

## 8.5 BEANGANING KWUURT INSTITUTE

### PREAMBLE

- 8.5.1 (a) This Constitution, which forms part of the By-laws of the Uniting Church in Australia, Synod of Western Australia, is made in the exercise of the powers of the Synod as provided for in the Uniting Church in Australia Act 1976 (WA) and in the Constitution of the Uniting Church in Australia.
- (b) This Constitution is an expression of the response of the Uniting Aboriginal and Islander Christian Congress, comprising all the Aboriginal and Islander members of the Uniting Church in Australia, and of its covenanting partner, the Uniting Church in Australia, to the Gospel and to assist the Church in its service of God and humanity.
- (c) The Uniting Church in Australia recognises Aboriginal and Torres Strait Islander people as the First Peoples, their spirituality and connection with the land, the wisdom and richness of their culture, and their ongoing experience of invasion and dispossession, racism, and oppression.
- (d) The Church recognises that it is right for it to make reparations to Aboriginal and Torres Strait Islander people, and to share in their struggles for justice, land, respect, fullness of life, and peace.
- (e) The Uniting Aboriginal and Islander Christian Congress recognises that the Church has been enlightened by the Spirit of a living God and desires to build a new relationship based upon real recognition, justice, and equality.
- (f) The Congress affirms its mission to meet the spiritual needs of Aboriginal and Torres Strait Islander people, to address practically their health, employment, housing and other material needs, and to present the Gospel of Christ in a way that confronts racism, oppression, and injustice.
- (g) Congress and the Church, through this Constitution, affirm their covenanted commitment to work together for the achievement of God's Kingdom of justice and righteousness in this land.
- (h) This Constitution is to be read in the spirit of paragraph 17 of the Basis of Union, which states:

#### "Law in the Church

The Uniting Church acknowledges that the demand of the Gospel, the response of the Church to the Gospel, and the discipline which it requires are partly expressed in the formulation by the Church of its law.

The aim of such law is to confess God's will for the life of the Church; but since law is received by human beings and framed by them, it is always subject to revision in order that it may better serve the Gospel.

The Uniting Church will keep its law under constant review so that its life may increasingly be directed to the service of God and humanity, and its worship to a true and faithful setting forth of, and response to, the Gospel of Christ.

The law of the Church will speak of the free obedience of the children of God, and will look to the final reconciliation of humanity under God's sovereign grace."

## NAME

- 8.5.2 The name of the instrumentality is the Beanganing Kwuurt Institute, a body corporate incorporated under the provisions of the Uniting Church in Australia Act 1976.

## DEFINITIONS

- 8.5.3 In these By-laws unless the context or subject matter otherwise indicates or requires:

"Aboriginal" means a person who is a member of the Aboriginal race of Australia.

"Accounts Committee of Review" means the committee appointed by the Synod to oversight the accounts of the Church and its agencies and instrumentalities.

"The Act" means the Uniting Church in Australia Act 1976 (WA).

"Agency" means any body whether incorporated or unincorporated established by or on behalf of the Church for religious, charitable, educational, commercial or other purpose.

"the Agency" means the Beanganing Kwuurt Institute a body corporate incorporated under the provisions of the Uniting Church in Australia Act 1976.

"the Assembly" means the National Assembly of the Uniting Church in Australia.

"the Basis of Union" means the Basis of Union (1971 text) approved by the Congregational, Methodist and Presbyterian Churches.

"the Board" means the Governance board of the Agency.

"By-law" or "By-laws" refers to or means one or more of these By-laws comprising the Constitution of the Agency.

"church" means the Christian church generally.

"the Church" means the Uniting Church in Australia.

"Commonwealth Act" means the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth).

"Commonwealth minister" means the minister of the Crown in the right of the Commonwealth of Australia having portfolio responsibility for Indigenous Affairs.

"conflict of interest" has the meaning given in By-law 8.5.47 herein.

"Congress" means the Uniting Aboriginal and Islander Christian Congress.

"General Council" means the General Council established by the Synod of Western Australia of the Uniting Church in Australia to act between meetings of the Synod.

"instrumentality" means an Agency that is incorporated under the provisions of the Uniting Church in Australia Act 1976 (WA).

"member of the Church" means a confirmed member of or member-in-association of the Uniting Church in Australia.

"member-in-association" means a person who has applied for and been granted recognition by the Church on the basis that the person:

- (a) is a member of another Christian denomination but not actively engaged in the life of that denomination and participates in the corporate life of the Church Congregation and accepts the polity and discipline of the Church; or
- (b) participates actively in the corporate life of two Congregations of the Church and is enrolled as a confirmed member of the other Congregation.

"minister" means and includes a Minister of the Word, Deacon, Deaconess, Community Minister, Lay Pastor or Youth Worker recognised as such by the Uniting Church in Australia.

