

27 April 2015

Vanessa Submaroney, Andrew Ward and Mayor Peter Long  
City of Karratha  
Welcome Road  
**Karratha WA 6714**

Via email [Vanessa.submaroney@karratha.gov.au](mailto:Vanessa.submaroney@karratha.gov.au)  
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[Peter.long@karratha.gov.au](mailto:Peter.long@karratha.gov.au)

Dear Peter, Andrew and Vanessa

**Roebourne Community Association Update**

Thank you for your letter of 16 April (Ref CS.6/OCR132673) and interest in the work being undertaken to establish Roebourne's community association. There is considerable interest in the topic up and down Roe Street and much work has taken place behind the scenes to formalise the ideas of those interested. For your information I have summarised the outcomes of this work below;

a. **Roebourne Community Association Working Group**

The Roebourne Community Association Working Group was established in mid-2014 to pursue the idea of an association for Roebourne residents in the broader community. Since that time the Working Group has addressed many of the issues relating to a community association through formal and informal gatherings of Roebourne residents.

Members of the Working Group are voluntary and include people from a range of backgrounds – though all are residents. The collective views of this working group have been debated over the period and are represented in the attached Rules of Association.

In my capacity as CEO of Roebourne's community association for Aboriginal people, I have been asked to assist the group in an ex-officio capacity, to undertake correspondence, governance and housekeeping for the group - until they are established. It is my understanding that other organisations in Roebourne have similarly been approached to provide support for the working group.

Members of the Working group are likely to stand for election as Coordinating Committee members, though accept that the final makeup of this committee will depend on eligibility and voting. Roebourne Community Association Working Group members comprise:

Shenara Smith	Marie Pont	Beth Smith
Russell Sandy	Jill Churnside	Josie Alec
Deanne Alec	Pansy Sambo	Ian Wally
Kathy Booker	Phyllis Simmonds	Cherylea Walker
Dion Storey	Georgia Mills	Michael Nikakis

b. **Roebourne Community Association Structure**

The Roebourne Community Association Working Group has workshopped sought and received legal advice on an appropriate structure and operating framework. The advice suggested an incorporated body controlled by the Associations Act and registered with Western Australia's Department of Commerce. A copy of the advice is attached for your information.

b. **Roebourne Community Association Rules of Association**

The Roebourne Community Association Working Group has workshopped through the community the attached Rules of an association that align to their aspirations. It is my view that these rules are sufficient to undertake the process of incorporation. For your information I précis the attached draft rules as follows:

- a. Membership is open to all residents of Roebourne (of more than 12 months)
- b. Membership is open to all former residents of Roebourne (that attended Roebourne District High School for more than 4 Years)
- c. Membership is by application
- d. Ex Officio membership will be extended to
  - i. The City of Karratha
  - ii. Ngarliyarndu Bindirri,
  - iii. NYFL
  - iv. Marwarnkarra. and
  - v. Ngarluma Aboriginal CorporationThe purpose of such ex-officio invitations is administrative support, transparency and information sharing. Ex officio organisation representatives are expected to be informed of the progress and intentions of the Association.
- f. Membership fee is likely to be nominal.
- g. Meetings will -
  - i. Take place in Roebourne
  - ii. Be open to all members
  - iii. Minimum 6 per year
- h. The working group will stand until voting by community members in accordance with the attached draft constitution
- i. The working group will give way to a Coordinating Committee. The Coordinating Committee will comprise:
  - i. Maximum 8 residents (maximum 3 former residents)
  - ii. Term on the Management Committee is 1 year

c. **Marketing RCA Membership**

In order to 'market' the Association to the broader community an application form is currently in draft for marketing via a range of outlets – including local radio and local organisation memberships. NBAC will be offering RCA membership to our own members.

d. **Financial Position**

NBAC is aware of the assistance (kindly) offered to establish the group. The working group have consumed very little of this assistance to date (less than \$600) due to the 'in-kind' and voluntary nature of support for the Working Group's efforts.

The Working Group plans to utilise the funds offered to promote the Community Association and Membership of the association via a newsletter and community meetings. These Community meetings are scheduled for May and July, 2015.

