**THE RULE BOOK**

Mutitjulu Community Aboriginal Corporation

ICN 4611

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



***Proposed Amended MCAC Rulebook***

***To be considered and voted on by MCAC Members at a Special General Meeting on 30 November 2022***

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## Name

The name of the corporation is **Mutitjulu Community Aboriginal Corporation**.

## Objectives

The objectives of the corporation are to assist in the relief of poverty, sickness, destitution, helplessness, distress, suffering, and misfortune, among Aboriginal and Torres Strait Islander people, through the process of supporting social and economic development.

To improve the life and wellbeing of members. We are here to live well, be healthy and happy, create a better world for our kids and their kids, look after our country and strengthen our culture.

The corporation aims to achieve its objectives by:

* providing and directing benevolent relief from poverty, sickness, suffering, misfortune, disability, destitution, helplessness and disadvantage among Aboriginal people, especially the Anangu and the Mutitjulu community;
* maintaining, protecting, promoting and supporting the traditions, laws, languages, culture, customs, development, interests and social progress of the Mutitjulu community;
* providing environmental, social, economic and cultural benefits to the Mutitjulu community;
* supporting and providing education, training and employment for the Mutitjulu community and other Aboriginal people in the region;
* operating community enterprises and building a strong financial base for community development activities and infrastructure;
* taking advantage of any investment or commercial operations in Australia and to exploit those opportunities to generate assets and funds for charitable purposes and employment for Aboriginal people in the region;
* undertaking purposeful investment in successful and sustainable ventures and the delivery of social services to build Mutitjulu’s economy; and
* undertaking any other things or activities which are incidental or ancillary to the attainment of the above.

## Definitions

3.1 In this rule book, the following words and terms have the following meanings:

**Accounting Period** means the period from the date of incorporation of the Company to the following 30 June and then each period of twelve months ending on 30 June in each year or any other period that the Board decides.

**ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth);

**ACNC Commissioner** means the Commissioner of the Australian Charities and Not-for-profits Commission for the purposes of the ACNC Act.

**Business days** means Monday, Tuesday, Wednesday, Thursday and Friday, and does not include any of these days when they are a public holiday.

**CATSI Act** means the Corporations (Aboriginal and Torres Strait Islander) Act 2006.

**Code of Conduct** means the policy or policies developed by the Board in relation to accepted conduct.

**Conflict of Interest** means a material personal interest which arises when a personal interest, fiduciary or otherwise, conflicts with, or has the potential to conflict with, a person’s duty as a member of the Board.

**Corporation** means the Mutitjulu Community Aboriginal Corporation ICN 4611.

**Director ID** means a director identification number provided under section 308-5 of the CATSI Act.

**Final Warning Notice** means a notice in writing given to a Member for a breach or breaches of the Code of Conduct agreed by the Directors passing a Special Resolution at a duly convened directors meeting.

**Group Entities** means the Corporation, Gumlake Pty Ltd, Ininti Store Trust and Walkatjara Trust and any other subsidiary of the Corporation or related entity.

**Gumlake** means Gumlake Pty Ltd ACN 000 000 000 a company registered under the *Corporations Act 2001* (Cth) a wholly owned subsidiary of MCAC, both in its own capacity and in its capacity as trustee.

**Independent** means in the case of a person, the person:

1. can demonstrate to the reasonable satisfaction of the Board that the person is capable of exercising independent judgement when undertaking the requirements of their appointment; and
2. is not:
	1. a Mutitjulu member or resident of the Mutitjulu community;
	2. a lineal descendant of, sibling of, or first cousin of, a person described in (i) above;
	3. married to or in a defacto relationship with a person described in (i) above; or
	4. a parent, child or sibling of a person who is married to or in a defacto relationship with a person described in (i) above.

**Independent Director** means an Independent Person appointed as a director of the Company.

**MCAC** means Mutitjulu Community Aboriginal Corporation.

**Mutitjulu Community** means that area designated the Mutitjulu Township Zone being the parcel of land in the Northern Territory with an area of 1,121 hectares more or less, being Northern Territory Portion 7584(A), delineated on Survey Plan S2016/098.

**Mutitjulu Person** means an Aboriginal person residing normally and permanently within the Mutitjulu Community.

**NTA** means the *Native Title Act 1993* (Cth).

**Persistent Breach** means a breach for which a Final Warning Notice has been issued to the Member, which has continued or recurred within the six (6) Month period after the date on which such Final Warning Notice is served on the Member.

