

# CONSTITUTION

## Nganana Incorporated

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### 1. Name

The name of the Incorporated Association is, **Nganana Incorporated** referred to herein as “the Association”.

### 2. Definitions

“**Board**” means the group of individuals appointed to govern the Association.

“**Board Member/s**” means the individuals who are appointed to the Board.

“**Office Bearer/s**” means the Board Members appointed by the Board to fulfill the roles of Chairperson, Deputy Chairperson, Treasurer and Secretary.

“**Term of office**” means the period of time that the Board Members are appointed to the Board and the period of time that the Office Bearers are appointed to their roles.

“**Public Officer**” means the individual aged 18 years and over, living primarily in South Australia who is appointed by the Board to fulfill the roles and obligations as prescribed by the Act.

“**The Act**” means the Associations Incorporation Act 1985.

“**Special resolution**” means a resolution, in accordance with these rules, that requires 21 days notice and a three-quarters majority vote to pass.

“**Ordinary resolution**” means a resolution, in accordance with these rules, that requires 14 days notice and a simple majority of votes to pass.

“**Prescribed association**” means an Association that has gross receipts in excess of \$500,000 per annum or some other amount as set by Consumer and Business Services.

“**Periodic return**” means the report required of the Board to be lodged with Consumer and Business Services within six (6) months of the end of each financial year.

**“Month”** means a calendar month.

**“Financial year”** means the 12 month period from July 1 to June 30.

**“Calendar year”** means the 12 month from January 1 to December 31.

### **3. Objects of the Association**

- 3.1 To support the first people of Australia via social innovation and social enterprise initiatives having the primary objective of building the capability of Australian Aboriginal people and communities to live self empowered and self determined lives as an expression of cultural identity, inclusive of cultural values and cultural practice.
- 3.2 To honour the Aboriginal community from the remote Anangu Pitjantjatjara Yankunytjatjara (APY) region of north west South Australia as first Australians from the oldest living culture on the planet still living traditionally, by supporting from an approach that is culturally respectful, that listens, and that recognises and embraces the intrinsic and fundamentally spiritual value of Tjukurpa (Aboriginal Lore, “dreaming”, way of life), family, kin, community, and Ngura (home, camp, place, land), all from the understanding that these values are inseparable to identity and represent key indigenous social determinants of health and wellbeing.
- 3.3 To critically analyse and work toward addressing systemic structural deficiencies within Australian society that results in or has an impact on the ability of first nation individuals and communities to live in a manner consistent with innate cultural values or that results in oppression, and as such to develop unique Aboriginal service types that protects, empowers and enhances cultural values and genuine, respectful, self determined engagement.
- 3.4 To proactively and from an individualistic perspective support all people living with disability, mental health, and psychosocial support needs, with commitment toward professional practice (utilises evidence based best practice standards), advocacy, the support of developmental outcomes focussed on empowerment and enhanced mental and physical health and wellbeing, that respects and takes into consideration cultural values and norms, and that includes critical reflection of practices which guides continuous improvement of all services offered .
- 3.5 To operate a true not for profit, charitable organisation that cherishes organisational culture above achievement of other business outcomes, that operates as a true collective by taking into

consideration equally and respectfully the input from all members, that promotes and practices integrity as a key principle throughout the organisation, and where fiduciary duty toward service users from all organisational members (officers, board members and employees) is placed as a priority over self interest.

#### **4. Legal and financial powers**

- 4.1 The Association shall have all the powers mentioned in Section 25 of the Act, which are:
  - 4.1.1 To acquire, hold, deal with and dispose of any real or personal property, and
  - 4.1.2 Administer any property on trust, and
  - 4.1.3 Open and operate bank accounts, and
  - 4.1.4 Invest its money, and
  - 4.1.5 Borrow money, and
  - 4.1.6 Give security for borrowings, and
  - 4.1.7 Appoint agents to transact any business of the Association on its behalf, and
  - 4.1.8 Enter into contracts

#### **5. Membership**

- 5.1 The Association does not have registered members.

#### **6. Rights and liabilities of Board Members**

- 6.1 Board Members, past or present, do not own or have the right to personally use land, property, vehicles, computers or other property and resources that have been purchased by Nganana Inc. to deliver services to clients.
- 6.2 A Board Member does not have to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of winding up the Association.
- 6.3 Board Members do have to contribute towards any debts or liabilities incurred by or on behalf of the Association before we incorporated.

- 6.4 If Board Members, past or present, are found guilty of an offence under the Act they will be subject to the fines, fees and penalties that apply to that offence.

