

# NGARDA-NGARLI-YARNDU FOUNDATION INC.

## CONSTITUTION

### 1. Name of Association

The name of the Association is Ngarda-Ngarda-Yarndu Foundation Inc.

### 2. Definitions

In these rules, unless the contrary intention appears:

“Aboriginal Corporation” means:

- (a) any body corporate (other than a company as defined by the Corporations Law) which has at least 5 adult Aboriginal people members in which membership is either limited to Aboriginal people or is made up of a majority of Aboriginal people and control over such body in either case is held and exercised by its Aboriginal people members at any given time; or
- (b) any company (as defined by the Corporations Law):
  - (i) the shares of which are (at any given time) held by a majority of Aboriginal people or Aboriginal corporations; and
  - (ii) the control over which (at any given time) is exercised by Aboriginal people or Aboriginal corporations.

For the purpose of making distributions in accordance with rule 5, the **Board** may, by unanimous resolution, deem any body corporate (other than a company as defined by the Corporations Law) to be an Aboriginal corporation if the purpose to which the body corporate will apply the distributed funds will be primarily for the benefit of Aboriginal people in the ***Western Pilbara region of Western Australia as the boundaries depicted on map (Appendix 1)***.

“Aboriginal people” means descendants of the Aboriginal race of Australia who identify as Aboriginal people and are accepted as such by the community in which they live;

“Act” mean the Association Incorporation Act 1987;

“***Western Pilbara region of Western Australia***” means the boundaries depicted.

“Ashburton Ward” means the Ashburton Ward, as set out ***according to the boundaries***.

“Association” means the Association referred to in Rule 1;

“Chairperson” means:

- (a) in relation to the proceedings at a **Board** meeting or general meeting, the person presiding at the **Board** meeting or general meeting in accordance with Rule 12; or
- (b) otherwise than in relation to the proceedings referred to in paragraph (a), the person referred to in paragraph 11.2 or, if that person is unable to perform his or her functions, the Vice Chairperson;

“**Board**” means the Committee of Management of the Association referred to in Rule 11.1;

“**Board** meeting” means a meeting referred to in Rule 16.1;

“**Board** member” means a person referred to in paragraph (a), (b) or (c) of Rule 11.1;

“Constitution” means the Constitution of the Association;

“Distribution Accounts” mean the accounts established for each of the Wards to account for distribution of funds pursuant to Rule 5.1(c). These accounts are to be book entry only in order to record the amounts available for distribution within the Wards in accordance with Rule 5.1 (c).

“East Pilbara Ward” mean the East Pilbara Ward, as set out **according to the boundaries**.

“Financial year” means:-

- (a) a period not exceeding 15 months fixed by the **Board** being the period commencing on the date of incorporation of the Association; and
- (b) each period of 12 months commencing at the expiration of the previous financial year of the Association;

“General meeting” means a meeting convened under Rule 17;

“Hedland Ward” means the Hedland Ward, as set out **according to the boundaries**.

“Member” means the **Board** members referred to in paragraph (a), (b) or (c) of the Rule 11.1;

“Ordinary Resolution” means a resolution other than a special resolution’

“Roebourne Ward” means the Roebourne Ward, as set out *according to the boundaries*.

“Rules” means the rules of the Association set out in this Constitution;

“Special Adviser” means the Special Adviser referred to in Rule 11.1(b) who will carry out the duties of a secretary as set out in Rule 13 and the duties of treasurer as set out in Rule 14;

“Special resolution” has the meaning given by section 24 of the Act;

“Surplus” means the income amount determined by the **Board** as surplus to the ongoing requirements of the Association;

“Vice-Chairperson” means the Vice-Chairperson referred to in Rule 11.1(b);

“Wards” means Ashburton, East Pilbara, Roebourne and Hedland Wards, and  
“Ward” means any one of them.

### 3. Objectives of Association

- 3.1 The objects of the Association are to alleviate poverty among Aboriginal people in the *Western Pilbara region of Western Australia* by supporting long-term Aboriginal community development. The aim of the Association is to achieve this by raising funds directly and by making investments that will generate long-term returns. Funds so raised will be specifically allocated for the provision of:
- (a) health facilities and services;
  - (b) education and training facilities and services;
  - (c) employment opportunities;
  - (d) economic opportunities;
  - (e) preservation of culture; and
  - (f) any other initiatives that work towards the alleviation of poverty in the aboriginal people in the *Western Pilbara region of Western Australia*.
- 3.2 The property and income of the Association shall be applied solely towards the promotion of the objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members, except as bona fide remuneration for services rendered or expenses incurred on behalf of the Association or in good faith in the promotion of those objects.