"Registrar of Aboriginal Corporations" means the person holding that office pursuant to the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth.).

"Regulation" or "Regulations" refers to or means the Regulations of the Uniting Church in Australia.

"Synod" means the Synod of Western of Australia of the Uniting Church in Australia.

"Synod Meeting" means an ordinary meeting or a special meeting of the Synod

"Torres Strait Islander" means an Indigenous inhabitant or a descendant of an Indigenous inhabitant of the Torres Strait Islands.

#### INTERPRETATION

##### 8.5.4 In these By-laws:

- (a) words in the singular include the plural and vice versa;
- (b) the words 'including', 'include', and 'includes' are to be read without limitation;
- (c) a reference to legislation is to be read as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted, or replaced for the time being; and
- (d) headings are used for convenience only and are not intended to affect the interpretation of these By-laws.

#### OBJECTS

##### 8.5.5 The principal objects and purposes of the Agency are to:

- (a) provide direct relief to Aboriginal and Torres Strait Islander people from poverty, suffering, destitution, misfortune, distress or helplessness and all matters ancillary thereto; and
- (b) establish and operate a Public Museum of Aboriginal history and culture.

##### 8.5.6 In fulfilling those objects and purposes the Agency will:

- (a) be an Aboriginal and Torres Strait Islander-controlled corporation;
- (b) as far as is practicable, be staffed by relevantly qualified and/or experienced Aboriginal and Torres Strait Islander people;
- (c) deliver services in a manner that is culturally appropriate and which promotes the customary values and traditions of Aboriginal and Torres Strait Islander peoples; and
- (d) be and remain an Agency of the Uniting Church in Australia.

##### 8.5.7 Without limiting the generality of By-law 8.5.5 (a), the Agency will deliver services directly to relieve poverty, suffering, destitution, misfortune, distress, or helplessness experienced by Aboriginal and Torres Strait Islander children and families, including:

- (a) supported and subsidised accommodation services for people who cannot afford private rental accommodation;
- (b) parenting skills programs for people who have lost legal custody, or are under threat of losing legal custody, of their children, and who need support or assistance to regain or retain such legal custody;
- (c) support programs for children at risk of being excluded from the education system, or who are at risk of having increasing contact with the juvenile justice system, or who have been released from a juvenile detention facility, or who are subject to another disposition of the juvenile justice system, or who may be affected by alcohol or other drug use and who need support to address their substance abuse

issues, or who may be subject to adverse domestic situations;

- (d) programs to assist long-term unemployed people to develop their capacities for obtaining employment; and
  - (e) programs for victims of domestic violence who require support or intervention.
- 8.5.8 The Agency may adopt from time to time any additional object of a public benevolent nature and consistent with the principal objects and purposes set out in By-law 8.5.5.

#### POWERS OF THE AGENCY

- 8.5.9 Subject to the Act and these By-laws, the Agency has the power to do anything lawful to carry out the objects.

#### GOVERNANCE BOARD

- 8.5.10 The Synod, in conjunction with the Western Australian Regional Committee of the Congress, and in accordance with its powers pursuant to the Uniting Church in Australia Act 1976 (WA) has established the Beanganing Kwuurt Institute a body corporate incorporated under the provisions of the Uniting Church in Australia Act 1976 (WA) and appointed the Board to have responsibility for the good governance of the Agency.
- 8.5.11 The Board subject always to the oversight and control of the Synod, which shall not act other than on, and shall act upon, the recommendation of the Western Australian Regional Committee of the Uniting Aboriginal and Islander Christian Congress or in accordance with By-law 15 upon the recommendation of the Congress National Executive, shall have the control and management of the Agency.
- 8.5.12 Where in these By-laws provision is made for the Synod or the General Council to exercise their powers upon, and only upon, the recommendation of the Western Australian Regional Committee of the Uniting Aboriginal and Islander Christian Congress, nothing shall prevent the Synod or the General Council requesting the Western Australian Regional Committee of Congress to reconsider a recommendation, provided that if the Western Australian Regional Committee of Congress does so reconsider, then its reconsidered recommendation, whether in its original form or in an amended form, shall be acted upon by the Synod or the General Council.

#### MEMBERSHIP OF THE BOARD

- 8.5.13 The Board shall be appointed by the Synod, on the recommendation of the Western Australian Regional Committee of the Uniting Aboriginal and Islander Christian Congress, and shall consist of:
- (a) a Chairperson, who shall be a member of the Church or a confirmed member of some other Christian denomination and be willing to participate in the life of the Church;
  - (b) the Agency's Chief Executive Officer; and
  - (c) not less than six and not more than ten other persons.
- 8.5.14 To be eligible for appointment or co-option to the Board, a person must be:
- (a) an Aboriginal or Torres Strait Islander person;
  - (b) at least 18 years old; and
  - (c) not disqualified from membership of the Board by the requirements of By-Laws 8.5.44-46 below.
- 8.5.15 All members of the Board must be persons who have expertise, qualifications or experience appropriate to the needs of the Agency and the oversight of the business and affairs of the Agency and a general working knowledge of the compliance requirements to be met by the Agency and the Board.

