



## Members' Explanatory Memorandum for EGM

The new constitution is based on extensive consultations with members. Each time the new Constitution has been put to members, a clear majority has voted in favour, although we have not achieved the 75% we need for a 'special majority'. The main sticking point last time was the size of the Board at 9 people. **This model responds to that feedback – it has a 16-member Board similar to the current NACCHO Board**

THE CURRENT CONSTITUTION	THE NEW CONSTITUTION
<b>Easier for members to read and use</b>	
68 pages Lots of contradictions and unclear what certain rules mean	32 pages of plain English Much clearer
<b>Allows for modern technology and meeting modern requirements</b>	
Old technology (e.g. use of fax machines and meetings in person) References to outdated regulatory requirements and documents	Allows for use of new technology and online meetings Updated requirements to meet modern standards
<b>Increased member control</b>	
Affiliates have the power to appoint 14 of the directors Members vote for the Chair and Deputy Chair	Members in each state elect their own directors and the company votes on those directors in general meeting Members still vote for the Chair and Deputy Chair
<b>Improved continuity</b>	
Annually appointed directors 3-year terms for Chair and Deputy Chair	Directors serve 4 years 2-year terms for Chair and Deputy Chair
<b>Simplified voting and meetings</b>	
Two voting delegates per ACCHO Problematic proxy forms	One voting delegate per ACCHOs Proxies replaced with appointment of Alternate Delegates
<b>All existing members transfer – guaranteed by the schedule listing them all specifically</b>	

Please discuss the new constitution within your organisation and with your state affiliate so you know how you want to vote before the day of the EGM. You can always contact us before the EGM with any questions.

## Explanatory Memorandum

### 1. Introduction

As members are aware, the Board has been working to modernise NACCHO's constitution since 2016. Following numerous consultations with members across that time, including a two-day workshop in Sydney, the Board developed a constitution (**New Constitution**) which took into account the recommendations of members. At the upcoming Extraordinary General Meeting (**EGM**) on 3 December 2024, members will be asked to vote on a special resolution to adopt the New Constitution. A copy of the New Constitution has been circulated with the Notice of Extraordinary General Meeting (**EGM**) and this Explanatory Memorandum.

### 2. Purpose of this document

The purpose of this memorandum is to:

- outline how the New Constitution was developed (section 3); and
- explain the key differences between the current NACCHO Constitution and the New Constitution (section 4).

### 3. New Constitution

The NACCHO Constitution was written many years ago, drawing on the history of NAIHO set up in 1974. Over the years, NACCHO has grown and from the initial Redfern AMS, there are now 143 member services with about 300 clinics.

The existing Constitution is very lengthy, in places uncertain, and is missing some fundamental provisions which are necessary for the organisation to run effectively and to evolve with its membership. It is also hard to use as it includes a great deal of information that is important to the organisation but would be more appropriate in policies. A Constitution should use plain language, be readable and easy to follow and make plain the intended meaning of its provisions and consequences of breaching those provisions.

Since 2016, the Board has been undertaking a review of NACCHO's constitution in order to ensure that it is clear and accessible, that it enables best practice governance and to make NACCHO more directly controlled by its members. The review was comprehensive and a new constitution, which was first presented at the EGM on 7 November 2019, was developed following numerous consultations with members, including:

- consultations attended by almost 1,000 representatives from members and affiliates, 2016-2022;
- an electronic survey on the constitution distributed to all members in 2017/18;
- a two-day workshop in Sydney in July 2019 which was attended by over 130 representatives from over 100 members; and
- two webinars and discussions at governance training workshops in 2023.



During the consultations, members had the opportunity to raise and comment on key issues. The views of members were then taken into account by the Board when developing the new constitution.