**Schedule** means a schedule to this Rule Book unless otherwise identified.

**Special Resolution of Members** means a resolution of the Corporation passed at a general meeting by not less than 75% of the votes cast by Members entitled to vote on a resolution of which written notice has been provided in accordance with rule 5.3.

**Special Resolution of Directors** means a resolution of the Directors passed at a directors meeting by not less than 75% of the votes of Directors entitled to vote on a resolution at that meeting.

## Members

### Who is eligible?

A member must be:

* at least 18 years old
* an Aboriginal person who is normally and permanently resident in Mutitjulu Community; and
* has lived in the Mutitjulu Community for a period of at least 12 months immediately preceding the membership application.

### How to become a member

A person applies in writing.

A person needs to be eligible under rule 4.1.

The directors accept the application by resolution at a directors’ meeting.

The directors must consider all applications for membership within a reasonable period after they are received.

The directors must, by resolution at a directors’ meeting, accept a membership application if the applicant:

* applies for membership in the required manner, and
* meets the eligibility for membership requirements under rule 4.1.

If the directors accept the application, the corporation must enter the person on the register of members. This must be done within 14 days of the directors accepting the application. The person does not become a member until the corporation enters the person on the register of members.

The person’s name, address and date they became a member is put on the register of members.

The directors may refuse to accept a membership application. If they do so, they must write to the applicant about the decision and the reasons for it. This must be done within 14 days of the directors’ decision.

However, the corporation must not enter the person on the register of members until after the relevant general meeting or annual general meeting (AGM) has been held if:

* a person applies for membership after a notice has been given for a general meeting or AGM, and
* the general meeting or AGM has not been held when the directors consider the person’s application.

Note: An application for membership form is at Schedule 1—Application for membership form of this rule book.

### Members’ rights

A member can:

* attend, speak and vote at general meetings
* be made a director (if the member is eligible to be a director—see rule 6.3 on eligibility of directors)
* put forward resolutions at general meetings, including under rule 5.6
* ask the directors to call a general meeting under rule 5.3
* look at the members’ register free of charge
* look at the minutes of general meetings and AGMs free of charge
* look at the rule book or get a copy (free of charge)
* raise a dispute and have a dispute dealt with using rule 11
* look at the books of the corporation if the directors have authorised it or the members pass a resolution at a members’ meeting which approves it.

### Members’ responsibilities

A member must:

* follow the corporation’s rules
* let the corporation know within 28 days if they change their address or other contact details
* treat other members and common law holders with respect
* comply with any code of conduct adopted by the corporation, including any traditional law and custom of the native title claim group/common law holders described in that document
* not behave in a way that significantly interferes with the operation of the corporation or its meetings
* make their best efforts to attend general meetings (including AGMs) or give their apologies.

### Members not to make public comment

No member may make any public statement on behalf of the Corporation except in accordance with any agreed policy or procedures approved by the directors.

### No membership fee

The members of the corporation are not required to pay fees to join or for ongoing membership of the corporation.

### Liability of members

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

### How to stop being a member

A person stops being a member if:

* they resign in writing
* they pass away
* their membership is cancelled in accordance with rule 4.9 or 4.10.

When a person stops being a member the corporation must put their name, address and the date they stopped being a member on the register of former members.

### Cancelling membership

A person’s membership can be cancelled by members passing a special resolution at a general meeting if the member:

* cannot be contacted for two years;
* misbehaves (has behaved in a manner that significantly interfered with the operation of the corporation or of corporation meetings);
* is responsible for a Persistent Breach of the Code of Conduct; or
* is not an Aboriginal or Torres Strait Islander person (if this is a requirement for membership).

The directors must give the person notice of the cancellation of their membership at the person’s last known address as soon as possible after the special resolution is passed.

When a person’s membership is cancelled the corporation must put their name, address and the date they stopped being a member on the register of former members.

The corporation must provide ORIC an updated membership list within 28 days of the person’s membership being cancelled.

### Directors limited right to cancel membership

For grounds not covered by rule 4.9, a person’s membership can be cancelled by the directors passing a resolution at a directors’ meeting if the member is not or stops being eligible for membership as set out in rule 4.1.