- 8.5.16 The Board may coopt no more than two persons to the membership of the Board, who have particular skills or expertise needed by the Board, for terms not exceeding twelve months at a time.
- 8.5.17 Appointed members of the Board, with the exception of the Chairperson, shall hold office for three years from the date of appointment and shall be eligible for re-appointment except that appointed members may not serve for consecutive terms of office exceeding ten years without Synod approval, which approval shall be granted on the recommendation of the Western Australian Regional Committee of Congress.
- 8.5.18 The Chairperson shall be appointed annually, and shall be eligible for re-appointment except that Chairperson may not serve for consecutive terms of office exceeding ten years without Synod approval, which approval shall be granted on the recommendation of the Western Australian Regional Committee of Congress.
- 8.5.19 Any failure by Synod not to consider re-appointment of the Chairperson shall not result in the vacating of the Chairperson's appointment and the Chairperson shall remain in office until re-appointment is considered by Synod.

#### REGISTER OF BOARD MEMBERS

- 8.5.20 The Agency shall keep a Register of the personal details of each Board member, recording:
- the person's family and given name;
  - all former given and family names of the person;
  - the person's address;
  - the person's date and place of birth; and
  - a declaration in writing from the person that the person is eligible to be a member of the Agency's Board.

#### CASUAL VACANCIES

- 8.5.21 A casual vacancy shall occur on the Board if a Board member:
- dies;
  - resigns by notice delivered to the Chairperson of the Board;
  - is disqualified from Board membership by virtue of By-Laws 8.5.44-46 below;
  - becomes incapable of continuing to act as a member of the Board;
  - is not excused by the Board for failing to attend at least three consecutive meetings of the Board without leave or failing to attend at least 50% of the meetings in any calendar year; or
  - is removed from office by resolution of the Synod, which resolution shall not be put or adopted other than on the recommendation of the Western Australian Regional Committee of Congress, it being expressly stated that the Western Australian Regional Committee of Congress is not required to state any reasons for such recommendation.
- 8.5.22 In the event of a casual vacancy occurring in the membership of the Board, the General Council on the recommendation of the Western Australian Regional Committee of Congress shall appoint a replacement member. The Board may suggest the names of persons considered suitable to the Western Australian Regional Committee of Congress. The replacement member shall hold office for the remainder of the term of the member replaced.
- 8.5.23 If an ordinary vacancy occurs because the Synod has failed to appoint any or all of the

appointed members of the Board the General Council, on the recommendation of the Western Australian Regional Committee of Congress, may appoint persons to fill any or all of the ordinary vacancies.

#### CONGRESS MEMBERSHIP OF THE BOARD

8.5.24 At least one third of the members of the Board shall be members of Congress.

#### GENDER BALANCE

8.5.25 As far as possible, the Board membership should include at least one third women and at least one third men.

#### OFFICERS OF THE BOARD

- 8.5.26 (a) The Chairperson, acting with one other member of the Board, shall have the power to act in lieu of the Board in matters of urgency, reporting thereafter to the Board, by no later than its next meeting.
- (b) The Board shall appoint a Deputy Chairperson who shall act as chairperson in the Chairperson's absence and assume the powers and responsibilities of the Chairperson.
- (c) The Chief Executive Officer shall act as Secretary of the Board.
- (d) The Board may appoint from its members other officers, as it deems necessary.

#### COMMITTEES OF THE BOARD

- 8.5.27 (a) The Board may appoint any committees it deems necessary and they may include staff and persons other than Board members.
- (b) The chairperson of any committee shall be a member of the Board.
- (c) The Board or any committee may invite people who are not Aboriginal or Torres Strait Islander people to join any committee. People so appointed shall have speaking but not consensus-determining or voting rights.
- (d) Members of committees of the Board shall be appointed annually.
- (e) The Chairperson and Chief Executive Officer shall be ex-officio members of all committees of the Board.
- (f) The Board may delegate any of its powers and authorities to a committee (except for this power of delegation, and except for the power to determine conflicts of interest pursuant to By-Laws 8.5.47-54 below).
- (g) The Board may determine the procedures of committees and may revoke the powers and duties or terminate the appointment of any committee at any time or may remove from office any member of any such committee.
- (h) Committees shall report to the Board periodically or when requested to do so by the Board.

#### RESPONSIBILITIES AND FUNCTIONS OF THE BOARD

8.5.28 The Board will be responsible for the governance of the Agency including the appointment of the Chief Executive Officer, policy development, strategic planning compliance and management oversight.