The proposed constitution attached to this Notice of EGM is substantially the same as the version presented at the EGM on 24 October 2023 except that:

- a) each State or Territory may have up to two elected directors on the board, with the exception of Tasmania and ACT which each have one elected director;
- b) members will continue to elect the chairperson and deputy chairperson;
- c) voting will occur by the preferential voting method;
- d) the power to make by-laws and/or to approve policies, procedures and codes of conduct has been made clearer and expanded;
- e) the power of the Board to discipline delegates and the rights of members and delegates in that process has been clarified;
- f) the transitional arrangements for the initial elected directors, chairperson and deputy chairperson have been updated to reflect the fact that under this constitution each State and Territory (other than Tasmania and the ACT) will have two directors; and
- g) the Register of Members, which lists the members of NACCHO that continue to be members if the proposed constitution is accepted, has been updated.

In addition to the above, some small amendments have been made to the proposed constitution for clarity and to correct any typographical errors identified.



**NACCHO**  
National Aboriginal Community  
Controlled Health Organisation

***Aboriginal health in Aboriginal hands***

[www.naccho.org.au](http://www.naccho.org.au)

#### 4. Comparison of current and proposed constitution

This table provides a comparison of certain key provisions of the current Constitution and the New Constitution.

Subject	Current Constitution	New Constitution	Commentary
<p><b>1</b> Definition of an Aboriginal and/or Torres Strait Islander Community Controlled Health Service (<b>ACCHS</b>)</p>	<p><b>Clause 1.3</b></p> <p><b>ACCHS means:</b></p> <ul style="list-style-type: none"> <li>• An incorporated Aboriginal organisation</li> <li>• Initiated by a local Aboriginal community</li> <li>• Based in a local Aboriginal community</li> <li>• Governed by an Aboriginal body which is elected by the local Aboriginal community</li> <li>• Delivering a holistic and culturally appropriate health service to the Community which controls it.</li> </ul>	<p><b>Schedule 1</b></p> <p><b>ACCHS means a company that:</b></p> <ul style="list-style-type: none"> <li>• is controlled by members of the local Aboriginal and Torres Strait Islander community(s);</li> <li>• has only Aboriginal and Torres Strait Islander people as full voting members;</li> <li>• has a board consisting of a majority of Aboriginal and Torres Strait Islander directors; and</li> <li>• delivers Comprehensive Primary Healthcare to the community that controls it.</li> </ul>	<p>To become a member of NACCHO an organisation must be an ACCHS.</p> <p>The definition in the New Constitution differs from the Current Constitution by requiring that new member organisations:</p> <ul style="list-style-type: none"> <li>• only allow Aboriginal and Torres Strait Islander people as voting members;</li> <li>• have Aboriginal and Torres Strait Islander people making up a majority of the Board; and</li> <li>• deliver primary healthcare as defined.</li> </ul> <p>The changes are intended to strengthen community control and do not apply to existing members.</p>
<p><b>2</b> Definition of comprehensive primary health care</p>	<p><b>Schedule 5</b></p> <p>Primary Health Care is defined in Schedule 5 of the current constitution which sets out the type of services and the core functions of Primary Health Care in ACCHOs over four and a half pages.</p>	<p><b>Schedule 1</b></p> <p><b>Comprehensive Primary Healthcare means:</b></p> <ul style="list-style-type: none"> <li>• meeting the health and well-being needs of Aboriginal and/or Torres Strait Islander people through comprehensive, holistic, place-based and culturally safe care throughout the life course;</li> <li>• systematically addressing the broader determinants of the health and well-being of Aboriginal and/or Torres Strait Islander people; and</li> <li>• empowering Aboriginal and Torres Strait Islander individuals, families, and communities to optimise their health and well being.</li> </ul>	<p>To become a member of NACCHO an organisation must deliver a certain type of health service.</p> <p>The definition of Comprehensive Primary Healthcare in the New Constitution was developed in consultation with members. It is based on the World Health Organisation definition, which owes much to the 1978 Alma-Ata declaration and the influential work at that conference by the Aboriginal delegates.</p> <p>It is a clear, short and comprehensive statement of the types of health care that must be provided by organisations to become a member of NACCHO. It does not apply to existing members.</p>