#### 4. Powers of Association

The powers of the Association are to:

- (a) provide funding in accordance with the Rules in promotion of the objects of the Association;
- (b) acquire, hold, deal with and dispose of any real or personal property;
- (c) open and operate bank accounts;
- (d) invest its money –
  - (i) as trust funds may be invested under Part III of the Trustees Act 1962;
  - (ii) without limiting the generality of paragraph (I), in projects for the furtherance of its objects;
- (e) borrow money upon such terms and conditions as the Association thinks fit;
- (f) give such security for the discharge of liabilities incurred by the Association as the Association thinks fit;
- (g) appoint agents to transact any business of the association on its behalf;
- (h) enter into any other contract it consider necessary or desirable;
- (i) act as a trustee in accordance with section 13(2) of the Act.

#### 5. Distribution of Funds

5.1 Surpluses from the Association will be allocated by the **Board** in the following order:

- (a) to the investment account to be held available for use in the operations and investments of the Association;
- (b) to Aboriginal corporations to be used in projects for the furtherance of the Association's objects and that are considered by the **Board** to be for the benefit of Aboriginal people across the **Western Pilbara region of Western Australia** and not for the benefit of Aboriginal people in any particular Ward;
- (c) the remainder to be credited to the Distribution Accounts and to be held available for distribution to Aboriginal corporations and or individuals on application, within the area for use in projects for the furtherance of the Association's objects.

- 5.2 Surpluses allocated in accordance with Rule 5.1(a) shall be invested by the **Board** having regard to the objects and powers of the Association, and in particular the primary object of the relief of poverty.
- 5.3 The maximum allocation to any one project under Rule 5.1(b) and (c) in the first five financial year so f the Association shall be \$50,000.
- 5.4 The maximum total allocation under Rule 5.1(b) and (c) in any of the first five financial years of the Association shall be \$150,000 and allocation can only occur in this period after at least \$200,000 has been allocated to the investment account in each year.
- 5.5 Payments made in relation to a project that is considered by the **Board** to provide benefits primarily to the members of a Ward shall be deducted from the Distribution Account of that Ward. At no time should a payment be made which would cause a Distribution Account to have a negative balance.
- 5.6 Subject to the requirements of Rules 5.8, 5.9 and 5.10 allocations of funding to project proposals shall be made by general resolution of the **Board** and having regard to the objects of the Association, and in particular the relief of poverty.
- 5.7 The **Board** shall determine guidelines for application for funding pursuant to Rules 5.1(b) and (c). The guidelines will be consistent with the objects of the Association and the requirements of Rules 5.2 to 5.6.
- 5.8 The appointed member for a Ward may not vote on **Board** decisions about funding of project proposals in the form which they are appointed.
- 5.9 A unanimous resolution of the **Board** is required where the total allocation of funding to Ward projects in a financial year exceeds the Ward's allocated share of surplus for the preceding financial year.
- 5.10 A unanimous resolution of the **Board** is required where a funding allocation exceeds \$100,000 for a project.

## 6. **Qualification for membership of Association**

- 6.1 Membership of the Association is open to all **Board** members including the Special Adviser.
- 6.2 A person who is appointed as a **Board** member shall become a member of the Association from the date of appointment. Upon ceasing to be a **Board** member that person shall cease to be a member of the Association.

## **7. Register of members of Association**

- 7.1 The Special Adviser shall on behalf of the Association cause to be kept and maintained the register of members in accordance with section 27 of the Act and that register shall be so kept and maintained at the place nominated by the **Board** from time to time. The register will include the Ward to which each member other than the Special Adviser belongs.
- 7.2 The Special Adviser shall cause the name of a person who dies or who ceases to be a member to be deleted from the register of members.