8.5.29 In relation to policy development, the Board will:

- (a) formulate and interpret policy consistent with the objects and the Preamble stated above; and
- (b) implement the policy approved by the Board.

8.5.30 In relation to strategic planning, the Board will develop, implement and monitor a long-

tem strategic plan having regard to the objects of the Agency.

8.5.31 In relation to compliance, the Board will:

- (a) ensure that the standards of probity and good governance required by these By-laws and the general law are met;
- (b) develop budgets and manage the funds of the Agency subject to the requirements of these By-laws, and any relevant funding authority;
- (c) oversee all financial operations and accounting procedures and ensure that proper records and books of account are kept;
- (d) establish compliance policies and monitor performance in relation to governmental and other legal obligations;
- (e) send two copies of the annual report, auditor's report and audited financial statements of the Agency to the Accounts Committee of Review within four months following the end of the financial year;
- (f) operate such bank accounts as it shall decide, provided that all banking transactions shall be authorised by any two of the signatories approved by the Board from time to time;
- (g) prepare and publish an annual report on the activities of the Agency; and
- (h) conduct an annual public meeting at which a report on the activities of the Agency is presented.

8.5.32 In relation to management oversight, the Board will:

- (a) approve and monitor an annual plan for the achievement of strategic goals;
- (b) obtain and consider reports on the management and programs of the Agency to ensure ongoing good governance;
- (c) implement procedures to conduct an evaluation of programs of the Agency to ensure best practice in service provision;
- (d) ensure the Agency meets or exceeds the expectations and standards required by the Church and funding bodies; and
- (e) raise funds to support the work of the Agency, which may be obtained from endowments, grants, gifts, fundraising efforts and borrowings.

#### DUTIES OF BOARD MEMBERS

8.5.33 The Board members must comply with the duties imposed on them by the general law. These include the duties to:

- (a) act with due care and diligence;
- (b) act in good faith;
- (c) disclose to the Board any conflict of interest;
- (d) not improperly use their position or information; and
- (e) not allow the Agency to trade while insolvent.

#### ACCESS TO RECORDS AND BY-LAWS

- 8.5.34
- (a) A Board member may inspect the minutes and financial records of the Agency free of charge, within 7 days of a written request for inspection.
  - (b) If a Board member asks for a copy of these By-laws, the Agency must provide it within 7 days, free of charge.

#### MEETINGS OF THE BOARD AND COMMITTEES

- 8.5.35 (a) The Board shall meet at least six times each year.
- (b) Committees shall meet when they deem it necessary, but shall meet within a reasonable time after a request from the Board.
- (c) The Chairperson of the Board, or committee, shall preside at all meetings of the Board or committee. In the Chairperson's absence, the Deputy Chairperson shall preside. In the absence of both the Chairperson and the Deputy Chairperson the Board or committee shall elect one of its members to act as chairperson of the meeting.
- 8.5.36 The Board and its committees shall as far as is practicable make decisions by consensus, and the following decision-making procedures shall apply:
- (a) any proposal that would bind the Board or any committee in respect of its policy or action must be moved by one member and seconded by another member;
- (b) any proposal that does not attract a seconder shall lapse, but may be re-introduced;
- (c) it shall be the responsibility of the chairperson to ensure that all members of the Board or committee have reasonable opportunity to speak to a proposal before any decision is taken;
- (d) decisions shall wherever practical be reached by consensus;
- (e) consensus is reached when all members support the proposal, or, at least, when no member states that she or he is withholding consensus;
- (f) a member who does not support a proposal may be asked to abstain from the decision, so that a decision may be made;
- (g) where consensus cannot be reached, the Board or committee should if practical agree to defer a decision to a later meeting, in order to give members the opportunity to rethink the proposal in a way that could attract consensus support;
- (h) if one or more members continue to be opposed to a proposal and withhold consensus, and the proposal is considered by other members of the Board or committee to be urgent, then, if at least half the members of the Board or committee believe a decision to be urgent, then a decision may be taken by simple majority vote; and
- (i) if a vote is taken, the chairperson of the meeting shall have one vote only, and if the votes are tied, then the proposal shall lapse, but may be reintroduced at a later meeting.

#### HOLDING MEETINGS BY TELEPHONE, VIDEOCONFERENCE, OR OTHER TECHNOLOGY

- 8.5.37 A Board meeting may be called or held using any technology agreed to by all the members. The consent may be a standing one.

#### CIRCULATING RESOLUTIONS

- 8.5.38 (a) A resolution of the Board or committee may be passed without holding a meeting if a written copy of the resolution stating that its members are in favour of it, or agree to not withhold consensus, is signed by all members entitled to vote on it. The signatures can be contained in more than one copy of the document. The resolution is passed when the last member signs.
- (b) A Board or committee member is not entitled to vote on a circulating resolution if she or he has a conflict of interest that has not been disclosed and dealt with in accordance with the procedure in By-Laws 8.5.47-55 below.



