specify electronic address for the purposes of a Pre-poll vote; and
 - (d) if a Special Resolution is to be proposed at the meeting, must specify an intention to propose the Special Resolution and state the full text of the Special Resolution.
- 19.4 A Member desiring to bring any business before a meeting of Members may do so in accordance with the provisions of the Corporations Act.

20. Quorum

- 20.1 No item of business is to be transacted at a meeting of Members unless a quorum of Members entitled to vote under this Constitution is present at the commencement of the meeting and continues to be present during the time the meeting is considering that item.
- 20.2 The quorum for consideration of the business of a meeting of Members is the presence in person, whether physical or through real-time communication technology (if any) nominated by the Board in the notice of the particular meeting, of thirty financial Members entitled to vote.
- 20.3 If within half an hour after the appointed time for the commencement of a meeting of Members a quorum is not present, the meeting:
- (a) if convened upon the requisition of the Members is automatically dissolved; or
 - (b) in any other case stands adjourned to such day, and at such time and place, as the Board determines or, if no such determination is made by the Board, the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the Chair at the meeting or communicated by written notice to Members given before the day to which the meeting is adjourned) at the same place.

21. Chair

- 21.1 The President shall Chair each meeting of Members of the ACM.
- 21.2 If the President is absent from the meeting of Members, the Directors present are to elect one of the Directors present to Chair the meeting.

22. Adjournment

- 22.1 The Chair at a meeting of Members at which a quorum is present may, with the consent of the majority of Members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 22.2 Where a general meeting is adjourned for fourteen days or more, the ACM must give written or oral notice of the adjourned meeting to each Member of the ACM stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 22.3 Except as provided in clauses 22.1 and 22.2, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

23. Business of a General Meeting

- 23.1 No business may be transacted at a general meeting unless the general nature of the business is stated in the notice convening the meeting.
- 23.2 No person may move any amendment to a resolution proposed at a general meeting the terms of which are set out in the notice convening the meeting, or to a document which relates to such a resolution (and a copy of which has been sent to Members or made available for them to inspect or obtain), without the approval of the Chair of the meeting (in their discretion).

24. Conduct of a General Meeting

- 24.1 Subject to applicable laws and this Constitution, the general conduct of each general meeting of the ACM and the procedures to be adopted at the meeting will be determined by the Chair of the meeting.
- 24.2 If there is a dispute at a general meeting about a question of procedures, the Chair of the meeting may determine the questions.

25. Decisions on questions

- 25.1 A resolution to be put to the vote at a meeting of Members of the ACM may be determined by Pre-poll, on a show of hands or by a poll.
- 25.2 On a show of hands:

- (a) a declaration by the Chair that a resolution has been carried or carried unanimously or carried by a particular majority or lost; and
 - (b) an entry to that effect in the minutes of the meeting, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 25.3 At a meeting of Members, a poll may be demanded by the Chair or by not less than three Members present in person at the meeting.
- 25.4 Where a poll is demanded at a general meeting:
- (a) the poll must be taken in such manner and at such time before the close of the meeting as the Chair directs;
 - (b) the results of the poll shall be deemed to be the resolution of the meeting on that matter; and
 - (c) independent scrutineers shall count votes at either open or secret ballot.

26. Voting

- 26.1 Members are entitled to vote at a general meeting of the ACM, subject to the voting rights attaching to the category of membership to which they belong, as per clause 8.
- 26.2 A Member is not entitled to vote at any general meeting of the ACM unless all money due and payable by the Member to the ACM has been paid, in accordance with clause 8.
- 26.3 Subject to this Constitution, on a Pre-poll, poll or show of hands, a Member has one vote.
- 26.4 All votes must be given personally, by Pre-poll or by proxy.
- 26.5 In the case of an equality of votes on a question at a general meeting, the Chair is entitled to exercise a second or casting vote in addition to the Chair's vote as a Member.