A newsletter for Roebourne community that will include information about the association and application forms for membership is slated to coincide with the community meeting in July this year.

These initiatives, alongside structural requirements such as insurance and incorporation fees are still intended to be drawn down against the amount of \$10,000 allocated to the project by the City of Karratha. Ngarliyarndu Bindirri Aboriginal Corporation is happy to provide the governance and acquittal support to the working group as these funds are expended.

Thank you for your invitation to join the Roebourne Advisory Group meeting on Monday, 4 May at Gurlu Gurlu Maya. I am unable to attend due to a conflicting commitment in Roebourne, but would be happy to discuss the progress of the Roebourne Community Association with any member of that committee at another time.

I trust the information provided herein provides you with a fulsome picture of the progress of the community to establish a Community Association. Your continued support and interest in these initiatives is much appreciated.

Please do not hesitate to contact me directly should you require any more information on the project.

Yours sincerely



Susan Shirliff  
**Chief Executive Officer**

**To** Jolleen Hicks  
**From** Daniel Knight & Katherine Glossop  
**Date** 13 October 2014  
**Subject** Structuring options for Roebourne community association

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## 1 Executive Summary

- (a) We consider that the most appropriate structure for Roebourne's community association is the incorporated association model. Incorporated associations are simple to set up and run, and the structure will meet the needs of the Roebourne community association.
- (b) Further, we understand that a number of other community associations based in the Pilbara use the incorporated association model.
- (c) For the sake of completeness, we have set out some information on the company limited by guarantee structure, and CATSI Act corporations in Schedule 1. These structures would also suit the needs of the Roebourne community association, but they are more difficult to run and are subject to more onerous reporting obligations. Given this, and the lack of significant advantages provided by the other options, we consider that an incorporated association is the best approach. However, we would be happy to discuss the use of one of these alternative structures should you prefer it.
- (d) If you are happy to proceed with an incorporated association, we recommend that you instruct us to prepare a draft set of rules. The rules can be based on the model rules published by the Western Australian government.

## 2 Background

Ngarliyarndu Bindirri Aboriginal Corporation (**NBAC**) is an Aboriginal corporation that works in the Roebourne community in WA. Roebourne is situated within the City of Karratha local government area, where the majority of the population is Aboriginal. Roebourne is the only town in this region that does not have a community association

The City of Karratha provides funding to its towns. We understand that, as Roebourne does not currently have its own community association, funds allocated for Roebourne are managed by the Roebourne Advisory Group (**RAG**). RAG consists of three City Councillors, and three representatives from Roebourne (none of whom are Aboriginal). The establishment of a community association will remove the need for RAG, and will ensure that funding allocated to Roebourne is disbursed in line with the best interests of the Roebourne community. Further, the establishment of a community association would:

- (a) promote community initiatives;
- (b) provide community programs;
- (c) promote leadership;
- (d) provide a united community voice for Roebourne; and
- (e) ensure that funding for Roebourne is spent in Roebourne

NBAC seeks our advice on the structuring options for the association, and assistance with the establishment of the association.

### 3 Options and Recommendation

The three options we have identified for establishing a community association are:

- (a) Incorporated association under the *Associations Incorporation Act 1987 (WA)*;
- (b) Company limited by guarantee under the *Corporations Act 2001 (Cth)*; and
- (c) CATSI Act corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*.

Each of these options involves the creation of a separate legal entity under the relevant Act. A summary of each option is set out in Schedule 1.

We consider that the key factors in determining which option is the most appropriate structure for NBAC's community association include:

- (a) ensuring the liability of members/directors is limited;
- (b) minimising the costs of establishment and administration of the body; and
- (c) minimising the complexity of the body's administrative procedures.

Each of the options can satisfactorily address these factors. However, incorporated associations are the least formal of these options, and the easiest and cheapest to establish and run. For example, an incorporated association can be run by a management committee, whereas directors (who may be subject to more onerous requirements) must be appointed to run a company limited by guarantee or a CATSI Act corporation. Accordingly, we recommend that NBAC select the incorporated association model.

One potential disadvantage of an incorporated association is that its operations will be limited to Western Australia. Given that NBAC's focus is on the Roebourne community, we do not anticipate that this will be an issue. However, please let us know if this is not correct.

