

Constitution

of

Aboriginal Hostels Limited
ACN 008 504 587

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ABORIGINAL HOSTELS LIMITED

Corporations Act 2001

1. COMPANY LIMITED BY GUARANTEE

1.1 Constitution

This document, as amended from time to time in accordance with the *Corporations Act*, will be the *Constitution* of the *Company*.

1.2 Company limited by guarantee

The *Company* is a company limited by guarantee and the liability of the *Member* is limited as provided in the *Constitution*.

1.3 Member's liability limited

The *Member* undertakes to contribute such an amount as may be required, not exceeding two dollars to the *Company's* property if the *Company* is wound up while it is a *Member* and within one year after it has ceased to be a *Member*, for:

- (a) payment of the *Company's* debts and liabilities contracted before the time when it ceased to be a *Member*; and
- (b) the costs, charges and expenses of winding up.

1.4 Income and Property

Except in circumstances of winding up:

- (a) The income and property of the *Company* must be applied solely towards the promotion of the objects of the *Company* as set out at **article 4.1**;
- (b) the income and property of the *Company*, or any portion of it, must not be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of a profit to the *Member* of the *Company*; and
- (c) this **article 1.4** does not prevent the payment in good faith of:
 - (i) reasonable and proper remuneration to any officer, servant or *Member* of the *Company* in return for any services actually rendered to the *Company*;
 - (ii) reasonable and proper rent for premises demised or let by any *Member* to the *Company*; or
 - (iii) any moneys by the *Company* to the *Commonwealth* under the terms of any relevant funding agreement or any other contractual arrangement or agreement.

2. REPLACEABLE RULES

2.1 To the extent permitted by law, the *Replaceable Rules* set out in the *Corporations Act* do not apply to the *Company*.

3. REGISTERED OFFICE

The registered office of the *Company* shall be situated in Canberra in the Australian Capital Territory.

4. OBJECTS

4.1 The *Company's* objects are to provide or facilitate safe, culturally appropriate and affordable accommodation for Indigenous Australians who must live away from home to access services and economic opportunity.

5. POWERS

5.1 Subject to this *Constitution*, the *Commonwealth Authorities and Companies Act 1997* and the *Corporations Act*, the *Company* has the power are to do all things necessary, convenient or incidental to carrying out the objects set out in **article 4.1**.

5.2 Notwithstanding **article 5.1**:

(a) the *Company* shall not carry on any business or do any act or thing that is beyond the powers of the *Commonwealth* under the *Australian Constitution*, or which does not have as its primary objective assisting *Aboriginal* and *Torres Strait Islander* people; and

(b) the *Company* and the *Directors* must comply with the *Commonwealth Authorities and Companies Act 1997* and the *Aboriginal and Torres Strait Islander Act 2005*.

Note: Article 5.2 recognises that the *Commonwealth* is the sole *Member* of the *Company* and that there are limitations on the activities in which the *Commonwealth* may engage.

6. MEMBER

The sole *Member* of the *Company* is the *Commonwealth*.

7. APPOINTMENT OF DIRECTORS

7.1 There shall be a minimum of 6 and a maximum of 9 *Directors*.

7.2 The *Commonwealth* may, by notice in writing to the *Company*, appoint a person to be a *Director* for a period of up to three years. *Directors* may be reappointed.

7.3 Each *Director* shall hold office for the period of his or her appointment in accordance with **article 7.2**, or until such office is vacated in accordance with **article 11**.

7.4 A person must give the *Company* their consent in writing to act as a *Director* before being appointed.

8. POWERS AND DUTIES OF DIRECTORS

8.1 Powers of directors

The business of the *Company* is to be managed by or under the direction of the *Directors*. Except to the extent that the *Member* is required to exercise a power, the *Directors* may exercise all of the powers of the company subject to the *Corporations Act*, the *Constitution* and the *Aboriginal and Torres Strait Islander Act 2005*.

8.2 Validity of acts of Directors

All acts of *Directors* are valid even if:

- a *Director's* appointment is later found to have some defect; or
- a *Director* was disqualified at the time of the act being done.