## CALLING AND NOTICE OF BOARD AND COMMITTEE MEETINGS

- 8.5.39 (a) The Board or committee at each meeting will normally determine the date, time, and place of the next meeting.
- (b) The choice of the date, time and place for a meeting must not unreasonably prevent the attendance by any member.
- (c) At least seven day's written notice of each meeting must be given to each member, but if the Chairperson considers an emergency exists a special meeting may be convened at shorter notice.
- (d) The notice for each meeting must state:
- (i) the date, time and place of the meeting; and
  - (ii) the proposed agenda for the meeting.
- (e) A resolution passed at a Board or committee meeting will not be invalid only because of an unintentional omission or mistake in giving notice of the meeting or in giving notice of any changes to the proposed agenda, date, or place of the meeting.

## MINUTES

- 8.5.40 (a) The Board and each committee must ensure that a person, who need not be a member of the Board or committee, takes the minutes of each Board or committee meeting.
- (b) The minutes must record the proceedings and resolutions of the meeting and, must record any resolutions circulated and determined out of session.
- (c) A copy of the minutes of each Board or committee meeting must be signed by the chair of the subsequent meeting.

## SPECIAL BOARD MEETINGS

- 8.5.41 The Chairperson may at any time when considered necessary and shall if requested to do so in writing by the Synod or the General Council, which request shall not be made other than on the recommendation of the Western Australian Regional Committee of the Congress, or by three members of the Board (which writing shall specify the purpose for which the meeting is convened) call a special meeting of the Board.

## OBSERVERS

- 8.5.42 (a) The Board or any committee may invite any person to attend its meetings as an Observer.
- (b) An invitation to attend a meeting as an Observer may be a general invitation, in which case the person may attend any meetings of the Board or committee until the invitation is withdrawn, or it may be specific, in which case the person is entitled to attend only the meeting to which she or he was invited.
- (c) An Observer shall have speaking but not consensus-determining or voting rights.

## QUORUM

- 8.5.43 The quorum for a Board or committee meeting shall be next whole number above half the current membership of the Board or committee.

## DISQUALIFICATION FROM BOARD MEMBERSHIP

- 8.5.44 A person cannot be appointed or hold office as a member of the Board if he or she been convicted of an offence against a Commonwealth, state or territory law and sentenced to:
- (a) imprisonment for three months or longer if the offence involved fraud or

misappropriation of funds, or

(b) imprisonment for one year or longer for any other offence.

8.5.45 A person can be appointed if at least five years have passed since his or her conviction and she or he is not currently serving a term of imprisonment, or if the person has been granted an exemption by the Registrar of Aboriginal Corporations or the Commonwealth Minister authorising that person to serve on the Board of an Aboriginal Corporation registered under the Commonwealth Act.

8.5.46 A person may not be appointed to membership or continue to be a member of the Board if he or she is bankrupt or enters into arrangements with creditors to discharge her or his debts.

#### CONFLICTS OF INTEREST

8.5.47 Any Board or committee member who:

- (a) has a direct or indirect financial or beneficial interest in a matter being considered or about to be considered by the Board or committee;
- (b) has a material personal interest in a contract or proposed contract of the Agency;
- (c) holds any office; or
- (d) owns any property

which might give rise to a conflict with his or her duties as a Board or committee member of the Agency, is deemed to have a conflict of interest.

8.5.48 Any Board or committee member who has a conflict of interest must give notice of the interest at a Board or committee meeting as soon as possible after becoming aware of it.

- 8.5.49 (a) A direct conflict of interest may arise when a Board or committee member is involved in making a decision about an issue in which he or she stands to benefit in some way.
- (b) An indirect conflict of interest may arise when a Board or committee member is involved in making a decision about an issue in which:
- (i) a relative of a Board or committee member;
  - (ii) a business with which the Board or committee member is involved; or
  - (iii) a business in which or a relative of the Board or committee member is involved

stands to benefit in some way.

8.5.50 (a) A "material personal interest" includes:

- (i) direct and indirect financial interests, and
- (ii) direct and indirect non-financial interests.

(b) An interest will be material if:

- (i) there a real or substantial conflict that it is sufficient to influence the Board or committee member's decision; or
- (ii) a reasonable person may think there is a perceived conflict that may be sufficient to influence the Board or committee member's decision.

(c) A Board or committee member's interest that arises solely because of his or her membership of the Uniting Aboriginal and Islander Christian Congress shall not be regarded as in conflict with the interests of the Agency.