## **7. Our relationship with stakeholders**

- 7.1 In the absence of registered members, the Board Members will make sure that there are processes in place for Nganana Inc. to connect and consult with our stakeholders.
- 7.2 The Board and employees of Nganana Inc. will plan and/or participate in culturally respectful activity as part of its business planning cycle that may include but is not limited to:
- 7.2.1 Community events
  - 7.2.2 Community meetings and forums
  - 7.2.3 Client and consumer focus groups
  - 7.2.4 Client and consumer feedback

## **8. Our Board**

### **8.1 Powers and Duties**

- 8.1.1 The Board can exercise all the powers that are mentioned in the Act and those mentioned in this Constitution. The Board can only do things that are within and to advance the stated purpose and objects of the Association.
- 8.1.2 The Board is accountable for the governance and control of the funds and other property of the Association.
- 8.1.3 If a situation comes up that the clauses in this Constitution do not cover, the Board is allowed to decide how it will be handled as long as the Board makes a decision or plan that is within the meaning or spirit of the rest of the Constitution and of the Act.
- 8.1.4 As required by the Act the Board must appoint a person living in South Australia, who is aged 18 years or over to perform the role of a Public Officer.
- 8.1.5 The Board must make sure that Nganana Inc. remains financially solvent at all times.

#### 8.2.6 Financial Control

- (a) Any money obtained by the Association shall be used only for the Association.
- (b) Any bank accounts opened for the Association shall be in the name of the Association.
- (c) Any cheque issued shall be signed by at least two of any three nominated signatures.
- (d) The Board will ensure that the Association stays within the budget.

### **8.2 Insurance**

8.2.1 The Association shall purchase and keep in force insurance against any liability incurred by a Board member or other officer of the Association acting in that capacity for the reasonable costs and expenses of defending either civil or criminal proceedings.

8.2.2 The Association shall give any officer of the Association or former officer access to any document or record for the purposes of any legal proceedings to which this clause applies.

### **8.3 The first Board under the new Rules**

8.3.1 The first Board under these new rules will be comprised of the supporters of the association and the senior officer. This Board composition will remain in place for at least the first 12 months during the establishment phase of the association.

8.3.2 As the organisation, funding and service range of the association develops and grows the first Board will recruit and appoint additional Board Members until it achieves the Board composition described in Section 8.4.

8.3.3 The Senior Officer as per the Act can hold the position of Chairperson for the first 12 months during the establishment phase of the association. After this time there is an expectation the Senior Officer will relinquish the position and an alternate Chairperson nominated.

8.3.4 The first Board can operate with a minimum of three individuals for the first 12 months during the establishment phase of the association, with

the objective to recruit additional Board members to have a minimum of five individuals after this time.

## **8.4 Board Composition and Appointment to the Board**

8.4.1 The Board shall be comprised of eight (8) individuals, though the Board may function validly while carrying a maximum of three (3) vacancies.

8.4.3 All individuals appointed to the Board are to be aged 18 years or over.

8.4.4 Board members are appointed based on their skills, experience and knowledge in one or more of the following areas or disciplines:

- a) Governance and/or management of not for profit organisations
- b) The Law
- c) Financial management/accounting
- d) Strategic and business planning
- e) Marketing, promotion and business development
- f) Business development
- g) Other skills, knowledge and experience as required and determined by the Board

8.4.5 Board members will be recruited, selected and appointed by the Board.

## **8.5 Terms of appointment and re-appointment to the Board**

8.5.1 Board members are appointed for terms of two (2) years and may stand for re-appointment at the end of each term with no maximum number of terms prescribed.

8.5.2 Board members who have completed a term of appointment to the Board and wish to stand again, can nominate themselves or be nominated by another Board Member for re-appointment to the Board.

8.5.3 Re-appointment at the end of a term is determined by a majority vote of the Board.

8.5.4 Board members may nominate or be nominated for a shorter term (that is, less than two (2) years) at the discretion of the Board.

## **8.6 Vacancies on the Board**

- 8.6.1 The Board may carry on meeting and fulfilling its duties with only five (5) currently appointed Board Members.
- 8.6.2 As Board vacancies arise and when the Board decides to fill those vacancies, it will determine a process to identify, recruit and appoint new Board Members.

