

BAWINANGA ABORIGINAL CORPORATION

ICN: 29

RULE BOOK

This rule book complies with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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1. NAME

The name of the corporation is **Bawinanga Aboriginal Corporation**.

2. OBJECTIVES

The corporation was established for the relief of poverty, destitution, helplessness and distress of Aboriginal and Torres Strait Islander people. The objectives of the corporation are to provide services the communities and lands set out in the map in Schedule 4:

- (a) promote the maintenance of language, culture and traditional practice
- (b) to promote the sustainable use of traditional lands
- (c) to promote community development
- (d) to promote the welfare of residents
- (e) to provide or assist in the provision and maintenance of education, employment, housing, health, communications and other services
- (f) to foster business opportunities and to promote economic independence;
- (g) to operate and maintain a gift fund to be known as “The Bawinanga Aboriginal Corporation Gift Fund” in accordance with the requirements of the income tax Assessment Act 1997; and
- (h) to promote, in all its endeavours, the common good and mutual benefit of its members through fair, equitable and representative action and enterprise.

3. MEMBERS

3.1 *Who is eligible?*

A member must be:

- at least 18 years of age
- an Aboriginal person who is normally and permanently resident in Maningrida or the lands and Maningrida outstation communities serviced by the corporation and/or
- an Aboriginal person who has traditional rights, affiliations or interests in Maningrida or the lands and Maningrida outstation communities serviced by the corporation.

Note: The lands and Maningrida outstation communities serviced by the Corporation are set out in the map in schedule 4 of this rule book.

3.2 *How to become a member*

The corporation must not impose fees for the membership of the corporation.

A person becomes a member if:

- they are eligible under rule 3.1
- they submit an application for membership in writing to the corporation
- the application is approved by resolution passed at a directors’ meeting.

The directors must consider all applications for membership within a reasonable time after they are received by the corporation.

The directors may refuse to accept any person’s membership application.

If the directors refuse an application, they must notify the applicant in writing of the decision and the reasons for it.

The directors shall be responsible to ensure the necessary details of all new members are placed on the register of members within 14 days of the directors' resolution accepting the new member.

Such detail must include the person's name, address and the date their name was entered in the register of members.

If an application for membership is received after a notice for an AGM or a general meeting has been issued by the corporation, the person's name can't be entered on the register of members until the AGM or general meeting is held (even if the application has been approved in accordance with rule 3.2).

| |
|--|
| Note: An application for membership form is attached at Schedule 1 of this rule book. |
|--|

3.3 Members' rights

A member can:

- attend, speak and vote at general meetings
- be made a director
- put forward resolutions at general meetings
- ask the directors to call a general meeting
- look at the books and records of the corporation - the register of members, the minutes of general meetings and the audited financial statements
- look at other books and records of the corporation that are not subject to privacy or confidentiality laws if the directors or the members have passed a resolution allowing them to do this.

3.4 Members' responsibilities

A member must:

- follow these rules
- let the corporation know if they change their address (within 28 days)
- treat other members with courtesy and respect
- not behave in a way that significantly interferes with the operations of the corporation or of corporation meetings.

3.5 Liability of members

The members do not have to pay corporation debts if the corporation is wound up.

3.6 How to stop being a member

A person stops being a member if:

- they resign in writing
- they die
- their membership is cancelled.

The person's name and date they stopped being a member is put on the register of former members (in accordance with rule 3.8).

3.7 Cancelling membership

If a member:

- can't be contacted for two years
- misbehaves or
- is not an Aboriginal and/or Torres Strait Islander person.

the member can only be cancelled by **special resolution** at a **general meeting**. The directors must then send that person a copy of the special resolution at their last known address, as soon as possible after it has been passed.

If a person is not eligible for membership for some other reason, the directors can cancel their membership by passing a resolution at a directors meeting. Before the meeting, directors must give the member 14 days to object in writing. If the member objects, the directors can't cancel the membership. The member can only then be removed at a general meeting by resolution.

3.8 The register of members and former members

The register of members and former members can be maintained in one document. It must be kept at the corporation's document access address or registered office and it must be made available at the annual general meeting (AGM).