8.5.51 A Board or committee member who has a conflict of interest about a matter that is being

considered at a Board or committee meeting must disclose:

- (a) the nature and extent of the interest; and
- (b) the relation of the interest to the affairs of the Agency.

8.5.52 A notice of a conflict of interest can be a standing notice to the Board or committee. This means that if there is a potential conflict of interest which will continue, the notice only has to be given once, and does not have to be given at every Board or committee meeting.

8.5.53 The substance of a notice of a conflict of interest must be recorded in the minutes of the Board or committee meeting at which it was given.

8.5.54 Where a Board or committee member has declared a conflict of interest, that conflict must be referred to the Board for determination. The Board shall determine whether the extent of any conflict of interest disclosed is such that the member not participate in, determine consensus in relation to, or be present during any debate on the matter.

#### THE CHIEF EXECUTIVE OFFICER

8.5.55 (a) The Chief Executive Officer shall be appointed by the Board, with the approval first obtained of the Synod or the General Council, which approval shall be given on the recommendation of the Western Australian Regional Committee of Congress.

(b) The Chief Executive Officer shall be an Aboriginal or Torres Strait Islander person.

(c) The Chief Executive Officer shall be appointed, or re-appointed, for such period as the Board may determine, by way of an employment contract which will detail all conditions and terms of the appointment which the Board deems necessary.

(d) If the Chief Executive Officer is a minister of the Church, then the position of Chief Executive Officer is not to be regarded by the Church as a placement for the purposes of the Church Constitution and Regulations.

8.5.56 The Chief Executive Officer's appointment is terminable at any time by the Board in the event of the serious illness or incapacity of the Chief Executive Officer or for good cause and in accordance with any employment contract between the Agency and the Chief Executive Officer, save that no termination shall be effective unless notice of the proposal for termination is given in the notice convening the meeting at which it is intended to consider the termination.

8.5.57 The Chief Executive Officer shall:

(a) be accountable to the Board for leading the activities and programs of the Agency;

(b) have the power, subject to the oversight of the Board, to appoint and dismiss all staff, direct the day-to-day operations of the Agency, and to take any reasonable action, consistent with the established Board guidelines and the objects of the Agency, to ensure that the Agency achieves satisfactory outcomes in all areas of management and operation;

(c) submit to each meeting of the Board a report on the implementation of the Board's policies and strategies and the activities of the Agency; and

(d) retire from any Board meeting for such time as matters concerning their own interests are under discussion.

8.5.58 The Board shall establish performance criteria for the Chief Executive Officer and ensure appropriate support and review processes are implemented.

8.5.59 The Board shall determine the limits of delegation of responsibility to the Chief Executive Officer, to be signed off by both the Chairperson of the Board and the Chief Executive Officer.

## GRIEVANCES AND COMPLAINTS

- 8.5.60 The National Executive of the Uniting Aboriginal and Islander Christian Congress may inquire into any grievance, complaint or other circumstance, which, in its opinion, adversely affects the good name of the Congress, or of the Church, or the progress of the work of God, and to seek a remedy for such situations.
- 8.5.61 any person may draw to the attention of the National Executive of Congress any such grievance, complaint, or circumstance.
- 8.5.62 The National Executive of Congress may appoint any person or persons to investigate any such grievance, complaint or circumstance.
- 8.5.63 A person appointed in writing by the National Executive of Congress pursuant to By-Law 8.5.62 has the right and authority to:
- (a) visit any centre or activity of the Agency;
  - (b) attend any meeting of the Board or call a meeting of the Board;
  - (c) examine the affairs of the Board and the manner in which the Agency is being conducted; and
  - (d) inquire into whether that the laws, rules, regulations and by-laws of the Commonwealth of Australia and the State of Western Australia, and these By-Laws are being duly observed and executed.
- 8.5.64 A person appointed in writing by the National Executive of Congress pursuant to By-Law 8.5.62 shall:
- (a) consult with the Western Australian Regional Chairperson of Congress, the Moderator of the Synod, and the Chairperson of the Church Law Committee of the Synod; and
  - (b) provide a report and any appropriate recommendations to the National Executive of Congress.
- 8.5.65 Upon receiving the report and any recommendations the National Executive of Congress shall provide to the Agency's Board written notice of any adverse finding made against the Agency, and shall allow the Agency 21 days within which to make a written response.
- 8.5.66 After receipt of the Agency's response, if any, the National Executive of Congress may, if it considers that the interests of the Congress, the Church or the Agency so require:
- (a) make such recommendations to the Agency or the Synod as it sees fit;
  - (b) recommend to the Synod that it issue a direction or directions to the Agency; or
  - (c) recommend to the Synod that it suspend the Board and appoint an interim board comprising not less than 6 and not more than 10 Aboriginal or Torres Straight Islander persons to carry out the functions of the Board until the Synod, on the recommendation of the Western Australian Regional Committee of Congress, reinstates or replaces it.
- 8.5.67 The Synod shall act upon a recommendation of the National Executive of Congress made pursuant to By-Law 8.5.66.