8.3 Director's Delegations

(a) The *Directors* can pass a resolution to delegate any of their powers to:

- a *Director*;
- a committee of *Directors*; or
- the *Chief Executive Officer*

subject to any conditions or directions determined by the *Directors* and set out in the resolution.

(b) The delegate or delegates must exercise any delegated powers in accordance with any conditions or directions determined by the *Directors* in accordance with **article 8.3(a)**.

8.4 Written Resolutions

(a) The *Directors* or any *Committee of Directors* may pass a resolution if all *Directors* sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) Separate copies of the document can be used provided the wording of the statement and resolution is identical in each copy.

(c) The resolution is passed when the last *Director* entitled to vote signs.

9. CHIEF EXECUTIVE OFFICER

9.1 There is to be a *Chief Executive Officer* of the *Company*.

9.2 The *Chief Executive Officer* is to be appointed by the *Directors* after consulting with the *Minister*.

9.3 The *Chief Executive Officer* may be appointed for a period of not more than five years. (Note that a *Chief Executive Officer* is eligible for re-appointment, subject to compliance with Article 9.2.)

9.4 The *Chief Executive Officer* must manage the day to day administration of the *Company* in accordance with any policies determined and directions given to him or her by the *Directors* in writing.

9.5 The *Chief Executive Officer* is to be remunerated on the terms determined by the *Remuneration Tribunal* (an independent statutory authority established under the *Remuneration Tribunal Act 1973*).

9.6 If there is no *Remuneration Tribunal* determination, the *Chief Executive Officer* holds office as determined by the *Directors*.

9.7 The *Directors* may terminate the *Chief Executive Officer's* appointment after consulting with the *Minister*.

Note: *Chief Executive Officer* has the same meaning as in **article 21.1** of this *Constitution*.

10. SECRETARY

10.1 There is to be a *Secretary* of the *Company*.

10.2 The *Secretary* is to report to and take directions from the *Chief Executive Officer*.

10.3 The *Secretary* is to be engaged as a Senior Executive Service Officer under the *Public Service Act 1999*.

10.4 The nominee for the position of *Secretary* must give the *Company* his or her consent in writing to act as a *Secretary* before being appointed.

11. VACATION OF OFFICE

11.1 In addition to the circumstances in which the office of a *Director* becomes vacant under the *Corporations Act* and otherwise subject to this *Constitution*, the office of a *Director* will become vacant if:

- (a) the *Director* becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (b) the *Director* resigns his or her office by notice in writing to the *Company*;
- (c) the *Director* becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) the *Director's* appointment expires or is revoked by the *Commonwealth*;

(e) the *Director* fails to attend 3 consecutive meetings of the Board without leave of absence from the other Directors (or, if he or she is the sole Director, the Commonwealth);

(f) the *Director* fails to comply with the material personal interest **articles at 12.1–12.14**; or

(g) the *Director* is removed by a resolution of the *Member*.

12. MATERIAL PERSONAL INTERESTS

12.1 Subject to article 12.2, a *Director* who has a material personal interest in a matter that relates to the affairs of the *Company* must give the other *Directors* notice of the interest.

12.2 A *Director* does not need to give notice of an interest under **article 12.1** if:

(a) the interest:

(i) arises in relation to the *Director's* remuneration as a *Director*; or

(ii) relates to a contract the company is proposing to enter into that is subject to approval by the *Member* and will not impose any obligation on the *Company* if not approved by the *Member*; or

(iii) arises merely because the *Director* is guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the *Company*; or

(iv) arises merely because the *Director* has a right of subrogation in relation to a guarantee or indemnity referred to in **article 12.2(a)(iii)**; or

(v) relates to a contract that insures, or would insure, the *Director* against liabilities the *Director* incurs as an officer of the *Company* (but only if the contract does not make the *Company* or a related body corporate the insurer); or

(vi) relates to any payment by the *Company* or related body corporate in respect of an indemnity permitted under section 199A of the *Corporations Act* or any contract relating to such an indemnity; or

(vii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the *Director* is a director of the related body corporate; or

(b) all of the following conditions are satisfied:

(i) the *Director* has already given notice of the nature and extent of the interest and its relation to the affairs of the company under **article 12.1**;

(ii) if a person who was not a *Director* at the time when the notice under **article 12.1** was given is appointed a *Director* – the notice is given to that person;

(iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(c) the *Director* has given a standing notice of the nature and extent of the interest under **article 12.5** and the notice is still effective in relation to the interest.