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		In this definition, 'well being' includes physical, mental, spiritual, cultural and emotional well being.	
3 Purpose of company	<p><b>Clause 2.2</b></p> <p>The aims and objectives of NACCHO are to ameliorate poverty within the Aboriginal community, advance Aboriginal religion, provide constructive educational programmes for members of the Aboriginal community; and to deliver holistic and culturally appropriate health and health related services to the Aboriginal community.</p> <p>Schedule 8 describes in detail (4 pages) each of the above objectives.</p>	<p><b>Clause 7</b></p> <p>NACCHO's purpose is to reduce the economic, social, health, nutritional and housing disadvantage experienced by Aboriginal and Torres Strait Islander people and their communities.</p> <p>Clause 7 also outlines specific activities NACCHO will engage in, among others, to fulfil its purpose.</p>	<p>Under the New Constitution, the goals of the company remain broadly similar to the Current Constitution.</p> <p>Reference to advancing "Aboriginal religion" is no longer included on the basis that this is not the primary focus of NACCHO's work. A goal of reducing Aboriginal nutritional and housing disadvantage has been added given the importance of these factors in health and well being outcomes.</p> <p>The list of activities that NACCHO will engage in is shorter and focuses on specific activities to achieve the broad aim of reducing Aboriginal disadvantage. The detailed description of the objectives in Schedule 8 is no longer included as that detail is more appropriate to a policy or other document.</p>
4 Membership criteria and admission	<p><b>Clause 4.2.5</b></p> <p>Membership of NACCHO is open to those ACCHS determined by the State or Territory peak Aboriginal community controlled health bodies affiliated with NACCHO and the NACCHO Board to have met the NACCHO criteria for membership.</p> <p>Affiliates are not able to be members as they do not deliver comprehensive primary health care.</p>	<p><b>Clauses 10.1 and 10.3</b></p> <p>The members of the company are the members as at the date the constitution was adopted and any organisation that is admitted as a member of the company by the directors.</p> <p>To be admitted as a member of the company, an organisation must be:</p> <ul style="list-style-type: none"> <li>• an ACCHS (for definition see Schedule 1); and</li> <li>• a member of the relevant state or territory affiliate.</li> </ul> <p>Affiliates are not able to be members as they do not deliver comprehensive primary health care.</p>	<p>As discussed at 1 and 2 in this table, all new NACCHO members will be required to have:</p> <ul style="list-style-type: none"> <li>• boards consisting of a majority of Aboriginal and/or Torres Strait Islander directors; and</li> <li>• only Aboriginal and Torres Strait Islander people as full voting members.</li> </ul> <p>All existing NACCHO members transfer across automatically under the New Constitution regardless of whether they meet the above requirements.</p> <p>Affiliates are not members under either Constitution.</p> <p>Under the current Constitution both the relevant affiliate and the NACCHO Board must determine an</p>