## HOLDING OF REAL AND PERSONAL PROPERTY

- 8.5.68 (a) All real and personal property of the Agency shall be held in the name of the Agency.
- (b) The Board shall carry out the responsibilities of management and administration of the real and personal property of the Agency.
- (c) Without in any way prejudicing, limiting or affecting the provisions of By-law 16.2

above or any power contained in the Act, any moneys of the Agency requiring investment may be vested in the name of the Agency in any real or personal property or in a form of investment the Board from time to time considers to be in the interest of the Agency, with power to the Board from time to time by resolution to vary any such investment.

#### FINANCIAL AFFAIRS

- 8.5.69 The income and property of the Agency, howsoever derived, shall be applied solely towards the promotion of the objects of the Agency as set forth in this Constitution.
- 8.5.70 No portion of the Agency's income or property thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to the Agency's Board or committee members, provided that nothing herein shall prevent the payment, in good faith, of:
- (a) the payment of reasonable wages to a Board or committee member if that person is also an employee of the Agency;
  - (b) reasonable payments to a Board or committee member pursuant to a contract for goods or services;
  - (c) reimbursement of expenses reasonably incurred in carrying out the official purposes of the Agency; or
  - (d) the payment of interest at a rate not exceeding interest at the rate for the time being charged by the Agency's bankers for overdraft accounts on money lent or reasonable and proper rent for premises demised or let by any member to the Agency.
- 8.5.71 For the purposes of By-Law 8.5.70:
- (a) "reasonable wages" means reasonable having regard to the circumstances of the Agency as well as the qualifications, role, and responsibilities of the Board or committee member as an employee;
  - (b) "reasonable payments" means reasonable having regard to the market costs of obtaining similar goods or services; and
  - (c) "reasonable payments to cover personal travelling expenses" means reasonable having regard to the circumstances of the Agency, and the costs of basic economy-class travel, accommodation and food in the relevant areas where the travel occurs.
- 8.5.72 The Agency shall not pay Board or committee members for performing their roles as Board or committee members.

#### FINANCIAL YEAR

- 8.5.73 The financial year of the Agency shall end on 30 June each year.

#### BOOKS OF ACCOUNT

- 8.5.74
- (a) The Agency shall keep proper books of account in which shall be entered an account of all receipts and disbursements received or made, of all credits and debts owing or due and of all matters necessary for the full explanation of the same, and the Agency shall, upon the request of the Accounts Committee of Review produce the same together with all supporting or relevant accounts, receipts, documents and writings for inspection, and shall permit extracts there from or copies to be made by any such officer or person authorised by the Accounts Committee of Review.
  - (b) The Agency's books and records shall be kept at the Agency's registered office.
  - (c) Board members shall have the right to inspect all of the Agency's books and records upon giving at least 7 days notice in writing to the Public Officer.

### MONIES TO BE BANKED

- 8.5.75 All monies received from time to time shall be placed to the credit of an account in the name of the Agency in any one or more of the following institutions:
- (a) a bank;
  - (b) a permanent building society;
  - (c) a credit union; or
  - (d) a fund or Agency of the Church.
- 8.5.76 The Agency shall appoint two or more persons to operate on such account or accounts and may from time to time alter or revoke a previous appointment and/or make new or additional appointments. Any such institution shall be empowered to honour such withdrawal by way of cheque or otherwise bearing the signature of any two such persons, unless and until written notice shall be given to and received by such institution of any other appointment or the alteration or revocation of any appointment.

### AUDIT

- 8.5.77 (a) The Board shall each year appoint one or more qualified accountants as the Agency's Auditor(s). For the purpose of this By-Law, a qualified accountant means a person who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants.
- (b) The Auditor shall not be a member of the Agency's Board or of any committee of the Board.
  - (c) The books of account shall be audited and certified by the Auditor(s) at least once in every year.
  - (d) The Auditor or Auditors shall have full access to all books and records of the Agency.
  - (e) The Auditor or Auditors shall, upon appointment, be provided with a copy of these By-Laws.
  - (f) The Auditor or Auditors shall have the right to attend and speak at any meeting of Board.

### PRESENTATION OF ACCOUNTS

- 8.5.78 Audited accounts signed by the Auditor(s) shall be submitted to the Accounts Committee of Review by 31 October each year.

### BUDGETS

- 8.5.79 Comprehensive and detailed budgets shall be prepared during the current year for the next succeeding year.