27. Votes by Pre-poll

- 27.1 A voting Member has a right to vote by Pre-poll prior to the relevant general meeting. Every member who is entitled to vote at that general meeting is entitled to cast a vote by Pre-poll.
- 27.2 The Pre-poll must be in the form determined by the Board for the relevant meeting of Members, or as similar to it as the circumstances permit.
- 27.3 The Pre-poll is operative only for a single meeting of Members (and any adjournment or postponement of that meeting) and must specify the proposed date of that meeting.
- 27.4 A Pre-poll must be executed in the case of a Member by the:
- (a) Member; or
 - (b) a proxy of the Member.
- 27.5 To be valid, the Pre-poll must be received by the Returning Officer at least seven days before the time for holding the relevant general meeting or adjourned general meeting of the ACM.
- 27.6 The ACM is deemed to receive the Pre-poll and any proxy or other authority under which it was executed when they are received by the Returning Officer by a means specified for that purpose in the notice of meeting.
- 27.7 A vote cast by Pre-poll will be valid even if, before the vote was cast the Member:
- (a) died;
 - (b) became mentally incapacitated; or
 - (c) wishes to change his or her mind,
 - (d) unless written notification of the relevant event is received by the Returning Officer at least 48 hours before the meeting, adjourned meeting or the taking of the poll in respect of which the Pre-poll was to have been cast.

28. Proxies

28.1 Appointment of proxy

- (a) A Member who is entitled to attend and vote at a general meeting of ACM may appoint a person as a proxy to attend, speak and vote for that Member.
- (b) The proxy must be a Full or Graduate Member of ACM under clause 7.3.
- (c) An appointment of a proxy under clause 28.1 (a):
 - (i) Must be in a form approved by the Board;
 - (ii) May be a standing appointment; and
 - (iii) Must be received by ACM at least 24 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting.
- (d) A proxy has the same rights as the Member to speak and vote at the general meeting and to demand, or join in demanding, a poll.

28.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy and state:
 - (i) The Member's name and address
 - (ii) The proxy's name or the name of the office held by the proxy; and
 - (iii) The general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) 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 the instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.
- (c) 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.
- (d) The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the ACM from the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.
- (e) 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 24 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:
 - (i) The Member who appointed the proxy ceases to be a Member with voting rights; or
 - (ii) ACM receives notice of:
 - (iii) The revocation of the instrument appointing the proxy; or
 - (iv) The appointment of a new proxy
- (f) ACM is not responsible for ensuring that the 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.

Part VI – The Board

29. Powers of the Board

- 29.1 The Board, subject to the applicable laws, any regulations, this Constitution, any Resolution passed by the ACM in general meeting, and the Objects:
- (a) controls and manages the affairs of the ACM;
 - (b) may exercise all such functions as may be exercised by the ACM other than those functions that are required by this Constitution to be exercised by the ACM in general meeting;
 - (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the ACM;
 - (d) has the authority to make, repeal or alter from time to time Governance Policies as to the management of the ACM and its affairs; and
 - (e) has the responsibility to practice within good governance and therefore remain accountable to the membership.
- 29.2 Without limiting the generality of clause 29.1, the Directors may exercise all the powers of the ACM to:
- (a) borrow money;
 - (b) charge any property or business of the ACM;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the ACM or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 29.3 The powers of the Directors are subject to the Corporations Act, this Constitution and to any regulations or by-laws (not being inconsistent with this Constitution) from time to time made by the ACM in general meeting. No regulation or by-law made by the ACM in general meeting will invalidate any prior act of the Directors which would have been valid if that regulation or by-law had not been made and the Directors shall always be able to act and make determinations in order to comply with their duties as Directors.
- 29.4 The Directors must comply with the duties described in governance standard 5 of the regulations made under the ACNC Act.

30. Board composition

- 30.1 The Board will always seek to attract Directors with the requisite skills and capabilities to achieve the best decision-making on behalf of the ACM. Until the ACM in a general meeting shall otherwise determine, the Board shall consist of not less than three persons or more than seven persons.
- 30.2 Of the seven persons on the Board:
- (a) five persons will be Midwives all of whom must be full financial Members of the ACM elected by the Members:
 - (i) one of whom shall be a popularly-elected President; and
 - (ii) one of whom shall be a popularly-elected as a Director residing in either of the Northern Territory, South Australia or Western Australia and in order to continue to hold office as such a Director he or she must remain resident at all times in either the Northern Territory, South Australia or Western Australia (**West-Central Director**); and
 - (iii) three of whom shall be popularly-elected Directors (each a **Midwifery Director**);

- (b) the other two persons need not be Members and will be appointed by the Board having been selected on merit according to the specific skill requirements and process specified by the Board from time to time (each an **Appointed Director**).