12.3 The notice required by **article 12.1** must:

(a) give details of:

(i) the nature and extent of the interest; and

(ii) the relation of the interest to the affairs of the *Company*; and

(b) be given at a *Directors'* meeting as soon as practicable after the *Director* becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

12.4 A *Director* who has an interest in a matter may give the other *Directors* standing notice of the nature and extent of the interest in accordance with **article 12.5**. The notice may be given at any time and whether or not the matter relates to the affairs of the *Company* at the time the notice is given.

12.5 The notice must:

(a) give details of the nature and extent of the interest; and

(b) be given:

(i) at a *Directors'* meeting (either orally or in writing); or

(ii) to the other *Directors* individually in writing.

The standing notice is given under **article 12.5(b)(ii)** when it has been given to every *Director*.

12.6 If the standing notice is given to the other *Directors* individually in writing, it must be tabled at the next *Directors'* meeting after it is given.

12.7 The *Director* must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

12.8 The standing notice:

(a) takes effect as soon as it is given; and

(b) ceases to have effect if a person who was not a *Director* at the time when the notice was given is appointed as a *Director*.

A standing notice that ceases to have effect under **article 12.8(b)** commences to have effect again if it is given to the person referred to in that article.

12.9 The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

12.10 A contravention of **articles 12.1–12.9** does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

12.11 A *Director* who has a material personal interest in a matter that is being considered at a *Directors’* meeting must not:

(a) be present while the matter is being considered at the meeting; or

(b) vote on the matter.

12.12 **Article 12.11** does not apply if:

(a) **articles 12.13** or **12.14** allow the *Director* to be present; or

(b) the interest does not need to be disclosed under **article 12.2**.

12.13 The *Director* may be present and vote if *Directors* who do not have a material personal interest in the matter have passed a resolution that:

(a) identifies the *Director*, the nature and extent of the *Directors’* interest in the matter and its relation to the affairs of the *Company*; and

(b) states that those *Directors* are satisfied that the interest should not disqualify the *Director* from voting or being present.

12.14 The *Director* may be present and vote if they are so entitled under a declaration or order made by the ASIC under section 196 of the *Corporations Act*.

12.15 A contravention by a *Director* of:

(a) **article 12**; or

(b) a condition attached to a declaration or order made by ASIC under section 196 of the *Corporations Act*,

does not affect the validity of any resolution.

13. PROCEEDINGS OF THE DIRECTORS

13.1 The *Directors* may meet for the dispatch of business, adjourn and otherwise regulate its proceedings as they think fit.

13.2 A quorum for a *Directors'* meeting is a majority of the *Directors*. The quorum must be present for the whole of the meeting.

13.3 Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of votes the chair of the meeting appointed in accordance with **article 15** shall have a second or casting vote.

13.4 On the request of three *Directors*, the *Secretary* shall at any time summon a meeting of the *Directors* by notice served upon each *Director*.

Minutes of meeting

13.5 (a) The *Directors* shall cause minutes to be made within one month:

(i) of all appointments of *Directors* made by the *Commonwealth* pursuant to **article 7** and of all appointments of officers made by the *Directors*;

(ii) of the names of *Directors* present at each *Directors' meeting*;

(iii) of all proceedings and resolutions of *Directors' meetings*;

(iv) of all proceedings and resolutions of the *Member* (both in a meeting and without a meeting); and

(v) of resolutions passed by *Directors* without a meeting.

(b) The *Company* must ensure that minutes are signed within a reasonable after the meeting by the *Chair* of the meeting at which the proceedings were held or by the *Chair* of the next meeting.

(c) The *Company* must ensure that minutes of the passing of a resolution without a meeting are signed by a *Director* within a reasonable time after the resolution is passed.