Subject	Current Constitution	New Constitution	Commentary
			<p>organisation applying for membership meets the criteria for membership.</p> <p>Under the New Constitution, an organisation must be a member of the affiliate but the NACCHO Board alone decides if the organisation applying for membership meets the eligibility criteria. This gives NACCHO greater ability to control its membership.</p>
<p><b>5</b> Ceasing to be a member</p>	<p><b>Clause 4.6</b></p> <p>Provides for cessation of membership where a member organisation:</p> <ul style="list-style-type: none"> <li>• resigns</li> <li>• is expelled</li> <li>• is declared bankrupt or dissolved</li> <li>• ceases to be a member of an affiliate</li> </ul>	<p><b>Clause 11</b></p> <p>Provides for cessation of membership where a member organisation:</p> <ul style="list-style-type: none"> <li>• resigns</li> <li>• is expelled</li> <li>• for members admitted after the new Constitution is adopted (not existing members) if they no longer meet the eligibility criteria for membership of NACCHO</li> <li>• is wound up or becomes insolvent</li> <li>• has not responded within three months to a request for confirmation that they wish to remain a member.</li> </ul>	<p>The New Constitution includes two additional grounds on which an organisation ceases to be a member:</p> <ul style="list-style-type: none"> <li>• if they do not respond to a request to confirm their membership. This provision encourages active membership and prevents NACCHO being unable to operate because they cannot get a quorum due to large numbers of inactive membership; and</li> <li>• for new members only (not existing members) if they no longer meet the eligibility criteria for membership.</li> </ul>
<p><b>6</b> Member's right of appeal</p>	<p><b>Clause 4.17</b></p> <p>If the board suspends or expels a member, the member may appeal the directors' decision at a NACCHO general meeting.</p>	<p><b>Clauses 12 and 23</b></p> <p>The directors have a discretion to refer the disciplinary decision to an unbiased, independent person, or require the matter to be determined at a general meeting.</p> <p>If a member disagrees with a disciplinary decision made by the board, the member can initiate the dispute resolution process in clause 23.</p>	<p>Under the current Constitution, a member that is suspended or expelled can appeal to the NACCHO general meeting.</p> <p>Under the New Constitution, the Board has a discretion to refer the matter to be determined by an independent person or at a general meeting but a member does not have the right of appeal to a general meeting.</p>



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			<p>Given that disciplinary matters may involve confidential, sensitive and potentially defamatory information, the New Constitution makes the Board responsible for disciplinary decisions, thereby limiting access to that confidential information. Having the decision made by the Board also avoids the cost of a general meeting in circumstances where it is not reasonable to wait until the next scheduled AGM or general meeting to resolve the matter and means disciplinary decisions may be made in a timely manner.</p> <p>If any issues arise concerning due process, the member can use the dispute resolution process which allows for an independent mediator to be appointed.</p>
<p><b>7</b> Member right to request a general meeting</p>	<p><b>Clause 6.3.3</b></p> <p>The directors may call and hold an extraordinary general meeting on request of at least 25% of members or if not feasible, allocate time at the next extraordinary general meeting to discuss the request.</p>	<p><b>Clause 13.2</b></p> <p>The directors must call and hold a general meeting on request of at least 25% of members.</p>	<p>The current and New Constitutions both provide that directors must call and hold a general meeting at the request of 25% of NACCHO members. The Board considers that this is an appropriate threshold to ensure that member rights are protected, but the cost and administrative burden of holding a general meeting is not unduly incurred.</p>
<p><b>8</b> Member voting rights</p>	<p><b>Clauses 6.8 and 6.13</b></p> <p>Members have the right to appoint two delegates to exercise two votes at general meetings.</p> <p>A member may appoint another member organisation to represent it by proxy.</p>	<p><b>Clauses 13.7 and 14</b></p> <p>Members have the right to appoint one delegate to exercise one vote at general meetings.</p> <p>Where a Delegate cannot attend a general meeting, a member may appoint another person as an Alternate Delegate.</p>	<p>The New Constitution reduces members' votes from two to one. This will reduce the cost and administrative burden of two delegates for members and for NACCHO. It does not reduce the power of each member as each member retains an equal vote. It further prevents one delegate of an organisation voting one way and the other voting the opposite way and, in effect, cancelling the member's vote.</p> <p>The New Constitution allows the appointment by a member organisation of an alternate delegate but does not provide for proxies. NACCHO's experience is that the current process for proxies is confusing. It is intended that appointing an Alternate Delegate to</p>