30.3 Each Midwifery Director is elected at a meeting of Members in accordance with policies determined by the Board from time to time.

31. Term

- 31.1 All Directors, with the exception of Directors elected/appointed following a casual vacancy under clauses 33.4 or 33.5, shall hold office for a term of three years and shall be eligible for re-election (or reappointment in the case of Appointed Directors) to the Board for a second term of three years.
- 31.2 A Director, with the exception of Directors elected/appointed following a casual vacancy under clause 30.2, who has held office for two consecutive terms is not eligible to be a Director for a period of one year after those six years' service.
- 31.3 The terms of members of the Board shall be staggered so that no more than three Directors will retire in each year.
- 31.4 In order to comply with clause 31.3, on occasion the Board may by resolution extend the term of office of an existing Midwifery Director or Appointed Director for an extra year such that the total term is four years instead of three years.

32. Nomination and appointment of Directors

- 32.1 Nominations for the positions of a Director subject to clause 30 must be called by the Board at least 60 days prior to each annual general meeting of the ACM.
- 32.2 The Board shall determine the last day for lodgement of notices of candidature.
- 32.3 In calling for nominations the Board will prepare and circulate a document outlining specific skill requirements for positions.
- 32.4 Nominations for the position of Director will be in a form determined by the Board from time to time.
- 32.5 If only one nomination that accords with requirements of the Board is received for each vacancy, that nomination will be appointed unopposed.
- 32.6 When the number of nominees is greater than the number of vacancies an election shall be held for the appointment of candidates of a meeting of Members.
- 32.7 Notice of elections and details of nominees for the positions who meet Board requirements and for which Members will vote must be provided to all Members eligible to vote at least twenty-one days prior to a meeting of Members at which the election is to take place.
- 32.8 Notification of all appointments without election must be provided to Members at the relevant annual general meeting.

33. Vacation of office

- 33.1 The office of a Director immediately becomes vacant if the Director:
 - (a) become ineligible to be a Director of the ACM under the ACNC Act while the ACM is a Registered Entity;
 - (b) ceases to be a Director by operation of the Corporations Act;
 - (c) dies;
 - (d) is a Midwifery Director and ceases to be a Member of the ACM in accordance with clause 13;
 - (e) resigns by notice in writing to the ACM;
 - (f) is removed by a Resolution of the ACM; or

(g) in the case of the West-Central Director, no longer resides in the Northern Territory, South Australia or Western Australia.

- 33.2 At least two months' notice must be given to the ACM of the intention to move a Resolution to remove a Director at a general meeting.
- 33.3 If notice of intention to move a Resolution to remove a Director at a general meeting is received by the ACM, the Director must be given a copy of the notice as soon as practicable.
- 33.4 In the event of a vacancy in the position of President, the Vice-President will assume this position until the end of the existing term of the President.
- 33.5 In the event of any other vacancy, the Board may appoint a replacement to fill the role until the next annual general meeting, at which time a new Director will be elected and appointed until the end of the term of the original vacancy.
- 33.6 If reasonable attempts are made and no suitable candidate is found, then the nomination and election process is to be repeated at the next annual general meeting for the remainder of the term.

34. Office Bearers

- 34.1 The office bearers of the ACM are:
(iv) the President, who must be a full financial Member of the ACM; and
(v) the Vice-President, who must be a full financial Member of the ACM.
- 34.2 The President shall be nominated and elected according to the proceedings outlined for the appointment of Directors in clause 32.
- 34.3 The Vice President shall be appointed in accordance with policies determined by the Board from time to time
- 34.4 The President, Vice President and Chief Executive Officer will comprise the Executive Committee.
- 34.5 If a vacancy arises throughout the financial year, the Board may appoint a replacement in accordance with clause 32.
- 34.6 The duties of Office Bearers of the ACM are to be determined by simple majority resolution of the Board and recorded in the Governance Policies.