To do this, the directors must:

write to the member to tell them:

* the directors are going to cancel their membership
* the member has 14 days to object to the planned cancellation
* if the member objects, they must write to the corporation to say so
* allow the member 14 days to object in writing to the intended cancellation.

**If the member does not object**, the directors must cancel the membership by passing a resolution at a directors’ meeting. Then give the former member a copy of the resolution.

**If the member objects**, the directors cannot cancel the membership. The membership can only be cancelled by members passing a resolution at a general meeting.

### The register/s of members and former members

The register/s must contain:

* the names and addresses of members and former members
* the date when each person’s name was added to the register
* if a person is not an Aboriginal or Torres Strait Islander person (if rule 4.1 allows non-Aboriginal or non-Torres Strait Islander members)
* for former members, the date when they stopped being a member.

The register/s of members and former members must be kept at the corporation’s document access address or, if it is a large corporation, its registered office.

The register of members must be made available at the AGM.

## General meetings and AGMs (members’ meetings)

### AGM timing

An AGM must be held before the end of November each year unless the registrar provides an exemption from holding the meeting or extends the period within which the corporation is required to hold it.

### AGM business

AGM business includes:

* checking the register of members
* confirming the minutes of the previous general meeting
* presenting reports: general, financial, directors’
* asking questions about how the corporation is managed
* electing directors (if required)
* choosing an auditor (if required) and agreeing on the fee.

### Calling general meetings

The directors can call a general meeting or AGM by passing a resolution in a directors’ meeting or by circulating resolution.

The required number of members can request the directors to call a general meeting.

Number of members in corporation Number of members required to request 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 per cent of members

The members’ request must:

* be in writing
* state any resolutions to be proposed at the meeting
* be signed by the members making the request
* nominate a member to be the contact member on behalf of the members making the request
* be given to the corporation.

Within the 21 days of receiving the request the directors must either call the meeting or apply to the Registrar to deny the request.

#### Directors agree to the request

If the directors agree to the request they must call the general meeting within 21 days of receiving the members’ request.

#### Directors apply to the Registrar to deny the request

If the directors resolve that:

* the request is frivolous or unreasonable, or
* complying with the request would be contrary to the interests of the members as a whole

a director, on behalf of all of the directors, may apply to the Registrar for permission to deny the request to call a general meeting.

The directors’ application to the Registrar to deny the members’ request must:

be in writing

* set out the reasons why the directors have decided that:
* the request is frivolous or unreasonable, or
* complying with the request would be contrary to the interests of the members as a whole

be made within 21 days after the members’ request for a meeting was made.

The directors must give notice to the contact member that they have applied to the Registrar to deny the request.

### General meeting business

General meetings business includes:

* confirming the minutes of the previous general meeting
* considering the business or resolutions in the notice of meeting.

### Notice for general meetings and AGMs

At least 21 days’ notice must be given.

Notice must be given to:

* each member individually
* the directors
* the contact person or secretary
* 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 special resolution is being proposed, the exact wording of it
* any technology to be used in the meeting (if required)
* if a member can appoint a proxy.

Notices must be given to each member individually. This can be done by sending by post to their address, by fax, by email or via social media. In addition to individual notice a corporation can also give notice in a manner which follows Aboriginal or Torres Strait Islander custom.

A notice of meeting:

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

### Members’ resolutions

The required number of members can propose a resolution by giving notice of it to the corporation.

Number of members in corporation Number of members required 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 per cent 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 members in the same way as rule 5.5.

The corporation must consider the resolution at the next general meeting which is being held more than 28 days after the notice from the members has been given to the corporation.

### Quorum at general meetings and AGMs

Number of members in corporation Number of members to make a quorum

2 to 30 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 is no quorum after one hour from the time the meeting was scheduled to start, the meeting is adjourned until the next week at the same time and at the same place unless the directors specify otherwise.

If the meeting is adjourned, the directors must take reasonable steps to inform members of the adjournment and details of the adjourned meeting.

If there is still no quorum, the meeting is cancelled.

### Chairing general meetings and AGMs

The chairperson (if there is one) of the corporation can chair general meetings or if the chairperson is not available or does not want to chair the meeting, the directors can elect someone to chair the meeting. The person chairing the meeting does not have to be a member or a director.

If they don’t, the members must elect someone.

Any person chairing the meeting who is not a member does not have a vote and cannot pass any resolution by either proposing or seconding that resolution. If the chairperson or a member chairs the meeting, they are entitled to only one vote and no casting vote shall be allowed.