The register must contain the:

- members' and former members' names and addresses
- date when the names and details were put on the register
- for former members, the date when they stopped being a member.

4. GENERAL MEETINGS

4.1 Annual general meeting (AGM)-timing

AGMs must be held before the end of November each year.

4.2 AGM business

The following business must be completed at each AGM:

- confirmation of the minutes of the previous general meeting
- presentation of directors' reports, general reports and financial reports
- appointing directors in accordance with rule 5.5
- choosing an auditor (if required) and agreeing of his/her fee
- checking the register of members and register of former members
- allowing time for members to ask questions about how the corporation is managed.

4.3 General meetings

A majority of directors can call a general meeting.

The members can ask directors to call a general meeting.

If the directors receive a legitimate request from members for a general meeting they must call the general meeting within 21 days of receiving the request.

| Number of members in corporation | Number of members needed to ask for a general meeting |
|---|--|
| 2 to 10 members | = 1 member |
| 11 to 20 members | = 3 members |
| 21 to 50 members | = 5 members |
| 51 members or more | = 10% of members |

4.4 General meeting business

General meetings are for:

- confirming the minutes of the previous general meeting
- completing the business specified in the notice of the meeting.

4.5 Notice for general meetings

At least 21 days notice must be given.

Notice must be given to members, directors, officers (eg the CEO and CFO), the contact person and the auditor (if the corporation has one).

The notice must set out:

- the place, date and time for the meeting
- the business of the meeting
- if a resolution or special resolution is being proposed, and what it is
- if a member can appoint a proxy.

Notices can be given to members personally (or in a manner which accords with Aboriginal or Torres Strait Islander custom), sent to their address, sent by fax or sent by email.

A notice of meeting sent by:

- post is taken to be given 3 days after it is posted
- fax, or other electronic means, is taken to be given on the business day after it is sent.

4.6 Members' resolutions

The members can propose a notice of a resolution and then give it to the corporation.

| Number of members in corporation | Number of members needed to propose a resolution |
|---|---|
| 2 to 10 members | = 1 member |
| 11 to 20 members | = 3 members |
| 21 to 50 members | = 5 members |
| 51 members or more | = 10% of members |

The notice must set out the resolution in writing and must be signed by the members proposing it.

The corporation must give notice of the resolution to all people entitled to it (see rule 4.5).

The corporation must consider the resolution at the next meeting which is being held at least 28 days after the notice has been sent out.

4.7 Quorum at general meetings

The quorum for a general meeting of members is dependent on the number of persons that are members of the corporation. The formula for determining the number of members required to form a quorum at general meetings is set out in the table below:

| Number of members in corporation | Number of members to make a quorum |
|---|---|
| 30 or less members | = 2 members |
| 31 to 90 members | = 5 members |
| 91 members or more | = 10 members |

The quorum must be present during the whole meeting. If there's no quorum after one hour, the meeting is adjourned until the next week at the same time. If there's still no quorum, the meeting is cancelled.

4.8 Chairing general meetings

The directors may elect someone to chair general meetings. If they don't, the members must elect someone.

4.9 Using technology

General meetings can be held at more than one place using any technology that gives members a way of taking part.

4.10 Voting

Each member has one vote. The chair has one vote (if he or she is a member) plus a casting vote. A challenge to a right to vote at a general meeting may only be made at the meeting, and must be determined by the chair, whose decision is final.

A resolution can be decided by majority on a show of hands, unless a poll is demanded. (A poll is a formal vote, not by show of hands—for example, by writing on a voting paper or by placing voting cards in labelled ballot boxes).

The chairperson of the meeting tells the meeting whether they have received any proxy votes and what they are.

The chair declares the results of the vote, on a show of hands, or when a poll is demanded.

4.11 Demanding a poll

Any member entitled to vote on the resolution or the chair can demand a poll.

A poll can be held before or after a show of hands vote.

A poll on the election of a chair or on the question of an adjournment must be taken immediately. A poll demanded on other matters must be taken when and in the manner the chair directs.

4.12 Proxies

A member can appoint a person as proxy to attend meetings and vote for them.