35. Board meetings and quorum

- 35.1 The Board is to meet in person or through real-time communication technology at least four times in each calendar year at such place and time as the Board determines.
- 35.2 A Director may at any time call a Board meeting.
- 35.3 The person calling a Board meeting must ensure that notice of the Board meeting is given verbally, in writing or by electronic means to each Director at least three days before the meeting or at another time determined by Board resolution.
- 35.4 Notice of a meeting given under clause 35.3 must specify the general nature of the business to be transacted and no business other than that business is to be transacted, except business which the majority of the Directors present at the meeting agree to treat as business which should be discussed.
- 35.5 A quorum for the transaction of the business of a meeting of the Board is 50% of Directors plus one (rounded up), providing at least three of the Directors are Midwifery Directors.
- 35.6 No business is to be transacted by the Board unless a quorum is present and if within 30 minutes after the time appointed for the meeting a quorum is not present the meeting stands adjourned to the same day in the following week at the same time and place unless otherwise specified at the time of the adjournment.
- 35.7 If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

- 35.8 The President of the ACM is the chair at each meeting of the Board. If the President is not present at any meeting of the Board within fifteen minutes after the time appointed for holding such meeting, the Directors present may choose a Director present who is a Midwife as a chairperson.
- 35.9 All the provisions of this Constitution relating to the Board, or other ACM Committee meetings, apply to a meeting held using real-time communication technology.

36. Decisions and questions

- 36.1 The Board, or any committee appointed by the Board, will strive to achieve decision making by consensus. Whenever this is not possible a simple majority vote will decide. In the event of a tied vote the President is entitled to exercise a second or casting vote.
- 36.2 Subject to clause **Error! Reference source not found.** the Board may act notwithstanding any vacancy on the Board.
- 36.3 As required by the Corporations Act, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the ACM, subject to clauses 44 and 45.

37. Written resolutions

- 37.1 The Board may pass a resolution without a Board meeting being held if:
- (i) All the Directors entitled to vote on the resolution are sent a document containing the resolution; and
 - (ii) The resolution is approved by a majority of the Directors entitled to vote on the resolution.
- 37.2 For this purpose, a resolution is approved by a Director if:
- (i) The document containing the terms of the resolution has been signed by the Director either physically or by affixing a signature by electronic means, and the document has been given to the ACM; or
 - (ii) Where the Board has resolved to accept a procedure for Directors to indicate their approval for a resolution by electronic means, the Director has indicated the Director's approval in accordance with that procedure.

38. Delegation

- 38.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to:
- (a) a committee of Directors (which comprise at least one Director and which may include persons other than Directors);
 - (b) a Director;
 - (c) an employee of the ACM; or
 - (d) any other person or group of persons.
- 38.2 A committee or person to which any powers have been delegated must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 38.3 A committee or person to which any powers have been delegated may be authorised to sub-delegate all or any of the powers for the time being vested in it.
- 38.4 The Directors may at any time revoke any delegation of power.
- 38.5 If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Directors may act only to call a general meeting for the purpose of appointing one or more Directors.

39. Validity of acts of Directors

- 39.1 If it is discovered that:

- (a) there was a defect in the election/appointment of a person as a Director or member of a Directors' committee; or
- (b) a person elected/appointed to one of those positions was disqualified, all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly elected/appointed and was not disqualified.

40. Minutes and registers

- 40.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all general meetings, Board meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Board meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Members without a meeting;
 - (d) all resolutions passed by Directors without a meeting;
 - (e) all appointments of officers;
 - (f) all orders made by the Directors and Directors' committees; and
 - (g) all disclosures of interests.
- 40.2 Minutes must be signed (physically or electronically) by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body, subject to endorsement by the Directors, and if so signed will as between the Directors be conclusive evidence of the matters stated in such minutes.
- 40.3 The ACM must keep all registers required by this Constitution and the Corporations Act.

41. Chief Executive Officer

- 41.1 The Chief Executive Officer shall be appointed by the Board for such term and on such conditions as it thinks fit.
- 41.2 The Chief Executive Officer must not be a Director of the ACM.
- 41.3 The Board may at any time:
- (a) define, limit and restrict that person's powers;
 - (b) fix that person's duties; and
 - (c) subject to the provisions of any contract between that person and the ACM, vary any of the powers so conferred and remove that person from that office and appoint another.