### Using technology at general meetings and AGMs

General meetings and AGMs can be held at more than one place using any technology that gives members a way of taking part but the type of technology to be used must be set out in the notice of meeting.

### Voting at general meetings and AGMs

Each member has one vote. The chair has one vote (if he or she is a member).

A challenge to a right to vote at a meeting may only be made at the meeting, and must be determined by the chairperson, whose decision is final.

A resolution is decided by majority on a show of hands, unless a poll is demanded under rule 5.11. The chairperson tells the meeting whether they have received any proxy votes and how they are to be cast subject to rule 5.12.

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

### Demanding a formal count (i.e., a poll)

Either the chairperson or any member entitled to vote on the resolution can demand a poll. A poll is a formal count of votes.

A poll can be held instead of, or immediately after, a vote decided by majority on a show of hands.

A poll demanded on any matter must be taken immediately. The chair of the meeting directs how the poll will be taken.

### Proxies at general meetings and AGMs

Proxies **may not** be appointed to attend or vote for members at general meetings.

### Other people at general meetings and AGMs

A person appointed by a member as their attorney under a power of attorney **may not** in their capacity as attorney attend general meetings and AGMs or vote for the member.

The chairperson may allow any person (excluding an attorney) other than a corporation director, member or auditor to attend general meetings and AGMs. But the person cannot propose or vote on resolutions.

### Postponing a general meeting or AGM

After notice has been given for a general meeting or AGM the directors can decide to postpone the meeting (this means, delay or reschedule the meeting for a later date) if there are exceptional reasons for doing so (such as the death of a community person or a natural disaster).

The directors postpone the meeting by passing a resolution in a directors’ meeting. A postponed meeting must be held within 30 days of the date that the meeting was due to occur.

The directors must give reasonable notice of the postponement and give each member individually a notice of the postponed meeting setting the new date, time and place.

### Auditors right to be heard at a general meeting

If the corporation has an auditor, the auditor is entitled to attend any general meetings of the corporation.

The auditor is entitled to be heard at the meeting on any part of the business of that meeting that concerns the auditor in their professional capacity.

The auditor is entitled to be heard even if:

* the auditor retires at the meeting, or
* that meeting passes a resolution to remove the auditor from office.

The auditor may authorise a person in writing as the auditor’s representative for the purpose of attending and speaking at any general meeting.

## Directors

### Role of directors

The directors oversee the running of the corporation on behalf of all members, make decisions about the affairs of the corporation, and should always be aware of what the corporation and its employees are doing. The directors manage, or set the direction for managing, the business of the corporation.

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 a general meeting.

### Number of directors

The number of directors of the corporation shall be up to 5 (but at any time shall not be less than 3). This number does not include up to 2 independent or specialist non‑member directors appointed in accordance with Rule 6.7

The member directors shall consist of equal representation of men and women with a chairperson of either gender and up to two non-member directors of either gender appointed in accordance with rule 6.7.

To change the number of directors, members need to pass a special resolution at a general meeting or AGM to change the rule book. Such a resolution needs to be in the notice calling that meeting.

### Eligibility of directors

A director (other than a director appointed under rule 6.7) must be:

* at least 18 years old, and
* a member of the Corporation unless appointed under rule 6.7
* consented in writing to be a director
* have a director ID or have applied for a director ID and give the corporation their director ID as soon as they have it.
* have skills relevant to the governance, business or activities of the corporation, such as law, accounting, cultural knowledge and lore or business administration, and
* have completed suitable governance training or undertake to do so as soon as possible following their appointment.

A person is not eligible to become a director if the person is disqualified under the CATSI Act from managing corporations. Disqualification happens when a person:

* has been convicted of an offence under the CATSI Act that is punishable by imprisonment for more than 12 months
* has been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
* has been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
* is an undischarged bankrupt
* has signed a personal insolvency agreement and has not kept to the agreement
* has been otherwise disqualified under the CATSI Act or the *Corporations Act 2001* from managing corporations.

### Majority of director requirements

A majority of directors of the corporation must:

* usually reside in the Mutitjulu Community
* be members of the corporation
* not be employees of the corporation in a management role.

The chief executive officer (CEO) may be a director but cannot chair directors’ meetings.