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			attend and vote at general meetings where a Delegate cannot attend will result in more active participation by the member than just appointing a proxy while still enabling participation by the member if their Delegate cannot attend.
9 Quorum for general meetings	<p><b>Clause 6.5.2</b></p> <p>The quorum for general meetings is 25% of members represented by delegates in person.</p>	<p><b>Clause 13.8</b></p> <p>Same as current Constitution.</p>	Under the current and New Constitutions, the quorum for a general meeting is 25% of all members.
10 Size of Board	<p><b>Clause 5.2.1</b></p> <p>The Board consists of 16 members including:</p> <ul style="list-style-type: none"> <li>• the Chairperson;</li> <li>• the Deputy Chairperson;</li> <li>• two Directors appointed by each affiliate with the exception of Tasmania and the ACT who each appoint one Director.</li> </ul> <p>The Chairperson and Deputy Chairperson are elected by members.</p>	<p><b>Clauses 16.1, 16.7 and 16.10</b></p> <p>The Board consists of 16 members including:</p> <ul style="list-style-type: none"> <li>• the chairperson;</li> <li>• the deputy chairperson;</li> <li>• two elected directors for each State or Territory, with the exception of Tasmania and the ACT which each have one elected director.</li> </ul> <p>The chairperson and the deputy chairperson will continue to be elected by the members.</p>	<p>The board has listened to member feedback and the new constitution now includes 16 directors. Each State or Territory may have up to two elected directors on the board, with the exception of Tasmania and the ACT which each have one elected director.</p> <p>The chairperson and deputy chairperson will continue to be elected by members.</p>
11 Election of directors	<p><b>Clauses 5.2.1 and 5.2.7</b></p> <p>Each affiliate elects or appoints their own Directors at a general meeting and those elected or appointed Directors are then endorsed by NACCHO members at the AGM.</p>	<p><b>Clauses 16.2, 16.4 and 16.5</b></p> <p>Applicants (who must each be a member of an organisation that is itself a NACCHO member) nominate themselves to be elected as director.</p> <p>Once the Applicants are found eligible to be a director, then they become Candidates and can be elected by members from the State or Territory as Nominees for director for that State or Territory.</p> <p>The affiliates run the elections to appoint the State or Territory's Nominees for director on</p>	<p>The New Constitution enables any member of an ACCHS to apply to become a director for their State or Territory.</p> <p>The process for nomination and election of directors is transparent and explicit.</p> <p>NACCHO has a greater role in and oversight of the process for electing its own directors under the changes.</p>





Subject	Current Constitution	New Constitution	Commentary
		<p>behalf of NACCHO prior to the AGM in a consistent and transparent way.</p> <p>NACCHO members then vote to elect the Nominees as directors at a NACCHO general meeting.</p>	
<p><b>12</b> Eligibility to be a director</p>	<p><b>Clause 5.2.1</b></p> <p>Directors must be members of an ACCHS which is a member of an affiliate to be eligible to be a director.</p> <p>Employees of NACCHO are not eligible to be directors.</p>	<p><b>Clause 16.2</b></p> <p>An elected director must be a member of an ACCHS in the State/Territory in which they seek election and must be Aboriginal and/or Torres Strait Islander person.</p> <p>The following are not eligible to be directors:</p> <ul style="list-style-type: none"> <li>• employees of NACCHO</li> <li>• employees or CEOs of affiliates</li> <li>• employees of a Commonwealth, State or Territory Department of Health.</li> </ul>	<p>The New Constitution provides, in addition to the requirements in the current Constitution:</p> <ul style="list-style-type: none"> <li>• that only Aboriginal and/or Torres Strait Islander people may be a director; and</li> <li>• that employees or CEOs of affiliates or Commonwealth, State or Territory Departments of Health may not be directors.</li> </ul>
<p><b>13</b> Removal of directors</p>	<p><b>Clause 5.7</b></p> <p>Directors and office bearers can be removed by NACCHO members at a general meeting and the affiliate is responsible for appointing a replacement.</p>	<p><b>Clause 16.13</b></p> <p>Directors can be removed by NACCHO members by a special resolution at a general meeting and the affiliate will conduct an election for a replacement.</p>	<p>Under the Current and New Constitutions, NACCHO members as a whole may remove a director by special resolution at a general meeting.</p>
<p><b>14</b> Term of directors</p>	<p><b>Clause 5.2.3</b></p> <p>All directors are appointed for a one year term.</p> <p>There is no limit on the number of terms for which that directors can be reappointed.</p>	<p><b>Clause 16.3</b></p> <p>Directors are appointed for a four year term. Election of directors will be staggered so half the board is elected at any one time.</p> <p>Directors may hold office for a maximum of two consecutive terms.</p>	<p>Under the New Constitution the term of directors has been increased and staggered to provide for greater continuity on the Board, succession planning and the ability to set and work towards longer-term strategies.</p> <p>Directors may hold office for a maximum of 8 consecutive years to balance continuity with fresh ideas on the Board.</p>
<p><b>15</b> Chairperson and deputy chairperson</p>	<p><b>Clauses 5.3, 5.4, 5.5 and 5.7</b></p>	<p><b>Clauses 16.7-16.12</b></p>	<p>Under the New Constitution, the term of the chairperson and deputy chairperson is reduced, and the membership retains control of the appointment</p>