A person holding a proxy (or proxies) can also speak at meetings and join in demanding a poll. They can vote if their appointment allows them to.

A proxy appointment must contain the member's name and address, the corporation's name, the proxy's name, the meeting where the proxy is going, and it must be signed by the member.

The corporation must receive the proxy's appointment at least 24 hours before the meeting.

A person must not be a proxy for more than three members.

| |
|---|
| Note: An appointment of proxy form is attached at Schedule 2 of this rule book. |
|---|

5. DIRECTORS

Subject to rule 5.11 the directors (excluding non-member directors) appointed at the end of the special administration shall hold office until the AGM for the year ended 30 June 2014 is held and thereafter the provisions of this rule shall apply.

5.1 Number of directors

The minimum number of directors is 6 (including non-member directors).

The maximum number of directors is 12 (including non-member directors).

5.2 Composition of the board of directors

The board of directors will be made up as follows:

- at least four and up to ten member directors; plus
- a maximum of two non-member directors appointed under rule 5.7.

Not more than one employee of the corporation is eligible to be a director at any one time.

Not more than one (1) person from each *immediate family* is eligible to be a director at any one time

Immediate family means any person related in any of the following ways: grandfather, grandmother, father, mother, husband, wife, defacto, son, daughter, sister, brother or step-children.

5.3 Eligibility of directors

A person is eligible to be appointed as a member director if they:

- are at least 18 years old; and
- are a member of the corporation (unless they are appointed as non-member directors under rule 5.8) and

A person is **not** eligible to be appointed, or hold office, as a member director if they:

- are the chief executive officer or chief financial officer of the corporation
- have been disqualified from managing corporations
- have been convicted of a criminal offence in the last five years

5.4 Majority of director requirements

A majority of directors of the corporation must:

- be individuals who are Aboriginal and/or Torres Strait Islander persons
- usually reside in Australia
- be members of the corporation
- not be employees of the corporation.

5.5 How to become a director

The corporation can appoint a member director by resolution passed at a general meeting or in the case of a non-member director, by resolution passed at a directors meeting.

The member directors must give the corporation their consent in writing to act as a director before being appointed.

Note: A 'Notification of a change to corporation officers details' form to register any changes can be obtained from the ORIC website or the changes can be made via online lodgement – www.oric.gov.au

Note: A consent form template that may be used for a director to give consent is at Schedule 3 of this rule book

5.6 Directors' terms of appointment and rotation

The directors are appointed at the annual general meeting for a term of two years. They are eligible to be re-elected.

5.7 How to become a non-member director

The member directors must appoint at least one non-member director.

The member directors may appoint a maximum of two non-member directors.

The non-member directors must be selected for their independence, expertise and skills in financial management, corporate governance, or community development.

The non-member directors must give the corporation their consent in writing to be a director before being appointed.

The non-member directors are appointed for the term specified in writing by the directors in their appointment. The term of appointment cannot exceed two years, but they can be reappointed.

5.8 How to fill vacancies

The member directors can fill director vacancies (including the chairperson and deputy chairperson positions) taking into account the eligibility requirements set out in rules 5.1, 5.2 and 5.3.

The directors can appoint someone as a director to make up a quorum. Their appointment must be confirmed by resolution at the next general meeting or they stop being a director.

5.9 How to stop being a director

A person stops being a director if:

- the person dies; or
- the person resigns in writing as a director
- the term of the person's appointment as a director expires
- the person is removed as a director by the members or the other directors (in accordance with rule 5.10)
- the person is disqualified from managing a corporation.

The corporation must notify the Registrar of the director's details within 28 days after they stop being a director.

5.10 How to remove a director

The members may remove a director (including a non-member director) at any time by passing a **resolution** at a **general meeting** provided that the following has occurred:

- a notice for a resolution to remove a director is given to the corporation at least 21 days before the next general meeting (or AGM), the notice must set out in detail all of the reasons why the resolution is being proposed
- the corporation has given the director concerned a copy of the notice as soon as possible.
- the director can give the corporation a written statement and speak at the meeting. The statement must be given to everyone entitled to receive notice of the meeting (see rule 4.5).

