



Australian Government

Office of the Registrar of Aboriginal and Torres Strait Islander Corporations

NOTICE UNDER SECTION 439-20(1) OF THE CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006

The directors
Durri Aboriginal Corporation Medical
Service
15-19 York Lane
KEMPSEY NSW 2440

Durri Aboriginal Corporation Medical
Service
C/- Mr Timothy Agius
Secretary
4/92 Copeland Street
PENRITH NSW 2750

WHEREAS an examination of the affairs of the Durri Aboriginal Corporation Medical Service (ICN: 27) (the corporation) was completed, under section 453-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act), by authorised officers Mr Peter Saunders, Ms Ann Daniels and Mr Mark Thompson (the examiners) from the NSW firm of Kennedy Saunders Pty Ltd in 21-23 October 2015.

AND WHEREAS I, Peter Armstrong, a delegate of the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) suspect on reasonable grounds that the corporation has not complied with provisions of the CATSI Act and the corporation's constitution (i.e. the rule books approved on 13 November 2013 and 15 August 2014), namely:

Register of members and former members

A. Contrary to section 180-1(1) of the CATSI Act, and former and current rule 3.8,
I suspect the corporation does not maintain a register of members.

The examiners reported that:

- the corporation supplied a list of members dated 31 October 2015,
- the list had no heading and did not contain all of the required information (i.e. the list does not record the date that each person became a member of the corporation).
- new members approved at the directors' meeting held on 16 September 2015 had not been added to the list of members as at the date of the examination.

B. Contrary to sections 180-10 and 180-15 of the CATSI Act, and former and current rule 3.8,
I suspect the corporation does not maintain a register of former members.

The examiners reported that:

- the corporation does not maintain a register of former members.

Membership

- C.** Contrary to section 144-5 of the CATSI Act, and former and current rule 3.2, I suspect the corporation has not obtained written applications for membership for each person who has been admitted as a member of the corporation.

The examiners reported that:

- the corporation was unable to produce written applications for membership from all persons who had been admitted as members since 1 July 2013 for inspection during the examination.

- D.** Contrary to section 144-10(6) of the CATSI Act, and former and current rule 3.2, I suspect that the directors corporation did advise a person in writing that their application for membership had been declined.

The examiners reported:

- an application for membership was declined at the directors' meeting held on 11 December 2013
- the directors did not provide the applicant with written notice setting out the reasons that the application had been declined.

- E.** Contrary to section 144-10(8) of the CATSI Act and former and current rule 3.2, I suspect that the corporation has entered the names and details of new members its list of members after notices had been issued for a general meetings.

The examiners reported that:

- they were unable to determine whether new members applying for membership after notices had been given for general meetings as the list of members does not record the date that each person became a member of the corporation.

Annual general meetings (AGMs)

- F.** Contrary to section 201-1 of the CATSI Act, and former and current rule 4.3, I suspect the AGM for the year ended 30 June 2013 was not called by a director or the directors of the corporation.

The examiners reported that:

- there was no evidence in the minutes of the directors meetings held since 1 July 2013 to show that the AGM held 20 November 2013 was called by a resolution passes at a directors' meeting
- the corporation could not produce any other evidence for inspection during the examination to show that a director had called any of these meetings.

- G.** Contrary to section 201-150(1) of the CATSI Act, and former and rule 4.1, I suspect the AGM for the year ended 30 June 2014 was not held before 30 November 2014.

The examiners reported:

- the corporation did not hold its AGM for the year ended 30 June 2014 before 30 November 2014
- there was no evidence to show that the corporation sought the Registrar's approval for an extension of time to hold the meeting
- the Registrar subsequently called and held the AGM on 28 January 2015.

- H.** Contrary to section 201-20(1) of the CATSI Act, and former and current rule 4.5, I suspect that the corporation did not give at least 21 days notice for the AGM for the year ended 30 June 2013 and the general meeting held on 14 October 2013 to all persons entitled to receive them.

The examiners reported

- they were unable to confirm that 21 days notice was given for the AGM held 20 November 2013 as the notice was undated
- the corporation was unable to produce a copy of the notice for the general meeting held on 14 October 2014 for inspection during the examination.

- I.** Contrary to section 220-5(4) of the CATSI Act, and former and current rule 7, I suspect the corporation has not kept proper minutes for the AGM for the year ended 30 June 2013 and the general meeting held on 30 July 2014.

The examiners reported that:

- the minutes of the AGM held on 20 November 2013 were not signed by the chair of the meeting within a reasonable time after the meeting or by the chair of the next meeting
- the minutes of the general meeting held 30 July 2014 were not signed by the chair of the meeting within a reasonable time after the meeting or by the chair of the next meeting.