Subject	Current Constitution	New Constitution	Commentary
	<p>Office bearers (the Chair and Deputy Chair) are elected by NACCHO members for a three year term.</p> <p>Office bearers can be replaced before their term has ended by a special resolution of NACCHO members at a general meeting.</p>	<p>The chairperson and deputy chairperson are elected by NACCHO members for a two year term.</p> <p>As directors, the chairperson and deputy chairperson can be replaced by NACCHO members by a special resolution at a general meeting.</p>	<p>and removal of NACCHO’s chairperson and deputy chairperson.</p>
<p><b>16</b> Delegation of directors’ powers</p>	<p><b>Clause 5.9</b></p> <p>The board may delegate to one or more committees (consisting of any persons) any or all of its powers except:</p> <ul style="list-style-type: none"> <li>• The power to delegate</li> <li>• A function imposed on a board of directors by law; and</li> <li>• To make or act on a resolution which has not been confirmed by the board.</li> </ul> <p>A delegated committee may consist of any persons the board considers fit.</p>	<p><b>Clause 18.2</b></p> <p>The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, other than a decision to admit a member.</p>	<p>The New Constitution gives the Board additional flexibility to delegate to employees or individuals, not only to committees. However, even if the Board delegates its authority, it cannot delegate its responsibility. The Board is still ultimately accountable for any of its powers that are exercised by others on its behalf regardless of whether these powers are exercised by a committee, director, employee or another person.</p>
<p><b>17</b> Director remuneration</p>	<p><b>Clause 5.2.4</b></p> <p>Directors can be remunerated for services that they provide to NACCHO, but it is unlikely they can be paid for their services as a director (though there is some uncertainty about this).</p>	<p><b>Clause 18.3</b></p> <p>Directors can be paid reasonable fees for acting as a director. A majority of directors must approve any payment and remuneration must have regard to fees paid to directors in similar organisations and relevant decisions of the Remuneration Tribunal.</p>	<p>While there is some uncertainty in the wording, the current Constitution prevents directors from being paid for their services as directors.</p> <p>The New Constitution enables the Board to approve the payment of a reasonable fee to a director, if the majority of the Board agrees. In setting the fees the Board must take into account the fees paid to directors in similar organisations and relevant decisions of the Remuneration Tribunal to ensure that any fees are set using a reasonable reference point. The Remuneration Tribunal is an independent statutory body, and its decisions are a fair representation of what the appropriate and “market” remuneration should be.</p>



Subject	Current Constitution	New Constitution	Commentary
18 Transitional provisions	Not relevant	<p><b>Clause 17</b></p> <p>The current chairperson, deputy chairperson and directors will continue in office after the New Constitution is adopted. The first election of directors under the New Constitution will take place at the 2025 AGM.</p> <p>The first election of a chairperson and deputy chairperson under the New Constitution will take place at the 2025 AGM.</p>	The transitional provisions set out how NACCHO will transition from the current Board, elected under the existing Constitution, to a Board elected under the new Constitution.