## **8.7 Office Bearers and terms of office**

- 8.7.1 The Office Bearers are the Chairperson, Deputy Chairperson, Treasurer and Secretary.
- 8.7.2 Nomination and election to the Office Bearer positions shall occur bi-annually, within two months of the Board Meeting at which the annual financial reports have been tabled and endorsed. Nominations and elections may take place at the same Board Meeting but shall take place after the audited report has been tabled and endorsed.
- 8.7.3 An individual Board Member may be elected to the same position on three (3) successive occasions only and may be re-elected to the same office after standing down for one (1) term.
- 8.7.4 At the Board's discretion an individual Board Member who has served in the same office for three consecutive terms may be re-elected to the same office for one (1) further term if there are no other suitable candidates. This fourth term shall be used to identify and prepare a suitable candidate for the office.
- 8.7.5 Nomination and election to an Office Bearer's position may occur at times other than at the annual scheduled Board Meeting if a vacancy arises, for whatever reason.
- 8.7.6 The Office Bearer term of office does not supersede the Board Member term of appointment.

## **8.8 Board Member resignation**

- 8.8.1 A member of the Board may resign by providing written advice of their intention and the date on which the resignation will become effective, to the Chairperson or Secretary of the Board.

## **8.9 Suspension of Board Members**

8.9.1 A Board Member shall be suspended when:

- 8.9.1.1 An alleged breach of the Code of Conduct, the Confidentiality Agreement or policy and procedures applicable to their role is under investigation;
- 8.9.1.2 Their capacity or willingness to fulfill the duties of the position is in question and under investigation;
- 8.9.1.3 They have been charged with an offence that, if proven, will disqualify them from being a member of a board or from being an officer of an association under the Act;
- 8.9.1.4 They have been charged with an offence that, if proven, damages the reputation of the Association, brings their character into question or indicates that they do not support the objects and purpose of the Association

8.9.2 The Board will advise the Board Member in writing that they are suspended.

8.9.3 A suspended Board Member cannot appeal against the suspension.

8.9.4 The suspension will stay in effect until the matter is clarified or determined.

8.9.5 During the period of suspension the Board Member ceases to have any of the powers, rights and responsibilities of a Board Member.

8.9.6 The matter leading to the suspension may result in disqualification.

## **8.10 Disqualification of Board Members**

8.10.1 A Board Member shall be disqualified if they:

- 8.10.1.1 Are disqualified from being a member of a board or officer of an association as defined within the Act;
- 8.10.1.2 Are absent without apology for more than three (3) consecutive meetings;
- 8.10.1.3 Have breached the Code of Conduct, the Confidentiality Agreement or policy and procedures applicable to their role;
- 8.10.1.4 Are convicted of an offence that brings disrepute to the Association, brings the Board Member's character into question or indicates that they do not support the objectives and purpose of the Association;
- 8.10.1.5 Otherwise unable or unwilling to fulfill the duties of the position



- 8.10.2 A Board Member subject to disqualification shall be given notice of one (1) calendar month of the date of the Board Meeting at which a resolution to disqualify the Board Member will be tabled.
- 8.10.3 A Board Member subject to disqualification shall have the right to address the Board Meeting at which the resolution to disqualify is tabled.
- 8.10.4 The Board shall provide written advice to the Board Member subject to disqualification of the outcome of the vote on the resolution to disqualify within one (1) week of the meeting at which the resolution was tabled and voted on.
- 8.10.5 A Board Member who has been disqualified shall have the right to appeal by advising the Board in writing of their intention within fourteen (14) days of receiving the written advice from the Board of the resolution to disqualify.
- 8.10.6 Upon receiving advice of an appeal against disqualification, the Board shall table the appeal at the next scheduled Board Meeting or call an extra-ordinary meeting of the Board if the next scheduled Board Meeting is not within one (1) calendar month of receiving the advice to appeal.
- 8.10.7 Where the appeal of a disqualified Board Member is upheld, the Board shall provide advice to this effect in writing to the Board Member and shall advise the Board Member that they will be reinstated to the Board for the remainder of their term, and if that Board Member also held office, to advise that they will also be reinstated to that office for the remainder of their term.
- 8.10.8 Where the term of appointment to the Board or to an Office Bearer's position ends during the process of disqualification and/or appeal the Board may:
- 8.10.8.1 Permit the Board Member to nominate or be nominated for a position on the Board and to an Office Bearer's position subject to these rules
  - 8.10.8.2 Permit the Board Member to nominate or be nominated for a position on the Board subject to these rules, but not to an Office Bearer's position
  - 8.10.8.3 Defer nominations and elections until the disqualification and appeal process or time limits have concluded
- 8.10.8 Where the appeal is not upheld, the Board shall provide advice to this effect to the Board Member that will include the date the disqualification was effective and clarification that they are no longer a Member of the Board.

8.10.9 Disqualified Board Members who remain eligible for Board Membership will not be considered again for Board Membership for a period of three (3) years.