### How to become a director

To be eligible for election, a member must:

* complete a ‘Nomination to serve as a director form’ (provided at schedule 3)
* complete a ‘Consent to become a director’ form (provided at schedule 2)
* have a director ID or have applied, or will apply for a director ID
* give both forms and your Director ID to the corporation.

The corporation can appoint a director by the members passing a resolution at a general meeting or AGM by:

* presenting nominations to members
* holding a vote or ballot on the nominated directors
* members passing a resolution.

If there is a casual vacancy in a directorship the other directors can pass a resolution in a directors’ meeting to fill the vacancy (see rule 6.8).

The corporation must notify the Registrar of the director’s appointment and personal details within 28 days after they are appointed.

### Directors’ terms of appointment and rotation

Directors (other than those appointed under rule 6.7 or rule 6.8) are appointed for a term of 2 years. They must retire at the end of the second AGM after they take office. They are eligible to be re-elected.

For directors appointed at the AGM there is a rotation system, so that half the directors must retire at each AGM. They are eligible to be re-elected.

To implement the rotational system:

* Half the member directors appointed at the time these rules are approved will only hold office until the next AGM and must retire. They are eligible to be re‑elected.
* The directors will agree on which directors retire at the AGM. If the directors cannot agree, they must decide by lot conducted by the directors.
* At every subsequent AGM those directors that did not retire at the previous AGM must retire. They are eligible to be re-elected.
* Newly elected directors have a term of 2 years, which ends at the second AGM after they take office. If a director is replaced during their term, the replacement director holds office for the remainder of the replaced director’s term.
* The minutes of the general meeting must record the term of each director appointed.

If, despite the operation of section 246-25(4) of the CATSI Act, the terms of all directors expire so that there are no directors appointed at a particular time, the directors holding office immediately before the expiry will continue to hold office until the members appoint new directors or reappoint the existing directors by resolution at a general meeting.

### Independent or specialist non‑member directors

Independent or specialist non-member directors may be selected because they are independent or have skills in financial management, corporate governance, accounting, law or a field relating to the corporation’s activities.

The directors may appoint independent or specialist non-member directors by passing a resolution in a directors’ meeting or the members may appoint independent or specialist non-member directors by passing a resolution in an AGM.

Before being appointed as an independent or specialist non-member director, the person must give the corporation their written consent to become a director and their director ID.

Independent or specialist non-member directors are appointed for the term specified in their appointment or, if no term is specified, for 2 years. Independent or specialist non-member directors can be reappointed.

### How to fill casual vacancies

The directors can appoint a person as a director to fill a casual vacancy.

A casual vacancy is where a person stops being a director before their term of appointment expires (see rule 6.9) and so the position of that director is vacant.

The person must meet the director eligibility criteria in rule 6.3 and any criteria that applies to the particular vacancy.

The term of an appointment made to fill a casual vacancy is for the balance of the term remaining on the vacant position.

However, a person’s appointment to fill a casual vacancy must be confirmed by members passing a resolution at the next general meeting otherwise the person stops being a director at the end of the general meeting.

If the person’s appointment as director is confirmed at a general meeting, the term of the appointment is for the balance of the term remaining on the vacant position.

The directors may fill a casual vacancy even if the vacancy has reduced the number of directors to less than the number required for a quorum.

### How to stop being a director

A person stops being a director if:

* the director passes away
* the director resigns in writing
* the director’s term of appointment expires
* the director is removed as a director by the members or the other directors
* the director is disqualified from managing a corporation
* the director ceases to be a member, but was a member when they became a director
* the director does not have a Director ID or fails to obtain one by 30 November 2023.

The corporation must send the Registrar a notice within 28 days after a person stops being a director.

### How to remove a director

By resolution of the members in a general meeting:

A notice for a resolution to remove a director must be given to the corporation at least 21 days before the next general meeting or AGM. (Alternatively, the members can request a meeting (rule 5.3) for the purpose of removing a director.)

The corporation must give 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 written statement must be given to everyone entitled to notice of the meeting (see rule 5.5).

By the other directors:

Directors can only remove a director if the director fails to attend three or more consecutive directors’ meetings without a reasonable excuse.

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 or AGM by resolution.

By resolution of the members in a general meeting:

* A notice for a resolution to remove a director must be given to the corporation at least 21 days before the next general meeting or AGM. (Alternatively, the members can request a meeting (rule 5.3) for the purpose of removing a director.)
* The corporation must give 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 notice of the meeting (see rule 5.5).