### 4 Next Steps

The process for establishing an incorporated association is set out in section 1.9 in Schedule 1 below. If NBAC is happy to proceed with this option, the next step will be for us to prepare a draft set of rules for the association. The rules will be based on the model rules for incorporated associations published by the Western Australian government with any amendments we consider appropriate. We are also happy to discuss the options set out in Schedule 1 should you have any queries.

**Schedule 1****1 Incorporated Association****1.1 Overview**

An incorporated association is a separate legal entity which is created under the *Associations Incorporation Act 1987 (WA)* (**Act**).

The key features of an incorporated association are as follows:

- (a) the association acquires the powers of a body corporate with perpetual succession and a common seal;
- (b) the association may sue or be sued;
- (c) the association may enter into contracts and acquire, hold and dispose of property;
- (d) members or officers of the association are generally not liable to contribute towards the payment of debts or liabilities of the association;
- (e) the name of the association concludes with the word "Incorporated" or the abbreviation "Inc." as part of its name; and
- (f) if members or office bearers of the association incurred liabilities or obligations on behalf of the association prior to incorporation, those liabilities and obligations can be exercised against the incorporated association.

**1.2 Eligibility**

Under the Act, an association is eligible to be incorporated if:

- (a) it has more than five members; and
- (b) it is formed for the purpose of establishing, carrying on, or improving a community, or promoting the interests of a local community.

**1.3 Advantages**

An incorporated association is empowered to do the following:

- (a) sue, contract and own property in its own name.
- (b) open and operate bank accounts;
- (c) borrow money; and
- (d) invest its money.

An incorporated association is simple and inexpensive to set up, and is easier to run than a company limited by guarantee and a CATSI corporation (discussed below in Schedule 1 sections 2 and 3).

**1.4 Disadvantages of Forming an Incorporated Association**

An incorporated association can only operate in the state in which it is incorporated. We expect that this will not be an issue for Roebourne community association as its activities will be carried out in Roebourne for the purposes of the Roebourne community. If this is not correct, please let us know.

**1.5 The Rules**

The Western Australian government has published a set of model rules that can be adopted or amended to suit the association's requirements. The rules cover (amongst other things):

- (a) qualification for membership of the association;
- (b) termination of membership;
- (c) election of the management committee (see below at 1.6); and
- (d) voting rights of members.

The rules do not take effect until they are lodged with the Department of Commerce.

## **1.6 Management**

The rules of the association will establish a committee of people who have the power to manage the affairs of the association. The association will be able to choose how it allocates that power under the rules. Generally the rules will provide for the election of committee members at the annual general meeting. The rules may also provide for specific office-holders such as chairperson, secretary and treasurer.

Committee members must take reasonable steps to ensure that the association complies with its obligations under the Act. A failure to do so is an offence that attracts a maximum fine of \$500. Committee members are also responsible for avoiding conflicts of interest by disclosing any direct or indirect financial interest they may have in any contract, or proposed contract being entered into or considered by the committee. Committee members who have a direct or indirect financial interest in a contract must not vote or take part in any deliberations in relation to the contract. A failure to comply with the conflicts rules is an offence, carrying a maximum penalty of a \$500 fine.

## **1.7 Meetings**

An incorporated association may hold its first annual general meeting at any time within 18 months of incorporation, and must hold an annual general meeting in every calendar year thereafter within 4 months after the end of the association's financial year.

## **1.8 Records**

An incorporated association must keep:

- (a) records showing the financial transactions and financial position of the association, kept in such a manner as will enable the accounts to be properly audited; and
- (b) an up-to-date register of members and a record of office bearers.

At the AGM, an incorporated association must submit to its members accounts of the association showing the financial position of the association as at the end of the preceding financial year.

There is however, no requirement to lodge an annual report with the Commissioner.

## **1.9 Process for Incorporation**

The process for incorporating an association is as follows:

- (a) check the availability of your intended name;
- (b) advertise your intention to incorporate in a registered newspaper circulating in the area where the association will be situated or will conduct its affairs;
- (c) develop a set of rules governing the day-to-day management of the association;
- (d) apply for incorporation by lodging the prescribed application form, accompanied by the \$138 application fee.