(d) The *Company* must keep its minute books at its registered office, its principal place of business or another place approved by ASIC.

(e) A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

14. DIRECTOR'S REMUNERATION

14.1 The remuneration of *Directors* is to be determined by the Remuneration Tribunal under the *Remuneration Tribunal Act 1973*.

15. CHAIRING DIRECTORS' MEETINGS

15.1 The *Commonwealth* may appoint a *Director* to be the *Chairperson* on any terms and conditions the *Commonwealth* thinks fit.

15.2 The *Commonwealth* may appoint a *Director* to be the *Deputy Chairperson* on any terms and conditions the *Commonwealth* thinks fit.

15.3 The *Chairperson* will chair all *Directors'* meetings at which he or she is present. If the *Chairperson* is not present, the *Deputy Chairperson* will chair the meeting.

15.4 The *Chairperson* and *Deputy Chairperson* hold office for the period specified by the *Commonwealth* or so long as he or she remains a *Director*, whichever period is shorter.

15.5 If:

(a) there is no *Chairperson* or *Deputy Chairperson* present at a *Directors'* meeting;

(b) the *Chairperson* or *Deputy Chairperson* is not present at a meeting within 10 minutes of the time appointed for the commencement of the *Directors'* meeting; or

(c) the *Chairperson* or *Deputy Chairperson* is unable or not willing to act as chair of a *Directors'* meeting

the *Directors* present at the meeting can appoint a *Director* who is present to chair the *Directors'* meeting.

16. INDEMNITY AND INSURANCE

16.1 To the extent permitted by law, the *Company* indemnifies every person who is or has been a *Director*, *Secretary*, or executive officer of the *Company*, and may indemnify every person who is or has been an auditor of the *Company*, against:

(a) any liability incurred by that person in his or her capacity as a *Director*, *Secretary*, auditor or executive officer of the *Company* other than;

(i) a liability owed to the *Company* or a related body corporate, or

(ii) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the *Corporations Act*, or

(iii) a liability that is owed to someone other than the *Company* or a related body corporate which did not arise out of conduct in good faith; and

(b) any liability for legal costs incurred by that person in his or her capacity as a *Director*, *Secretary*, auditor or executive officer of the *Company* other than:

(i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under **article 16.1(a)**; or

(ii) in defending or resisting criminal proceedings in which the person is found guilty; or

(iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (except in relation to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for a court order); or

(iv) in connection with proceedings for relief to the person under the *Corporations Act* in which the Court denies the relief.

16.2 To the extent permitted by law, the *Company* may, where the *Directors* consider it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been a *Director, Secretary, auditor or executive officer of the Company*, against:

(a) any liability incurred by that person in his or her capacity as a *Director, Secretary, auditor or executive officer of the Company* other than a liability which arises out of:

(i) conduct involving a wilful breach of duty in relation to the *Company*; or

(ii) a contravention of section 182 (Use of Position) or section 183 (Use of Information) of the *Corporations Act*; and

(b) any liability for legal costs incurred by that person in his or her capacity as a *Director, Secretary, auditor or executive officer of the Company* in defending proceedings, whether civil or criminal, whatever their outcome, and without the qualifications set out in **article 16.2 (a)(i) and (a)(ii)** above.

16.3 The insurances referred to in **article 16.2** (including all other *Company* insurances) must be obtained from Comcover, unless specifically exempted, while AHL is classified in the General Government Sector and Government policy requires such bodies to be insured through Comcover.

17. MISCELLANEOUS

17.1 Accounts

(a) The *Directors* shall cause proper accounting and other records to be kept and shall distribute copies of profit and loss accounts and balance sheets as required by the *Corporations Act*.

(b) The accounting and other records referred to in **article 17.1(a)** shall be kept at the registered office of the *Company*, or at such other place as the *Directors* think fit, and shall at all times be open to inspection by the *Directors*.

17.2 Banking Accounts

(a) The *Company* must pay all money received by it into an account maintained by it with an approved bank.