The directors may remove a director (including non-member directors) if:

- the director fails to attend three or more consecutive directors' meetings without a reasonable excuse.
- the directors must give the director a notice in writing and they must give the director 14 days to object in writing.

If the director objects, they cannot remove the director. The director can only then be removed at a general meeting by resolution.

5.11 *Alternate directors*

With the other directors' approval, a director (appointing director) may appoint an alternate to exercise some or all of the director's powers for a specified period.

If the appointing director asks the corporation to give the alternate director notice of directors' meetings, the corporation must do so.

The appointing director may terminate the alternate's appointment at any time.

An appointment of an alternate or its termination must be in writing. A copy must be given to the corporation.

5.12 *Directors' and officers' duties*

The duties are:

- a duty of care and diligence
- a duty of good faith
- a duty to disclose a conflict of interest (material personal interest)
- a duty not to improperly use position or information
- a duty to not trade while insolvent.

The business of the corporation is to be managed by or under the direction of directors. The directors may exercise all the powers of the corporation except any that the CATSI Act or this rule book requires the corporation to exercise in general meeting.

5.13 *Conflict of interest (material personal interest)*

A director who has a material personal interest in a corporation matter must tell the other directors.

This notice must give details of what the interest is and how it relates to the corporation. It must be given at a directors' meeting as soon as possible, and it must be recorded in the minutes of the meeting.

A director who has a material personal interest must not:

- be present at the directors' meeting while the matter in question is being considered
- vote on the matter in question unless allowed to do so under the CATSI Act.

5.14 *Payment*

The directors are not paid, unless they are employees of the corporation, or unless they have a contract to provide goods or services (so long as the director has exercised any duty to disclose a conflict of interest).

The corporation may pay the directors' travelling and other expenses for attending meetings or to do with other corporation business.

5.15 *Delegation*

The directors can delegate, by passing a resolution, any of their powers to:

- another director
- a committee of directors
- an employee of the corporation.

The delegate must follow the directions of the directors when using the delegated powers.

5.16 Related party benefit

If a corporation wants to give a financial benefit to a director or related party (such as a spouse of a director) it must comply with part 6.6 of the CATSI Act and, where required, follow the procedure to get the approval of the members.

5.17 Directors' meetings

The directors must meet at least every three months.

The directors will usually decide at a meeting when and where the next meeting will be.

A director can call a meeting by giving reasonable notice to all the other directors.

A majority of the directors can call a directors' meeting.

5.18 Quorum for directors' meetings

The quorum for a directors' meeting shall be a majority of directors.

The quorum must be present at all times during the meeting.

5.19 Chairing directors' meetings

The directors can elect a director to chair their meetings.

They must decide how long that director will be the chair.

The chairperson shall have the right to ask a director to leave a directors' meeting if the director is being disruptive to the meeting.

5.20 Resolutions at directors' meetings

A resolution of directors must be passed by a majority of the votes.

The chair has a vote, plus a casting vote.

Resolutions can be passed without a directors' meeting if all directors sign a statement saying that they are in favour of it.

5.21 Using technology

Directors' meetings can be held at more than one place using any technology, as long as they all agree to it.

5.22 Reporting for directors' meetings

The CEO must provide reports and other information as requested by the directors from time to time.

6. CONTACT PERSON OR SECRETARY

The contact person or secretary must be at least 18 years old.

The directors appoint a contact person or secretary.

The directors decide the contact person or secretary's pay and terms and conditions of employment, if any.

The contact person or secretary must pass on any correspondence received to at least one of the directors within 14 days.

The contact person or secretary must give the corporation their consent in writing to become a contact person before being appointed.

The corporation must send a contact person or secretary's personal details to the Registrar within 28 days after they are appointed (see *Notification of a change to corporation officers' details* form).

Note: "small" and "medium" sized corporations have a contact person, "large" corporations have a secretary.

7. RECORDS

The corporation must keep the:

- minutes of meetings (in writing or as an audio or video recording)
- rule book (constitution)
- register of members and former members
- names and addresses of directors, officers and the contact person
- financial records.