Part VII – Payments to Directors and Directors' interests

42. Payments to Directors

- 42.1 No payment will be made to any Director of the ACM other than payment:
- (a) which is in reimbursement of out of pocket expenses reasonably and properly incurred by the Director in the performance of any duty as Director of the ACM where the amount payable does not exceed an amount previously approved by the Directors;
 - (b) for any service rendered to the ACM by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service, and the amount payable, has the prior approval of the Directors and is not more than an amount which commercially would be reasonable payment for the service; and
 - (c) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

- 42.2 Notwithstanding anything else in this Constitution, a payment of any kind which permitted to be paid to a Director by this Constitution can be made by the ACM to a Director only if that payment is approved by the Board.

43. Directors' interests

43.1 As required by the Corporations Act, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the ACM.

43.2 Subject to this Constitution a Director or a body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any agreement or arrangement with the ACM;
- (b) hold any office or place of profit other than as auditor of the ACM; and
- (c) act in a professional capacity other than as auditor of the ACM,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the ACM or from holding an office or place of profit in or acting in a professional capacity with the ACM.

43.3 The fact that a Director holds office as a Director, and has fiduciary obligations arising out of that office:

- (a) will not void or render voidable a contract made by a Director with the ACM;
- (b) will not void or render voidable a contract or arrangement entered into by or on behalf of the ACM and in which the Director may have any interest; and
- (c) will not require the Director to account to the ACM for any profit realised by or under any contract or arrangement entered into by or on behalf of the ACM and in which the Director may have any interest.

43.4 A Director may be or become a director or other officer of, or otherwise be interested in:

- (a) any related body corporate of the ACM; or
- (b) any other body corporate promoted by the ACM or in which the ACM may be interested as a vendor, shareholder or otherwise,

and is not accountable to the ACM for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

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

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted to do so by the Corporations Act, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or a proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or a proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

44. Conflicts of interest

44.1 In addition to clause 45, the Directors shall, to the extent required by any applicable law, establish a mechanism for dealing with any conflicts of interest that may occur involving a Director, officer or employee of the ACM.

Part VIII – Branches

45. Branch Chairs Committee

- 45.1 The Branch Chairs Committee will be a standing committee of the Board consisting of the Branch Chair of each state and territory and will:
- (a) provide advice and support to the Board in accordance with its terms of reference; and
 - (b) promote service provision at the state and territory level.
 - (c) provide a conduit between sub-branches of their state and territory and the Board
- 45.2 The Board will appoint a chairperson of the Branch Chairs Committee who will be a current Midwifery Director.
- 45.3 The responsibilities of the Branch Chairs Committee will be defined in their terms of reference and be delegated and managed in accordance with policies determined by the Board from time to time.

46. Branches

- 46.1 The Board may establish Branches of the ACM in a state or territory consisting of Midwives in that state or territory that it deems necessary to enable and facilitate the provision of services to Members and enable the business of the ACM to be conducted in that state or territory.
- 46.2 The Board may establish sub-branches of the ACM within a state or territory consisting of midwives in that region that it deems necessary to enable and facilitate the provision of services to Members and enable the business of the ACM to be conducted in that region. A sub-branch reports through the state or territory Branch to the Board via the Branch Chairs Committee.
- 46.3 The Board may dissolve a Branch or sub branch where it ceases to be viable as determined by the Branch and Board jointly.
- 46.4 A Branch or sub-branch has no legal status separate from that of the ACM and may not establish itself as a separate legal entity.
- 46.5 The responsibilities of each Branch or sub-branch will be delegated and managed in accordance with policies determined by the Board from time to time, in consultation with the Branch.
- 46.6 Each Branch or sub-branch, subject to the direction and oversight of the Board, will be led and administered by a Branch Committee. Each Branch Committee will elect a Branch Chair, Secretary and Treasurer.
- 46.7 Members of a Branch Committee in their capacity as such are not Directors of the ACM for any purpose. However, a member of a Branch Committee may be a Director if the member has also been appointed as a Director under this Constitution.

Part IX – Miscellaneous

47. Inspection of records

- 47.1 Except as otherwise required by the Corporations Act and other relevant legislation, the financial records, books and other documents of the ACM shall be open for inspection, free of charge, by a Member of the ACM at any reasonable hour, subject to the condition that all Members agree to maintain the confidentiality of such information.