Once the application is approved, the Department of Commerce provides an incorporation certificate.

## **2 Company limited by guarantee**

### **2.1 Overview**

A company limited by guarantee is established under and operates pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**). A company limited by guarantee is a legal entity in which the members do not hold shares, but each member agrees to contribute a limited amount (which is usually nominal eg. \$2) specified in the company's constitution to meet the company's liabilities in the event that the company is wound up. Companies limited by guarantee are not able to issue shares, however, they are able to borrow money and typically raise funds by way of grants and donations.

Like an incorporated association, a company limited by guarantee:

- (a) has the powers of a body corporate with perpetual succession and a common seal;
- (b) may sue or be sued; and
- (c) may enter into contracts and acquire, hold and dispose of property.

A company limited by guarantee is a public company, and as such it must have a minimum of 3 directors and a company secretary.

### **2.2 Eligibility**

A company limited by guarantee must have at least one member. There are no requirements as to purpose.

### **2.3 Advantages**

The advantages of forming a company limited by guarantee include:

- (a) Like an incorporated association, a company limited by guarantee is a separate legal entity that can sue, contract and own property in the company's name.
- (b) The liability of the company's members is limited to the amount each member has agreed to contribute, if the company is unable to meet its liabilities when it is wound up. That is, members cannot be required to contribute more than the amount that they have guaranteed (which is usually a nominal amount, such as \$2).
- (c) A company limited by guarantee has the freedom to do business anywhere in Australia, without the need for further registration.

### **2.4 Disadvantages**

The main disadvantage of the company limited by guarantee structure is that it is subject to the onerous financial reporting requirements of a public company. These requirements will include the preparation of a directors' report and audited financial accounts – which necessarily entails additional annual expenditure and management time.

### **2.5 Rules**

A company is not required to have its own constitution. It may instead rely on the replaceable rules in the *Corporations Act*. It would however, be prudent for Roebourne Community Association to have its own company constitution, as the replaceable rules in the *Corporations Act* are not aimed at community groups, and would not be appropriate. A copy of the constitution must be lodged with ASIC.



## 2.6 Management

A company limited by guarantee must have at least three directors. Directors must comply with certain duties set out in the Corporations Act, including that directors must:

- (a) act in good faith, in the best interests of the company and for a proper purpose;
- (b) not make improper use of information or position;
- (c) act with care and diligence;
- (d) disclose any material personal interest in matters relating to the affairs of the company; and
- (e) not allow the company to trade while it is or would become insolvent.

The company must also have at least one secretary.

## 2.7 Meetings

A company limited by guarantee must hold an annual general meeting at least once a year within five months after the end of its financial year. The first annual general meeting must be held within 18 months of incorporation.

## 2.8 Records

A company limited by guarantee must keep:

- (a) a register of members, options and charges; and
- (b) financial records regarding its transactions and financial position and performance that would enable true and fair financial statements to be prepared and audited.

Small companies limited by guarantee (ie. a company with revenue of less than \$250,000 per year) are not required to prepare financial or directors' reports. Companies with a yearly revenue exceeding \$250,000 must prepare annual financial and directors' reports. The annual financial report must include:

- (a) financial statements;
- (b) notes to financial statements; and
- (c) a directors' report.

## 2.9 Process

The process for establishing a company limited by guarantee is as follows:

- (a) check the availability of your intended name (note that a company limited by guarantee must have the word "limited" at the end of its name unless its constitution requires that it pursue charitable purposes only; prohibits the company making distributions to its members and paying fees to its directors; and requires the directors to approve all other payments the company makes to directors);
- (b) lodge ASIC Form 410 to reserve the proposed company name (this attracts a fee of \$45);
- (c) decide how the company will be internally governed and draft a proposed constitution;
- (d) obtain written consents from proposed initial company directors and secretaries, and identify the initial member/s (there must be at least one member);
- (e) apply for incorporation using the prescribed form (this attracts a fee of \$377); and
- (f) after receipt of the application ASIC will:
  - (i) give the company an Australian Company Number (ACN);

- (ii) register the company; and
- (iii) issue a Certificate of Registration

In order to stay registered, a company limited by guarantee must pay an annual review fee of \$45 per year.