Directors

- J.** Contrary to section 246-10(1) of the CATSI Act, and former and current rule 5.5, I suspect that the corporation did not obtain signed consents, to act as directors from each of the current directors of the corporation before they were appointed.

The examiners reported that:

- they were advised that the current directors of the corporation are: Cheryl Davis, Norma Kelly, Alison Martin, Nicole Turner, Kerry Wade, Wendy Cowan, Donald Griffen, Karen Kennedy and Kelvin Jarrett
- the corporation was unable to produce signed consents, to act as directors, from Norma Kelly, Alison Martin, Nicole Turner and Kerry Wade for inspection during the examination.

- K.** Contrary to former and current rule 7, I suspect the corporation does not maintain records about its directors (i.e. full name, address and date of birth).

The examiners reported:

- the corporation does not keep the records containing the about two current directors (Norma Kelly and Alison Martin)
- the corporation does not keep a record of the date of birth for Kerry Wade

- L.** Contrary to section 249-5 of the CATSI Act and former and rule 5.11, I suspect a director did not give the corporation written notice of his resignation.

The examiners reported that:

- Robert Smith resigned as a director on 30 July 2014 and was reappointed as a director 30 September 2014
- there was no evidence that Robert Smith gave the corporation written notice of his resignation on 30 July 2014.

Registrar not notified about changes to directors within 28 days

- M.** Contrary to section 304-5 of the CATSI Act, I suspect the corporation did not notify the Registrar of changes to directors (i.e. appointments and resignations) within 28 days of the change occurring.

The examiners reported that:

- Robert Smith resigned as a director on 30 July 2014 and was reappointed as a director 30 September 2014
- the corporation did not advise Registrar of the resignation and reappointment of Robert Smith within 28 days after these changes occurred.

Directors' meetings

- N.** Contrary to 220-5(4) of the CATSI Act, and former and current rule 7, I suspect the corporation has not kept proper minutes of all directors' meetings.

The examiners reported that:

- the minutes of 24 of the 26 directors' meetings held since 1 July 2013 have not been signed by the chair of each meeting within a reasonable time after each meeting or by the chair of the next meeting

Financial records and payments out of the corporation's money

- O.** Contrary to Section 322-10(1) of the CATSI Act, and former and rule 7, I suspect the corporation has not kept up-to-date financial records that correctly record and explain its transactions and financial position and performance and would enable true and fair financial reports to be prepared and audited.

The examiners reported that:

- the corporation was unable to produce an asset register for inspection during the examination.

- P.** Contrary to former and current rule 8, I suspect the corporation does not issue receipts for all money it receives.

The examiners reported that:

- the corporation does not issue receipt for money received by the corporation.

- Q.** Contrary to section 274-5 of the CATSI Act and former and current rule 8, I suspect that payments out of the corporation's money may have been approved by persons who do not have the delegated authority to do so.

The examiners reported that:

- they were provided with a copy of the corporation's Delegation Register and advised that the directors had delegated authority to certain staff to authorise payments out of the corporation's money
- however, there was no evidence in the minutes of the directors' meetings held since 1 July 2013 to show that the directors had delegated theirs powers to any person to authorise payments out of the corporation's money.

Sundry matters

- R.** Contrary to section 85-15 of the CATSI Act, I suspect the corporation's Indigenous Corporation Number (ICN) is not set out on its public documents and negotiable instruments.

The corporation's ICN is 27.

The examiners reported that:

- the corporation's ICN is displayed on its letterhead but is not recorded on other public documents and negotiable instruments.

- S.** Contrary to division 112 of the CATSI Act, I suspect the corporation's ICN is not displayed prominently at the corporation's registered office.

The corporation is classified as a 'large' sized corporation.

The examiners reported that:

- the current registered address is 15-19 York Lane Kempsey NSW 2440
- the name of the corporation is displayed at its registered office
- however, the corporation's ICN is not prominently displayed at the corporation's registered office.

- T.** Contrary to section 257-15(1) of the CATSI Act, and former and current rule 6, I suspect the corporation did not obtain a signed consent to act as secretary of the corporation prior to his appointment.

The examiners reported that:

- Tim Agius was appointed as secretary of the corporation by a resolution passed at the director's meeting held on 12 August 2015
- the signed consent from Tim Agius, to act as secretary of the corporation, is signed and dated 16 September 2015.