48. Service of notices

- 48.1 Notice may be given by the ACM to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification (including email) to the person at the person's address shown in the Register or the address supplied by the person to the ACM for sending notices to the person; or

- (c) if it is a notice of a meeting of Members, by giving it in accordance with section 249J(3) of the Corporations Act.

48.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the sixth day after the day on which it was posted.

48.3 Subject to the Corporations Act, a notice sent by electronic notification is taken to be served:

- (a) by properly addressing electronic notification and transmitting it; and
- (b) on the day after its dispatch.

48.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted:

- (a) on a notice board at the ACM's registered office; or
- (b) on the ACM's website.

48.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of this clause 48.

48.6 A certificate in writing signed by a Director or other officer of the ACM that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

48.7 Subject to the Corporations Act the signature to a written notice given by the ACM may be written or printed.

48.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

49. Audit and accounts

49.1 The Directors must cause the ACM to keep written financial records in relation to the business of the ACM as required by law.

49.2 The Directors must cause the financial records and financial documents of the ACM to be audited as required by law.

50. Winding up

50.1 If the ACM is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the ACM for the:
 - (c) payment of debts and liabilities of the ACM (in relation to clause 50.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and

- (d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$2.00 (and otherwise has no liability for the payment of debts and liabilities of the ACM nor obligation to contribute to the property of the ACM).

50.2 If the ACM is wound up, any surplus assets must not be distributed to a Member, or a former Member of the ACM. Unless that Member or former Member is a charity as described in clause 52.3.

50.3 Subject to the Corporations Act, any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 52.6) that remain after the ACM is wound up must be distributed to one or more registered charities:

- a) With charitable purpose (s) similar to, or inclusive of, purposes consistent with the objects of ACM;
 - b) Which also prohibit the distribution of any surplus assets to its Members, to at least the same extent as ACM; and
 - c) That is or are deductible gift recipients under the Tax Act.
- 50.4 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 company may apply to the Supreme Court to make this decision.
- 50.5 If the ACM deductible gift recipient endorsement is revoked (whether or not the ACM is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of clause 52.3, as decided by the Board.
- 50.6 For the purpose of this clause:
- (a) 'gift funds' means:
 - (i) Gifts of money or property for the principal purpose of ACM;
 - (ii) Contributions made in relation to a fund-raising event held for the principal purpose of the ACM; and
 - (iii) Money received by the ACM because of such gifts and contributions.
 - (b) 'contributions' and 'fund-raising vent' have the meanings given in the Tax Act.

51. Indemnity, insurance and access

51.1 Indemnity

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each officer, Director and Secretary of the ACM (Officer) 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 ACM or the proper performance of any duty of that Officer.
- (b) The indemnity in clause 52.1 (a):
 - (i) Is enforceable without the Officer first having to make a payment or incur an expense;
 - (ii) Is enforced by the Officer notwithstanding that the Officer has ceased to be an Officer of the ACM; 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
 - (iv) The ACM may enter into an agreement containing an indemnity in favour of the Officer, with the ACM to determine terms of the indemnity contained in the agreement.

51.2 Insurance

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

52. Resolution of internal disputes

- 52.1 Disputes between Members (in their capacity as Members), and disputes between Members and the ACM that the parties have not been able to themselves resolve (after following any internal dispute procedures the Directors may specify or adopt) are to be referred to a mediator as the Directors may, subject to applicable law, determine.
- 52.2 At least seven days before such a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.
- 52.3 Any internal dispute procedures the Directors may specify or adopt include, without limitation:
- (a) the appointment of an independent person to arbitrate on the dispute;
 - (b) processes to bring the parties together to help resolve the dispute at an early stage, and should allow all parties a full and fair opportunity of presenting their case.

53. Complaints

- 53.1 If, and to the extent, required by any applicable law, the Directors shall ensure that a mechanism is established that will properly and effectively deal with complaints made by members of the public and grievances from employees.

54. Execution of documents

- 54.1 The ACM may execute a document:
- (a) in accordance with section 127(1) of the Corporations Act;
 - (b) in any other way approved by the Directors and permitted by law.

55. Secretary

- 55.1 There must be at least one Secretary of the ACM appointed by the Directors on conditions determined by them.
- 55.2 The Secretary is entitled to attend all Directors' and general meetings.
- 55.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.