### **3 CATSI Act Corporation**

#### **3.1 Overview**

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (**CATSI Act**) was enacted to allow Aboriginal and Torres Strait Islander groups to form corporations. CATSI corporations are regulated by the Office of the Registrar of Indigenous Corporations (**ORIC**).

#### **3.2 Eligibility**

A CATSI corporation must:

- (a) have a minimum of five members;
- (b) have a majority of members and directors who are indigenous;
- (c) have in its name:
  - (i) 'Aboriginal Corporation';
  - (ii) 'Torres Strait Islander Corporation';
  - (iii) 'Aboriginal and Torres Strait Islander Corporation';
  - (iv) 'Torres Strait Islander Corporation';
  - (v) 'Indigenous Corporation'; or
  - (vi) if applicable, 'Registered Native Title Body Corporate'; and
- (d) have a rule book approved by the Registrar.

#### **3.3 Advantages**

There are a number of advantages to registering under the CATSI Act, including:

- (a) upon registering the corporation, the members can choose not to be liable for the debts of the corporation;
- (b) a CATSI corporation is a separate legal entity that can sue, contract and own property in the company's name;
- (c) the rules can take into account Aboriginal or Torres Strait Islander customs and traditions;
- (d) CATSI corporations can operate nationally – they are not limited to the state in which they are registered;
- (e) registration is free;
- (f) the Registrar may exempt corporations from lodging annual reports;
- (g) the Registrar can provide specialised assistance to CATSI corporations, for instance, the registrar can:
  - (i) provide advice about the registration and operation of the corporation;
  - (ii) assist with dispute resolution;
  - (iii) assist with complaints under the CATSI Act;
  - (iv) conduct public education programs;

- (v) conduct research and develop policy proposals; and
- (h) the Registrar's office conducts training programs covering topics such as corporate governance, and the legal responsibilities involved in becoming a CATSI corporation.

### 3.4 Disadvantages

Similar to a company limited by guarantee, CATSI corporations are subject to reporting requirements, and directors are subject to the duties set out in the CATSI Act.

### 3.5 Rules

CATSI Corporations must have a rule book agreed to by the members which sets out how the corporation will be run. The rule book contains a number of rules applicable to all corporations, as well as rules that can be replaced, changed, and inserted.

The rule book can be changed by calling a directors' meeting to make the changes, followed by a general meeting for the members to approve the changes.

### 3.6 Management

A CATSI corporation with more than two members must have at least three, and no more than 12, directors. Directors are subject to certain duties, including:

- (a) care and diligence;
- (b) not to improperly use their position or information;
- (c) not to trade while insolvent;
- (d) good faith; and
- (e) to disclose conflicts of interest.

### 3.7 Meetings

A new CATSI corporation must hold a meeting within three months of registration. After that, the annual general meeting must be held every year within five months after the end of the financial year.

### 3.8 Records

CATSI corporations must report to the Registrar each year regarding their finances, membership, and compliance with the CATSI Act and the corporation's rule book. Reporting requirements differ depending on the size of the corporation:

- (a) Small corporations (with a consolidated gross operating income of less than \$100,000) have to submit a general report;
- (b) Medium corporations (with a consolidated gross operating income of more than \$100,000 and less than \$5 million) have to submit a general report and a financial report; and
- (c) Large corporations (with a consolidated gross operating income of more than \$5 million) have to submit a general report, financial report, audit report, and directors report.

### 3.9 Process

The process for establishing a CATSI corporation is as follows:

- (a) fill in the application form;
- (b) draft a proposed rule book;
- (c) hold a meeting of members where at least 75% of the people who have consented in writing to becoming members must agree to:

- (i) apply for registration;
  - (ii) approve the proposed rule book;
  - (iii) nominate the directors; and
  - (iv) nominate the contact person or secretary,  
this must either be evidenced by minutes from the meeting, or a resolution document;  
and
- (d) send the form, resolution and rule book to ORIC.

When approved, ORIC will:

- (a) send you a certificate of registration;
- (b) send you a copy of the approved rule book; and
- (c) place the corporation's details on the Public Register of Aboriginal and Torres Strait Islander Corporations.