## **8. Subscriptions of members of Association**

- 8.1 The members shall from time to time at a general meeting determine the amount of the subscription, if any, to be paid by a member.
- 8.2 Each member shall pay to the Special Adviser, annually on or before 1 July or such other date as the **Board** from time to time determines, the amount of the subscription, if any, determined under Sub-Rule 8.1.
- 8.3 Subject to Sub-Rule 8.4, a member whose subscription is not paid within 3 months after the relevant date fixed by or under subclause 8.2 ceases on the expiry of that period to be a member, unless the **Board** decides otherwise.
- 8.4 A member is a financial member for the purposes of these Rules if his or her subscription is paid on or before the relevant date fixed by or under Sub-Rule 8.2 or within 3 months thereafter.

## **9. Resignation of members of Association**

- 9.1 A member who notifies the **Board** of his or her resignation from the Association ceases on delivery of that notice to be a member.
- 9.2 A person who ceases to be a member under Sub-Rule 9.1 remains liable to pay to the Association the amount of any subscription due and payable by that person to the Association but unpaid at the date of that cessation.

## **10. Expulsion of members of Association**

- 10.1 If the **Board** considers that a member should be expelled from membership of the Association because of this or her conduct detrimental to the interests of the Association, the **Board** shall communicate, either orally or in writing, to the member:
- (a) notice of the proposed expulsion and of the time, date and place of the **Board** meeting at which the question of that expulsion will be decided; and

- (b) particulars of the conduct,

not less than 30 days before the date of the **Board** meeting referred to in paragraph (a).

10.2 At the **Board** meeting referred to in a notice communicated under Sub-Rule 10.2, the **Board** may, having afforded the member concerned a reasonable opportunity to be heard by, or to make representations in writing to, the **Board**, expel or decline to expel that member from membership of the Association and shall, forthwith after deciding whether or not so to expel that member, communicate that decision in writing to that member.

10.3 A member who is expelled under Sub-Rule 10.2 from membership of the Association ceases to be a member 14 days after the day on which the decision so to expel him or her is communicated to him or her under Sub-Rule 10.2.

## 11. **Board of Management**

11.1 The affairs of the Association shall be managed exclusively by a **Board** of Management consisting of:

(a) one person appointed from each of the Wards by the **outgoing** Ngarda-Ngarli-Yarndu ATSIC Regional Council and the **outgoing** Chairperson of the Ngarda-Ngarli-Yarndu ATSIC Regional Council. The first nominee for each of the **Wards shall be Willy Jumbo for the East Pilbara Ward, Darren Injie for the Ashburton Ward, Michael Woodley and Joyce Drummond for the Roebourne Ward, Barry Taylor and Arthur Gear for the Hedland Ward;**

(b) A Special adviser having appropriate commercial skills and experience and being a full member of the Institute of Chartered Accountants in Australia or similar professional body **appointed by the Board of Management.**

(c) The **Board** shall have the ability to appoint an ex-officio non Aboriginal member as deemed necessary.

(d) The **Board** shall have the ability to appoint two members from the Resource Industry, which hold Executive Positions.

11.2 The **Board** shall appoint one of its members to be the Chairperson and one of its members to be the Vice-Chairperson.

11.3 The members appointed under Rule 11.1(a) and (b) shall hold office until their respective appointers replace them by new appointments and the provisions of Sub-Rules 11.4-11.8 of this Rule do not apply to their respective appointments.

- 11.4 At the second annual general meeting to be held after the incorporation of the Association under the Act and every third annual general meeting thereafter the **Board** members appointed by nomination under Rule 11.1(c) shall cease to be **Board** members, but shall be eligible to be re-nominated.
- 11.5 The appointments for each Ward are made by resolution of the **Board** from the nomination from each Ward. The retiring member for a Ward cannot vote in relation to the new appointment for that Ward but other retiring members can vote.
- 11.6 When a casual vacancy within the meaning of Rule 15 occurs in the nominated membership of the **Board** :
- (a) the **Board** may appoint a member to fill that vacancy; and
  - (b) a member appointed under this sub-rule shall:
    - (i) hold office until the commencement of; and
    - (ii) be eligible to be nominated membership of the **Board** at the next following annual general meeting.
- 11.7 Where a casual vacancy within the meaning of Rule 15 occurs of a member other than a nominated member, the member's appointer shall appoint a replacement member forthwith.