### GIFT FUND

- 8.5.80 (a) The Agency shall operate and maintain in accordance with the requirements of the Income Tax Assessment Act 1997 a gift fund for the public benevolent works of the Agency.
- (b) The Agency will ensure that the moneys in the Gift Fund are only used for the Public Benevolent activities of the Agency.
  - (c) As soon as:
    - (i) the gift fund is wound up, or
    - (ii) the Agency's endorsement as a deductible gift recipient is revokedany surplus assets of the gift fund must be transferred to another fund, authority or

institution, which has similar objectives to the Agency and which is able to receive tax-deductible gifts under division 30 of the Income Tax Assessment Act 1997.

#### PUBLIC FUND

- 8.5.81 (a) The Agency shall in accordance with the requirements of the Income Tax Assessment Act 1997 maintain a Public Fund for its Public Museum works.
- (b) The Agency will ensure that the moneys in the Public Fund are only used for the Public Museum activities of the Agency.
- (c) As soon as:
- (i) the Public Fund is wound up; or
  - (ii) the Agency's endorsement as a deductible gift recipient in respect of the Public Fund is revoked

any surplus assets of the Public Fund must be transferred to another fund, authority or institution, which has similar objectives to the Agency in respect of its Public Museum works, and which is able to receive tax-deductible gifts.

#### INDEMNITY

- 8.5.82 Any person acting under the express or implied authority of the Agency and who is not an independent contractor shall be indemnified out of the Agency's property against all liability for any matter or thing done or liability incurred except in the case of fraud, criminal act, gross negligence, or wilful misconduct.

#### COMMON SEAL

- 8.5.83 (a) The Agency shall have a common seal, the form of which shall be determined by the Board.
- (b) The Chairperson shall have custody of the Common Seal.
- (c) Any deed, instrument, or writing relating to any property held for the Agency or to any matter, which if made or executed by an individual could be or would be required to be in writing and under seal, may be made or executed under the Common Seal of the Agency.
- (d) The Common Seal shall not be affixed to any deed, instrument, or writing except in pursuance of a resolution passed at a duly convened meeting of the Board and every deed, instrument, and writing to which the Common Seal is affixed shall be signed by two members of the Board.
- (e) Every affixing of the Common Seal shall be recorded in a Register kept for that purpose.

#### PUBLIC OFFICER

- 8.5.84 The Chief Executive Officer shall be the Public Officer of the Agency.

#### EFFECT OF CONSTITUTION

- 8.5.85 This Constitution and its By-Laws do not have effect as a contract:
- (a) between the Agency and each Board or committee member or Officer; or
  - (b) between Board members, or between Board or committee members or Officers.

#### TERMINATION OF INCORPORATION

- 8.5.86 (a) The incorporation of the Agency may be terminated by the Synod, after consultation with the Western Australian Regional Committee of the Uniting Aboriginal and Islander Christian Congress, and in accordance with section 35 of the Act.
- (b) Where the incorporation of the Agency is terminated, the Agency shall thereupon

cease to be a body corporate and all land and the property held or belonging to or vested in it, whether in its corporate name or otherwise, shall without conveyance be vested in the Uniting Church in Australia Property Trust (WA) and henceforth shall be held by the Trust for the purposes of the Agency if it not then be closed and is still functioning but otherwise for such purposes and upon such trusts as the Synod shall, after consultation with the Western Australian Regional Committee of the Uniting Aboriginal and Islander Christian Congress, direct, provided that such purposes and trusts shall be consistent with the objects of the Agency and for the benefit of Aboriginal and Torres Strait Islander people.

#### CLOSURE OF THE AGENCY

- 8.5.87 (a) The Agency may be closed on the decision of the Synod, either at the request of the Board or after consultation with the Board, provided that the Synod shall not so act other than upon the recommendation of the Western Australian Regional Committee of the Uniting Aboriginal and Islander Christian Congress.
- (b) If, on the closure of the Agency, any assets remain after the satisfaction of any debts and liabilities and the costs, charges and expenses of the closure, those assets shall be transferred to the Synod, and then to another Public Benevolent Institution or to another Public Museum, as the case may be, for such purposes and upon such trusts as the Synod, on the recommendation of Western Australian Regional Committee of the Uniting Aboriginal and Islander Christian Congress, shall direct, provided that such purposes and trusts shall be consistent with the objects of the Agency and for the benefit of Aboriginal and Torres Strait Islander people.

#### AMENDMENTS TO THESE BY-LAWS

- 8.5.88 (a) These By-Laws may be amended by decision of Synod, or, if the Board believes that a proposed amendment is urgently required, by the General Council. Synod and the General Council shall act upon the recommendation of Western Australian Regional Committee of Congress.
- (b) The Board may submit a request to the Synod or the General Council for the amendment of these By-laws, and the Synod or General Council shall act only upon the recommendation of the Western Australian Regional Committee of Congress.
- (c) Any amendment to these By-laws shall within 21 days be advised to the Deputy Commissioner of Taxation.