(b) The *Company* may invest money of the *Company* that is not immediately required for the purposes of the *Company*:

(i) on deposit with an approved bank;

(ii) in securities of the *Commonwealth* or of a State or Territory; or

(iii) in securities guaranteed by the *Commonwealth*, a State or Territory.

In this article:

‘approved bank’ means:

(a) the Reserve Bank of Australia;

(b) a bank as defined in subsection 5(1) of the *Banking Act 1959*;

(c) a bank established by or under a State Act.

17.3 Execution of documents

(a) The *Company* may execute a document without using a common seal if the document is signed by:

(i) two *Directors* of the *Company*; or

(ii) a *Director* and the *Secretary* of the *Company*.

17.4 Notices

A notice may be given by the *Company* to a *Member* of the *Company* by sending it to the address notified to the *Company* by the *Member* from time to time. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

18. REPRESENTATIVE

(a) The *Commonwealth*, as a body politic, may by written notice to the *Secretary* appoint a person holding, occupying or performing the duties of a specified office or position to act as its representative in any matters connected with the *Company*, including exercising all or any of the powers the body politic may exercise and subject to any restrictions set out in the appointment.

(b) Unless otherwise notified to the *Secretary* by the *Commonwealth*, the *Minister* may act as the *Commonwealth's* representative.

(c) The *Commonwealth* may by written notice to the *Secretary* remove an individual or person as its representative.

19. SURPLUS ASSETS ON WINDING UP

16.1 If upon winding up or dissolution of the *Company* there remains, after satisfaction of all its debts and liabilities, any property, the same shall be paid or transferred to the *Commonwealth* and shall thereafter be applied in such a manner as the *Minister* shall direct.

16.2 The *Company* shall take steps to wind up its affairs as soon as practicable after receiving a written notice from the *Minister* that in his/her opinion such a course is in the circumstances necessary or desirable.

20. VARIATION OR AMENDMENT OF CONSTITUTION

The whole or any part of this *Constitution* may be varied, amended or repealed by the passing of a special resolution.

21. DEFINITIONS

21.1 In this *Constitution*, unless the contrary intention appears:

'*Aboriginal*' means a person who is a member of the Aboriginal race of Australia;

'*ASIC*' means the Australian Securities and Investments Commission;

'*Australian Constitution*' means the *Commonwealth of Australia Constitution Act*;

'*Chairperson*' means the *Chairperson* appointed under **article 15**;

'*Chief Executive Officer*' means a person appointed by the *Directors* under **article 9** and has the same meaning as the person appointed to Aboriginal Hostels Limited under section 200(2) of the *Aboriginal and Torres Strait Islander Act 2005*;

'*Commonwealth*' means the Commonwealth of Australia;

'*Company*' means the Aboriginal Hostels Limited (ACN 008 504 587);

'*Constitution*' means this document as amended from time to time;

'*Corporations Act*' means the *Corporations Act 2001*;

'*Director*' means an individual occupying the position of *Director* of the *Company*;

'*Deputy Chairperson*' means the *Deputy Chairperson* appointed under **article 15**;

‘*Member*’ means a person described as a *Member* of the *Company* in **article 6** and includes a *Member* present by proxy;

‘*Minister*’ means the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs or the person acting in that position from time to time or the Commonwealth Minister who from time to time is responsible for the *Company*;

‘*Replaceable Rules*’ means the provisions referred to in **section 141** of the *Corporations Act*;

‘*Secretary*’ means a person appointed under **article 10** to perform any of the duties of *Secretary* of the *Company*;

‘*Torres Strait Islander*’ means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

21.2 In this *Constitution*, unless the contrary intention appears:

- words importing the singular include the plural and vice versa;
- words importing any gender include the other genders;
- words or expressions that are italicised have the meaning given by **article 21.1**;
- words or expressions defined in the *Corporations Act* have the same meaning;
- headings do not affect construction or interpretation;
- a reference to a person includes a body corporate and a body politic;
- an expression in an article that deals with a matter dealt with by a particular provision of the *Corporations Act* has the same meaning as in that provision; and
- in the event of inconsistency between the *Constitution* and the *Corporations Act*, the *Corporations Act* will prevail to the extent of any inconsistency.