## 12. Chairperson

- 12.1 Subject to this rule, the Chairperson shall preside at all general meetings and **Board** meetings.
- 12.2 In the event of the absence from:
- (a) A general meeting of:
    - (i) the Chairperson, the Vice-Chairperson; or
    - (ii) both the Chairperson and the Vice-Chairperson, a **Board** member elected by the other **Board** members present.
  - (b) a **Board** meeting of:
    - (i) the Chairperson, the Vice-Chairperson; or
    - (ii) both the Chairperson and the Vice-Chairperson, a **Board** member elected by the other Committee members present.



(c) shall preside at the general meeting or **Board** meeting, as the case required.

### **13. Special Adviser – secretarial duties**

The Special Adviser shall be responsible to ensure that:

- (a) the correspondence of the Association is coordinated;
- (b) full and correct minutes of the proceedings of the **Board** and of the Association are kept;
- (c) The Association complies with;
  - (i) section 27 of the Act in respect of the register of members of the Association;
  - (ii) section 28 of the Act in respect of the Rules of the Association; and
  - (iii) section 29 of the Act in respect of the record of the office holders, and any trustees, of the Association;
- (d) all books, documents, records and registers of the Association, including those referred to in paragraph (c), are kept and maintained.
- (e) such other secretarial duties as are imposed by these Rules on the Special Adviser are performed.

### **14. Special Adviser – Treasurer’s duties**

The Special Adviser shall also act as Treasurer and shall be responsible to ensure that:

- (a) receipts are issued for all moneys paid to the Association in the name of the Association;
- (b) all moneys referred to in paragraph (a) are paid into such account or accounts of the Association as the **Board** may from time to time direct;
- (c) payments are made from the funds of the Association with the authority of a general meeting or of the **Board** and in so doing ensure that all cheques are signed by at least one **Board** member other than the Special Adviser;
- (d) the Association complies with sections 25 and 26 of the Act in respect of the accounting records of the Association;
- (e) whenever directed to do so by the Chairperson, a report, balance sheet or financial statement in accordance with that direction is submitted to the **Board**

- (f) all securities, books and documents of a financial nature and accounting records of the Association, including those referred to in paragraphs (d) and (e) are kept and maintained; and
- (g) such other duties as Treasurer as are imposed by these Rules on The Special Adviser are performed.

**15. Casual vacancies in membership of *Board***

A casual vacancy occurs in the office of a ***Board*** member and that office becomes vacant if the ***Board*** member:

- (a) dies;
- (b) resigns by notice in writing delivered to the Chairperson or, if the ***Board*** member is the Chairperson, to the Vice-Chairperson;
- (c) is convicted of an offence under the Act;
- (d) is permanently incapacitated by mental or physical ill-health;
- (e) is absent from more than:
  - (i) 3 consecutive ***Board*** meetings; or
  - (ii) 3 ***Board*** meetings in the same financial year, of which he or she has received notice without tendering an apology to the person presiding at each of those ***Board*** meetings.

**16. Proceedings of *Board***

- 16.1 The ***Board*** shall meet together for the dispatch of business not less than four times in each financial year and the Chairperson may at any time convene a meeting of the ***Board***
- 16.2 Each ***Board*** member has a deliberative vote.
- 16.3 Subject to Rule 5 a question arising at a ***Board*** meeting shall be decided by a majority of votes, but, if there is an equality of votes, the person presiding at the ***Board*** meeting shall have a casting vote in addition to his or her deliberative vote.
- 16.4 At a ***Board*** meeting four ***Board*** members constitute a quorum.

- 16.5 Subject to these Rules, the procedure and order of business to be followed at a **Board** meeting shall be determined by the **Board** members present at the **Board** meeting.
- 16.6 A **Board** member having any director indirect pecuniary interest referred to in section 21 or 22 of the Act shall comply with that section.
- 16.7 A resolution in writing signed by all members of the **Board** shall be as valid and effectual as if it had been passed at a meeting of the **Board** duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more **Board** members. A telex, telegram, facsimile transmission or other document produced by mechanical means and bearing the signature of the **Board** member, printed mechanically and with the **Board** member's authority, shall be deemed to be a document in writing signed by the **Board** member.
- 16.8 The contemporaneous linking together by instantaneous communication device of a number of consenting **Board** members comprising not less than the quorum, and whether or not one or more **Board** members is out of Australian shall be deemed to constitute a meeting of the **Board** . The provisions of this Constitution apply to a meeting of this nature, with the additional requirements that:
- (a) each of the **Board** members must be able to hear each of the other **Board** members; and
  - (b) at the start of the meeting each **Board** member must acknowledge their presence for the purpose of a meeting of the **Board** to all the other **Board** members taking part.