TAKE NOTICE that, under Section 439-20(1) of the CATSI Act, and for the purpose of complying with the CATSI Act and the rules of the corporation, **I require** the corporation and the directors of the corporation to take the following actions by the dates specified below:

1. To comply with sections 180-1, 180-5, and 180-10 of the CATSI Act, the corporation and the directors must establish and maintain:

- 1.1 A register of members which contains:

- the member's given and family name;
- the member's address; and
- the date on which the entry of the member's name in the register was made.

- 1.2 A register of former members which contains the following details for all persons who have stopped being a member within the last 7 years:

- the member's given and family name;
- the member's address; and
- the date on which the individual stopped being a member.

Note: Under section 180-22 of the Act, the corporation may maintain its register of members and register of former members in the one document.

2. Within 30 days of the date of this notice convene a meeting of directors to:

- 2.1 Consider the revised register(s) of members prepared in accordance with action item 1 above and pass a resolution to the effect that the said register(s) reflects the total current and former membership of the corporation at the date of the directors' meeting.

- 2.2 At the same meeting of directors pass the following resolution:

"The directors have read the notice issued by the Registrar of Indigenous Corporations under section 439-20 of the Act and acknowledge its contents. The directors undertake to do all things necessary to ensure that in future the corporation is governed strictly in accordance with the Act and the rules of the corporation."

3. Ensure that resolutions of the directors passed in response to the action required by the matter set out under the paragraph numbered 2 above are recorded in the minutes of the directors' meeting and that a copy of those minutes, together with a copy of the register of members and register of former members, are forwarded to the Registrar within 14 days of the date of that meeting.

4. Action to prevent reoccurrence of non-compliance with CATSI Act and rules

By the close of business on Friday 18 March 2016, the corporation and the directors of the corporation must take action to rectify the suspected instances of non-compliance with the CATSI Act and the corporation's rule book and send confirmation together with any relevant supporting documents to the Registrar which demonstrates that:

- 4.1. the register of members and register of former members are properly maintained and kept up-to-date
- 4.2. all of the required information is recorded in the register of members and register of former members
- 4.3. a written application for membership form is obtained from each person who wants to become a member of the corporation
- 4.4. all applicants for membership are notified in writing about the outcomes of their applications
- 4.5. all future AGMs are held before the end of November each year
- 4.6. all AGMs (and other general meetings) are called by a director or the directors of the corporation
- 4.7. at least 21 days notice is given for all AGMs (and any other general meeting), each notice includes all of the required content, and that the notices are given to all persons entitled to receive them (i.e. each member, each director, the contact person and the corporation's auditor)
- 4.8. minutes are kept for all AGMs, all other general meetings and directors' meetings that:
 - record the names of all persons who attended the meeting
 - record any discussions on the matters considered at each meeting
 - record each resolution clearly, including who "moved" and "seconded" a resolution, and whether the resolution was "carried" or "not carried" by a majority vote (or special resolution if needed)
 - are signed by the chair of each meeting within a reasonable time after each meeting or by the chair of the next meeting
- 4.9. a register is maintained of the name, address and date of birth for each current director

- 4.10. the corporation obtains a signed consent, to act as a director, from each person before they are appointed as a director of the corporation
- 4.11. the Registrar is notified of any changes to the directors or contact person within 28 days after each change occurs
- 4.12. receipts are issued by the corporation for all money received
- 4.13. all payments are being properly authorised and approved by the directors or under a delegation which has been made by resolution at a director' meeting
- 4.14. the corporation maintains and up-to-date asset register
- 4.15. the corporation's ICN is displayed on all of its public documents and negotiable instruments
- 4.16. the corporation's ICN is displayed prominently at the corporation's registered office

By the close of business on Friday 25 March 2016, the corporation and the directors of the corporation must send a written report to the Registrar which details what actions have been put in place to address each of the above points.

Minutes of meetings

- 5. The corporation and the directors of the corporation must forward to the Registrar copies of all minutes of directors' meetings and general meetings (together with copies of any notices sent to directors and members for any such meetings) held by the corporation from the date of this notice until such time as the Registrar notifies the corporation in writing that he is satisfied that it is no longer necessary to monitor the corporation.

This documentation is to be forwarded to the Registrar within 14 days of the date of the meeting to which the minutes and notices relate.

The requirement to take the above action is for the purpose of complying with the Act and the corporation's constitution (i.e. the rule book) and to rectify any other irregularities mentioned in this notice.

Dated this 15th day of February 2016



Peter Armstrong

Delegate of the Registrar of Aboriginal
and Torres Strait Islander Corporations



Note: The decision to issue this notice is a reviewable decision under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)* and you have the right to have the decision reviewed under Part 15-4 of that legislation. Should you wish to avail yourself of that right, you will need to comply with the requirements of section 620-5 of that legislation.