### Directors’ and officers’ duties

The duties are:

* a duty of care and diligence
* a duty of good faith and to act in the best interests of the corporation
* a duty to disclose a conflict of interest
* a duty not to improperly use position or information
* a duty to not trade while insolvent.

Officers of the corporation must uphold the duties of care and diligence, good faith, and not to improperly use their position or information.

A director or officer must act in good faith when doing anything to ensure the corporation complies with its native title legislation obligations.

In addition a director must abide by the Code of Conduct set in place by the Board from time to time.

### Conflict of interest

A director who has, or thinks they may have, a conflict of interest in a corporation matter must tell the other directors.

This includes, but is not limited to, a material personal interest or other personal benefit (e.g., direct benefit from the outcome of a resolution) such as:

* business opportunity(s)
* transfer of interests in land
* providing goods or services to the corporation or others for money or other benefit
* receiving goods, services or benefits from the corporation or any other party on request of the corporation.

The director must give details of what the interest is and how it relates to the corporation. These details must be given at a directors’ meeting as soon as possible and must be recorded in the minutes of the meeting and in a Conflict of Interest Register.

A director who has a conflict of interest must not:

* be present at the directors’ meeting while the matter in question is being considered, or
* vote on the matter

unless they have been granted approval by:

* the other directors (those that do not have a conflict of interest) passing a resolution, or
* the registrar in writing.

### Payments to directors

A majority of directors must not be paid employees in a management position of the corporation.

Directors may be paid if they are employed by the corporation, or if they have a contract to provide goods or services to the corporation (so long as the director has fulfilled any duty to disclose a conflict as required by this rule book and the payment is fair and reasonable to the corporation).

The corporation may also pay the directors a sitting fee of $500 per full day or $250 per half day, per meeting (but no more than once per month) as well as paying the directors’ travelling and other expenses for attending meetings or to do with other corporation business.

*For the sake of clarity, a meeting may proceed over more than one day, but meetings should not be held more than one per month and only one directors meeting can be paid in a month. The determination of a full or half-day meeting should be set out in the notice of meeting prior to the meeting.*

The corporation may also pay the directors a sitting fee of up to $45 per hour, or part thereof, to attend meetings other than directors meetings, that are considered relevant and important corporation business, are approved by director’s resolution and are not in addition to payments made by any third party involved.

A director cannot be paid any additional salary or sitting fees, or alter the amounts agreed under rule 6.13 for their work as directors, unless agreed to at a general meeting of members.

### Related party benefit

If a corporation wants to give a financial benefit to a director or other related party (including a spouse, child or parent 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.

### Delegation of directors’ powers

The directors can pass a resolution to delegate any of their powers to:

* another director
* a committee of directors
* an employee of the corporation; or
* any other person.

The delegation must be in writing and specify the delegation period and the delegated powers The delegate must follow the directions of the directors when using the delegated powers.

The exercise of the power by the delegate is as effective as if the directors had exercised it themselves. This means the directors are still responsible for what the delegate does with the powers.

Delegates must report to directors on the exercise of their delegated power.

Note the limitation on delegation subject to rule 5.12.

### Appointment of directors to Subsidiary Companies

Directors of any subsidiary controlled by the corporation must be directors of the corporation during their term of appointment.

The directors shall decide at the first meeting following the AGM each year who shall be appointed as directors of any subsidiary of the corporation under the following guidelines:

* The minimum number of directors shall be appointed to each subsidiary; or
* All of the corporations’ directors shall be the directors of each subsidiary of the corporation.

Where a director of the corporation ceases to be a director of the corporation they shall automatically be deemed to have resigned as a director of the subsidiary of the corporation.

Where any subsidiary of the corporation shall have less than the number of directors required by law the directors of the corporation shall appoint a director to fill that vacancy.

### Calling and giving notice of directors’ meetings

Directors must meet at least every three months.

All directors must be given reasonable notice of a directors’ meeting.

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.

### Quorum for directors’ meetings

A majority of the directors must be present at all times during the meeting.

The directors may appoint a person as a director to make up a quorum for a directors’ meeting so long as there are a minimum of two member directors in attendance.

### Chairing directors’ meetings

There must be a chair elected for each directors’ meeting.

If someone has not already been elected to chair the meeting, or the person previously elected as chair is not available, the directors must elect a director present to chair the meeting (other than the CEO).