## **17. General meetings**

- 17.1 The **Board** :
- (a) may at any time convene a special general meeting;
  - (b) shall convene annual general meetings within the time limits provided for the holding of annual general meetings by section 23 of the Act
  - (c) shall, within 45 days of receiving a request in writing to do so from not less than 5 members, convene a special general meetings for the purpose specified in that request.

- 17.2 The members making a request referred to in Sub-Rule 17.1(c)(i) shall:
- (a) state in that request the purpose of which the special general meeting concerned is required; and
  - (b) sign that request.
- 17.3 If a special general meeting is not convened within the relevant period of 45 days referred to in Sub-Rule 17.1(c)(i), the members who made the request concerned may themselves convene a special general meeting as if they were the **Board** .
- 17.4 When a special general meeting is convened under Sub-Rule 17.3;
- (a) the **Board** shall ensure that the members convening the special general meeting are supplied free of charge with particulars of all members; and
  - (b) the Association shall pay the reasonable expenses of convening and holding the special general meeting.
- 17.5 Subject to Sub-Rule 17.8, the Special Adviser shall give to all members not less than 14 days notice of a general meeting and of any motion to be moved at the general meeting.
- 17.6 A notice given under Sub-Rule 17.5 shall specify:
- (a) when and where the general meeting concerned is to be held; and
  - (b) particulars of the business to be transacted at the general meeting concerned and of the order in which that business is to be transacted.
- 17.7 In the case of an annual general meeting, the order in which business is to be transacted is:
- (a) first, the consideration of the accounts and reports of the **Board** ; and
  - (b) second, any other business requiring consideration by the Association in a general meeting.
- 17.8 The Special Adviser shall give to all members not less than 21 days notice of a general meeting at which a special resolution is to be proposed and of any other motions to be moved at that general meeting.

- 17.9 The Special Adviser may give notice under Sub-Rule 17.5 or 17.8 by:
- (a) serving it on a member personally; or
  - (b) sending it by post to a member at the address of the member appearing in the register of members kept and maintained under section 27 of the Act.
- 17.10 When a notice is sent by post under Sub-Rule 17.9(b), sending of a notice shall be deemed to be properly effected if the notice is sufficiently addressed and posted to the member concerned by ordinary prepaid mail.

**18. Quorum in proceedings at general meetings**

- 18.1 At a general meeting 4 members present in person constitute a quorum.
- 18.2 If within one hour after the time specified for the holding of a general meeting in a notice given under Rule 17.5 or 17.8:
- (a) as a result of a request or notice referred to in Rule 17.1(c) or as a result of action taken under Rule 17.3 a quorum is not present, the general meeting lapses; or
  - (b) otherwise than as a result of a request, notice or action referred to in paragraph (a), the general meeting stand adjourned to a date within 60 days of the adjourned meeting and at a time and venue to be determined by the Chairperson and notice of such adjourned meeting shall be given by the Special Adviser to the members.
- 18.3 If within one hour of the time appointed; by Sub-Rule 18.2(b) for the resumption of an adjourned general meeting a quorum is not present, the members who are present in person may nevertheless proceed with the business of that general meeting as if a quorum were present.
- 18.4 The Chairperson may, with the consent of a general meeting at which a quorum is present, and shall, if so directed by such a general meeting, adjourn that general meeting from time to time and from place to place.
- 18.5 There shall not be transacted at an adjourned general meeting any business other than business left unfinished or on the agenda at the time when the general meeting was adjourned.
- 18.6 When a general meeting is adjourned for a period of 30 days or more, the Special Adviser shall give notice under Rule 17 of the adjourned general meeting as if that general meeting were a fresh general meeting.