They must be kept at the corporation's document access address.

8. FINANCES

The corporation must follow these procedures:

- all money of the corporation must be deposited into the corporation's bank account
- all payments made out of the corporation's money must be supported by adequate documents which explain the nature and purpose of the payment
- all accounts must be approved for payment at a directors' meeting or in accordance with valid delegations approved by the directors
- all cheques, withdrawal forms, electronic transfer (EFT) transactions, and other banking documents must be signed by at least two directors or in accordance with valid delegations approved by the directors.

FINANCE AND RISK COMMITTEE

Within six weeks of being appointed, the directors must establish a Finance and Risk Committee.

The committee shall have five members which will be comprised as follows:

- the chief executive officer
- the chief financial officer
- two member directors
- one non-member director

The committee will monitor the financial risk and performance of the corporation.

The committee will focus on, but not be limited to:

- financial management and internal controls
- financial reporting (in particular to the board)
- the expenditure of corporation funds
- compliance with grant funded activity obligations
- the incurrance of financial obligations and liabilities.

All financial business of the corporation shall be tabled before the committee for assessment to determine and gauge if the corporation is maintaining income and expenses within its budget and funding agreements.

All expenses incurred by staff to do with travel, incidentals and other individual expenditure shall be provided to the committee for assessment to determine and gauge proper purposes, cost efficiency and cost effectiveness.

The committee shall meet as often as it considered necessary, but not less than once every three months. The committee shall set its own agenda and shall hold complete autonomy, but will report to the board.

The committee is entitled to review any document of the corporation and ask questions of any person that has connection to the corporation.

9. APPLICATION OF FUNDS

The directors must use the money and property of the corporation, not subject to any special trust or conditions by funders, to carry out its business.

They cannot give the money and property to members of the corporation.

This rule does not stop the corporation from making reasonable payment to a member:

- in their capacity as an employee (i.e. wages)
- under a contract for goods or services provided.

10. POWERS

Subject to the CATSI Act and this rule book, the corporation has the power to do anything lawful to carry out the objectives, except that:

- 10.1 the directors of the corporation shall not in any way of, charge, mortgage, pledge, encumber or otherwise deal with an asset of the corporation which consists of or includes land without first obtaining approval of the members by way of a **special resolution** of members passed at a properly convened **general meeting** of the corporation
- 10.2 if the land under consideration was acquired with funding received from the Commonwealth or the Northern Territory, the corporation must contact the relevant department and obtain any necessary approvals to proceed.

11. GIFT FUND

- 11.1 The corporation shall maintain for the principle purpose of the corporation a gift fund:
- (a) to be named the “The Bawinanga Aboriginal Corporation Gift Fund”
 - (b) which can receive gifts of money or property for the purposes of the objectives of the corporation
 - (c) which can have credited to it any money received by the corporation because of those gifts.
- 11.2 The gift fund cannot receive any money or property other than that stated at 11.1(b).
- 11.3 The corporation shall use gifts made to the gift fund and any money received because of them only for the principal purpose of the corporation.
- 11.4 Receipts issued for gifts to the gift fund must state:
- (a) the full name of the corporation
 - (b) the Australian Business Number (if applicable) and the Indigenous Corporation Number (ICN) of the corporation
 - (c) the fact that the receipt is for a gift.
- 11.5 As soon as:
- (a) the gift fund is wound up, or
 - (b) the corporation’s endorsement as a deductible gift recipient is revoked under section 426-55 of the Taxation Administration Act 1953

any surplus assets of the gift fund must be transferred to another fund, authority or institution, which has similar objectives to the corporation. This body must also be able to receive tax deductible gifts under division 30 of the Income tax Assessment Act 1997.

12. DISPUTE RESOLUTION

If a dispute arises, the parties must first try to resolve it themselves.

If the dispute is not resolved within 10 business days, any party may give a dispute notice to the other parties.

The dispute notice must be in writing and must say what the dispute is about. It must be given to the corporation.

The directors or any of the dispute parties may ask the Registrar for assistance.