When electing a chair, the directors must decide how long that director will be the chair (i.e. just for that meeting, or at every meeting over a certain period of time). The directors may also remove a chair (but not their appointment as a director) by a resolution of the directors.

### Using technology

Directors’ meetings can be held at more than one place using any technology, as long as all directors agree to it. The type of technology to be used may be set out in the notice for a directors’ meeting.

### Resolutions by directors

Directors pass a resolution at a directors’ meeting by a majority of the votes.

Each director (including independent or specialist non-member directors) has one vote.

The chairperson of the meeting also has a casting vote (if required).

Directors can pass a resolution without a directors’ meeting if all directors sign a statement saying that they are in favour of it.

### Sub-committees of directors

The directors may at any time appoint a sub-committee of directors and determine the responsibilities and powers of the sub-committee.

Unless otherwise decided by the directors, a sub-committee:

* has a quorum of 3 for its meetings, unless the sub-committee resolves that a larger number shall be the quorum
* must appoint one of its members to be responsible for calling sub-committee meetings and inform the directors of the name of the responsible person.

### Trainee directors

The directors may appoint up to two trainee directors for mentoring by the board. The trainee directors will not have any voting rights and will not be appointed as official directors of the Corporation.

The trainee directors will be eligible for payment at the rate of 75% of the sitting fees paid to the directors where they attend meetings.

To be eligible the trainee directors must be:

* Between 18 and 25 years old,
* a member of the Corporation, and
* would not otherwise be disqualified under Rule 6.3.

## Advisory committees

The directors may appoint advisory committees to provide the corporation with advice and assistance.

The membership of an advisory committee may include directors, members, or other persons with relevant expertise or experience.

## Contact person or secretary

Small and medium corporations have a contact person. Large corporations have a secretary.

The directors appoint a contact person/secretary.

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

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

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

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

The corporation must send the Registrar a contact person’s/secretary’s details within 28 days after they are appointed.

## 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/secretary
* written financial records that;
	+ correctly record and explain its transactions, financial position and performance
	+ would enable true and fair financial reports to be prepared and audited

These records must be kept at the corporation’s document access address or (if it is a large corporation) its registered office.

## Finances

The corporation must follow these procedures.

* The corporation must give receipts for all money it receives.
* All money of the corporation must be deposited into a corporation bank account.
* All accounts must be approved for payment at a directors’ meeting or in accordance with valid delegations.
* All cheques, withdrawal forms, electronic funds transfer (EFT) transactions, and other banking documents must be signed by at least two people authorised by the directors.
* All payments made out of the corporation’s money must be supported by adequate documents which explain the nature and purpose of the payment.
* The corporation must keep adequate records for all cash withdrawals from the corporation’s bank accounts (i.e. records that show the cash was used for a proper purpose and in accordance with the corporation’s objectives).
* The financial records must be retained for seven years after the transactions covered by the records are completed.

## Application of funds

The corporation is a not-for-profit corporation.

The directors can use the money and property of the corporation to carry out its objectives (see rule 2).

Funding from Government must be spent on the purpose for which it was allocated.

The directors cannot directly or indirectly give or loan any money or property of the corporation to members, directors or any other persons unless:

* it is to a subsidiary controlled by the corporation, or
* a trust in which the corporation is a beneficiary, and the trustee is a subsidiary of, or controlled by, the corporation.

This rule does not stop the corporation from making reasonable payment to a member, director or other person in their capacity as an employee or under a contract for goods or services provided in carrying out the corporation’s objectives.

## Dispute resolution

If a dispute arises, the parties, being:

* one or more members
* one or more directors, or
* the corporation

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 must help the parties resolve the dispute within 20 business days after the corporation receives the notice. This may include third party assistance or mediation.

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

#### Seeking assistance from the Registrar

If a dispute or any part of a dispute relates to the meaning of any provision of the CATSI Act or the corporation’s rule book, the directors or any party to the dispute may seek an opinion from the Registrar about the correct meaning of the relevant provision.

The Registrar’s opinion will not be binding on the parties to a dispute.

The right to request assistance from the Registrar does not create a right to request a formal mediation. However, in an appropriate case the Registrar may provide assistance in having the matter resolved.

For more information on members’ rights see rule 4.3.