- 18.7 At a general meeting:
- (a) an ordinary resolution put to the vote shall be decided by a majority of votes cast on a show of hands; and
  - (b) a special resolution put to the vote shall be decided in accordance with section 24 of the Act
- 18.8 A declaration by the Chairperson at a general meeting that a resolution has been passed as an ordinary resolution thereat shall be evidence of the fact unless, during the general meeting at which the resolution is submitted, a poll is demanded in accordance with Sub-Rule 18.9.
- 18.9 At a general meeting, a poll may be demanded by the Chairperson at the general meeting or by three or more members present in person and, if so demanded, shall be taken in such manner as the Chairperson directs.
- 18.10 If a poll is demanded and taken under Sub-Rule 18.9 in respect of an ordinary resolution, a declaration by the Chairperson of the result of the poll is evidence of the matter so declared.
- 18.11 A poll under Sub-Rule 18.9 on the election of a person to preside over a general meeting or on the question of an adjournment shall be taken forthwith on that demand being made.

## **19. Minutes of meetings of Association**

- 19.1 The Special Adviser shall cause proper minutes or all proceedings of all general meetings and **Board** meetings to be taken and then to be entered within 30 days after the holding of each general meeting or **Board** meeting, as the case required, in a minute book kept for that purpose.
- 19.2 The Chairperson shall ensure that the minutes taken of a general meeting or **Board** meeting under Sub-Rule 19.1 are checked and signed as correct by the Chairperson of the general meeting or **Board** meeting to which those minutes relate or of the next succeeding general meeting or **Board** meeting, as the case required.
- 19.3 When minutes have been entered and signed as correct under this rule, they shall, until the contrary is proved, be evidence that:
- (a) the general meeting or **Board** meeting to which they relate (in this sub-rule called “the meetings”) was duly convened and held;
  - (b) all proceedings recorded as having taken place at the meeting did in fact take place thereat; and

- (c) all appointments or elections purporting to have been made at the meeting have been validly made.

**20. Voting rights of members of Association**

- 20.1 Subject to these Rules, each member present in person at a general meeting is entitled to a deliberative vote.

**21. Rules of Association**

- 21.1 Other than in respect of Rules 5 and 11, the Association may alter or rescind these Rules, or make Rules additional to these Rules, in accordance with the procedure set out in sections 17, 18 and 19 of the Act. Rules 5 and 11 may only be altered or rescinded; by a unanimous resolution of all members of the **Board** confirmed by a special resolution passed in accordance with section 17 of the Act.
- 21.2 These Rules bind every member and the Association to the same extent as if every member and the Association had signed and sealed these Rules and agreed to be bound by all their provisions.

**22. Common Seal of Association**

- 22.1 The Association shall have a common seal on which its corporate name shall appear in legible characters.
- 22.2 The common seal of the Association shall not be used without the express authority of the committee and every use of that common seal shall be recorded in the minute book referred to in Rule 19.
- 22.3 (a) The affixing of the common seal of the Association shall be witnessed by any two of the Chairperson, Vice-Chairperson and the Special Adviser;  
  
(b) The **Board** may determine that the affixing of the common seal of the Association may be witnessed by a **Board** member and one other person for certain classes of documents.
- 22.4 The common seal of the Association shall be kept in the custody of the Special Adviser or of such other person as the **Board** from time to time decides.

**23. Inspection of Records, etc of the Association**

- 23.1 A member may at any reasonable time inspect without charge the books, documents, records and securities of the Association.

**24. Distribution of Surplus Property on Winding up of Association**

If, on the winding up of the Association, any property of the Association remain after satisfaction of the debts and liabilities of the Association and the costs, charges, and expenses of that winding up, that property shall be distributed to another incorporated association or incorporated associations within the *Western Pilbara region of Western Australia* which have similar objects and which have rules prohibiting the distribution of its assets and income to its members and which is exempt form income tax under section 50-5 of the Income Tax Assessment Act 1997 or equivalent section of any subsequent Income Tax Assessment Act.

**25. Indemnity**

The members of the *Board* and every subcommittee and all officers of the Association shall be indemnified and saved harmless out of the funds and assets of the Association from and against all charges, costs, losses, damages and expenses which they or any of them incur or sustain in or about the execution of their respective offices except and to the extent as may be occasion ed by or through their own willful default and none of them shall be answerable for the acts of the others of them.

**26. Auditing**

At the Annual General Meeting the members shall appoint an auditor who shall not be a member or the spouse or child of a Committee member. At least once in every year the Association shall cause its accounts to be audited by the Auditor.