The directors must help the parties resolve the dispute within 20 business days after the corporation receives the notice.

If the directors cannot resolve the dispute, it must be put to the members to resolve at a general meeting.

13. CHANGING THE RULE BOOK

The rule book can be changed by passing a special resolution at a general meeting. The proposed changes must be set out in the notice of the general meeting.

Within 28 days after the resolution is passed, the corporation must send the Registrar a completed *Request to change corporation rule book form* together with:

- a copy of the changes
- a copy of the minutes of the general meeting.

The changes do not take effect until the new rule book is registered by the Registrar.

Note: A *request to change corporation rule book form* to register the changes can be obtained from the ORIC website or the changes can be made via online lodgement – www.oric.gov.au

14. WINDING UP

The winding up of the corporation shall be in accordance with the CATSI Act.

14.1 Resolution to distribute surplus assets

Subject to rule 14.2, where:

- (a) the corporation is wound up
- (b) after all debts and liabilities have been taken care of, and costs of winding up have been paid, surplus assets of the corporation exist,

the members may pass a special resolution relating to the distribution of the surplus assets of the corporation.

14.2 The distribution of surplus assets must not be made to any member or to any person to be held on trust for any member.

BAWINANGA ABORIGINAL CORPORATION

APPLICATION FOR MEMBERSHIP

I, _____
(first name of applicant) *(last name of applicant)*

of

(address of applicant)

(applicant's D.O.B)

(applicant's phone)

(applicant's email)

hereby apply for membership of the Bawinanga Aboriginal Corporation.

I declare that I am eligible for membership under Rule 3.1 and am willing to be bound by the rules of the corporation.

Signed: _____

Date: _____

Office use only

| | |
|--|----------|
| Application tabled at directors' meeting held | Date: |
| Directors confirmed applicant is eligible for membership | Yes / No |
| Entered on register of members | Date: |

.....
Chairperson's signature

BAWINANGA ABORIGINAL CORPORATION

APPOINTMENT OF PROXY

I, _____ (full name of member)

of _____ (address of member)

am a member of the Bawinanga Aboriginal Corporation

I appoint _____ (full name of proxy)

of _____ (address of proxy)

as my proxy to vote for me on my behalf at the general meeting of the corporation (annual general meeting or other general meeting, as the case may be) to be held on

_____ (date of meeting)

and at any adjournment of that meeting.

Signature of member _____

Date _____

NOTE: A proxy vote may be given to a member of the corporation or another person.

**BAWINANGA ABORIGINAL CORPORATION
CONSENT TO BECOME A DIRECTOR**

I, _____
(full name of person)

of _____
(address of person)

Date of birth: _____ Phone: _____ email: _____

give my consent to become a director of **Bawinanga Aboriginal Corporation**

(date of meeting)

I confirm my date of birth was / / and my place of birth was _____
(place of birth)

I also acknowledge that a person is automatically disqualified from managing corporations if they:

- have been convicted of an offence under the *Corporations (Aboriginal and Torres Strait Islander Act 2006)* that is punishable by imprisonment for more than 12 months;
- have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months;
- have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months;
- are an undischarged bankrupt;
- have signed a personal insolvency agreement and have not kept the agreement; and
- have been disqualified under the *Corporations Act 2001* from managing corporations.

The period of automatic disqualification is set out in sections 279-5 and 279-10 of the CATSI Act.

Signature of person _____

Date _____

Note: This form should be completed and given to the corporation **before** the person is appointed as a director – section 246-10(1) of the CATSI Act.

Schedule 4—Map of lands and Maningrida outstation communities

| | | |
|-------------|----------|-----------|
| Mewirnbi | 12°07.62 | 134°46.02 |
| Milmilngkan | 12°31.47 | 134°14.78 |
| Mu-gurta | 12°15.50 | 134°30.47 |
| Mumeka | 12°21.90 | 134°08.09 |
| Nangak | 12°12.85 | 134°17.73 |
| Wurdeja | 12°10.31 | 134°39.58 |
| Yikarrakkal | 12°30.31 | 134°06.63 |
| Yilan | 12°02.65 | 134°37.28 |