The corporation will not be liable for any costs associated with any dispute resolution process unless such process and amount are agreed in writing by resolution of the directors and in any such case the directors are limited to an amount in aggregate for the total process not to exceeding $5,000. Any amount greater than $5,000 in aggregate shall require the approval of the members at a general meeting.

## Changing the rule book

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

Within 28 days after the resolution is passed, the corporation must send the Registrar copies of the:

* proposed rule book changes
* special resolution
* minutes of the meeting.

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

## Confidentiality requirement

In the course of the corporation performing its functions or exercising its powers, members and directors may have access to confidential or sensitive information. Examples include information that:

* is confidential according to the traditional laws or the customs of the common law holders
* a common law holder has requested be kept confidential (and disclosure of that information is neither authorised by other common law holders nor required by law)
* may affect trading or procurement.

A person handling such confidential information must protect and maintain its confidentiality.

## Gift fund rules

The corporation shall maintain for the main purposes of the corporation a gift fund:

* to be named ‘The Mutitjulu Community Aboriginal Corporation Gift Fund’
* which must receive gifts of money or property for the purposes (objectives) of the corporation
* which must have credited to it any money received by the corporation because of those gifts.

The gift fund cannot receive any money or property other than that for the purposes (objectives) of the corporation.

The corporation shall use gifts made to the gift fund and any money received because of them only for the purposes (objectives) of the corporation.

Receipts issued for gifts to the gift fund must state:

* the full name of the corporation
* the Australian Business Number (if applicable) and the Indigenous Corporation Number (ICN) of the corporation
* the fact that the receipt is for a gift.

As soon as:

* the gift fund is wound up, or
* 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*.

## DGR Revocation or Winding up

At the first occurrence of:

1. The winding up of the Gift Fund; or
2. The Corporation ceasing to be endorsed as a deductible gift recipient under the Tax Act, any surplus assets of the Gift Fund must be transferred to a fund, authority or institution:
	1. Which is charitable at law;
	2. Whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as outlined in rule 11; and
	3. Gifts to which are deductible under Division 30 of the Tax Act.

The identity of the fund, authority or institution must be decided by the Board.

## Winding up

### Members’ resolution required

If the corporation is solvent and not subject to any legal proceedings or regulatory action by the registrar, the members may pass a special resolution for the corporation to be wound up voluntarily.

### Surplus assets of the corporation

Where:

* the corporation is wound up and
* 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 liquidator can decide how the surplus assets of the corporation are to be distributed if the members have not already decided.

If the members want to decide how the surplus assets are to be distributed, they must pass a special resolution at or before the time of the winding up.

The surplus assets must not be given to any member or to any person to be held in trust for any member and can only be given to a charitable organisation/s with similar charitable purposes or to another prescribed body corporate that will carry out the native title objects and functions under the determination.

## Schedule 1—Application for membership form

**Mutitjulu Community Aboriginal Corporation ICN 4611**

Application for membership

|  |  |  |
| --- | --- | --- |
| I, |  | (first name of applicant) |
|  |  | (last name of applicant) |
| of |  | (address of applicant) |
|  |  |  |

apply for membership of the corporation.

I declare that I am eligible for membership.

I am: [ ]  Aboriginal [ ]  Torres Strait Islander [ ]  neither

|  |  |
| --- | --- |
| Signature of applicant |  |
| Date |  |

**Corporation use only**

|  |  |
| --- | --- |
| Application received | Date: |
| Application tabled at directors’ meeting | Date: |
| Directors consider applicant is eligible for membership | Yes / No |
| Directors approve the application | Yes / No |
| If approved, new members’ details added to register of members | Date: |
| Applicant notified of directors’ decision | Date: |

## Schedule 2—Consent to become a director form

**Mutitjulu Community Aboriginal Corporation ICN 4611**

Consent to become a director

|  |  |  |
| --- | --- | --- |
| I, |  | (full name of person) |
| of |  | (residential address, a postal address is not sufficient) |
|  |  |  |
| give consent to become a director of the corporation. |
| I confirm my date of birth is |  | (date of birth) |
| and my place of birth was |  | (place of birth) |
| Director ID |  |  |
| I acknowledge I am automatically disqualified from managing corporations if I:* have been convicted of an offence under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) 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
* am an undischarged bankrupt
* have signed a personal insolvency agreement and have not kept to the agreement
* have been disqualified under the *Corporations Act 2001* from managing corporations,

and I will notify the corporation if any of the above events occur after my appointment.  |
| 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.

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