8.10.10 Any legal and/or professional costs incurred by the Board Member subject to disqualification are not the responsibility of the Association.

## **8.11 Proceedings of the Board**

8.11.1 The first Board shall convene for the dispatch of business on a quarterly basis or more frequently if required.

8.11.2 The Executive Members (office bearers) may meet to conduct urgent business between scheduled Board Meetings.

8.11.3 A quorum for a meeting of the Board shall be a natural majority of the current number of members appointed to the Board.

8.11.4 At least seven (7) days prior to a Board meeting each member must be given notice of the meeting, setting out the nature of the business to be dealt with, a copy of the minutes of the previous meeting and any documents relevant to the business of the meeting.

8.11.5 The Chairperson or two other members of the Board shall have the power to call a meeting of the Board.

8.11.6 At the invitation of the member presiding, a person who is not a member of the Board may be present at and participate in discussions at a meeting of the Board but not vote on any determination of the Board.

8.11.7 A member of the Board having a direct or indirect pecuniary interest in a contract or proposed contract with the Association must disclose the nature and extent of that interest to the Board as required by the Act, and shall not vote with respect to that contract or proposed contract.

8.11.8 The Board meeting shall be chaired by the Chairperson. In the absence of the Chairperson or where the Chairperson declines to preside or the matter at hand is in regards to the Chairperson or where the Chairperson has a conflict of interest, the meeting shall be chaired by the Deputy Chairperson. If for the same reasons the Deputy Chairperson can't or won't preside, another Board member will be elected to preside at the meeting.

## **8.12 Voting at Board Meetings**

8.12.1 Each Board Member has only one vote.

8.12.2 Questions, motions and ordinary resolutions arising at any meeting of the Board shall be decided by a majority of votes.

8.12.3 Unless a poll is demanded by two (2) Board Members, a question for decision must be determined by a show of hands.

8.12.4 If a poll is demanded by two (2) Board Members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.

8.12.5 A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

8.12.6 When the voting on a motion or ordinary resolution is tied the Board Members may consider and decide on how best to move forward including options such as:

- (a) Hold a secret ballot (poll) at the meeting or schedule it for a subsequent meeting
- (b) Set aside the agenda item and reschedule the item for a subsequent Board meeting
- (c) Refer the matter to an independent person or organisation for information, advice and/or recommendation distributed prior to a subsequent meeting of the Board
- (d) Invite a person or organisation with requisite expertise to attend a subsequent meeting of the Board
- (e) Ask the Senior Officer or other appropriate employee to prepare additional information, reports, advice and/or recommendations to be distributed prior to a subsequent meeting of the Board
- (f) Arrange training for the Board as a whole or for individual Board members regarding the unresolved matter at hand
- (g) Refer the matter to a sub-committee of the Board or establish a sub-committee to consider the matter and report to the Board at a subsequent meeting of the Board
- (h) Hold a community meeting or client focus group to seek input on the matter.

8.12.7 Board Members are not entitled to vote by proxy.

## **9. Committees**

- 9.1 The Board may appoint committees for such purposes and with powers and terms of reference as it determines from time to time.
- 9.2 The members of the committees need not be members of the Board.
- 9.3 The Chairperson is ex officio a member of all committees.
- 9.4 Any determination of committees shall be by way of recommendation to the Board unless the Board has given the committee power to give effect to the determination.
- 9.5 Such a determination shall not diminish from the right of the Board to exercise powers delegated and determinations may be modified or revoked by the Board.

## **10. The Seal**

- 10.1 The Association shall have a common seal upon which its corporate name shall appear in legible characters.
- 10.2 The seal shall not be used without the express authorisation of the Board and every use of the seal shall be recorded in the minutes or such other book of the Association.

## **11. Special and Ordinary Resolutions**

- 11.1 A special resolution is required for alterations to the Constitution where the alteration changes the meaning or intent of the section or clause, for the winding down of the Association and the amalgamation of the Association.
- 11.2 A Board Meeting where a special resolution is to be proposed requires 21 days written notice to be given to Board Members specifying the intention to propose the resolution as a special resolution.
- 11.3 A special resolution is passed only by a majority of not less than three-quarters of votes cast by Board Members present in person or electronically.
- 11.4 An ordinary resolution is passed by a natural majority of votes cast by Board Members present in person or electronically.

## **12. Minutes**

- 12.1 Proper minutes of all proceedings of Board Meetings shall be entered within one month after the relevant meeting in minute books or electronic files kept for that purpose.
- 12.2 The minutes must be confirmed by the Members of the Board at a subsequent meeting.
- 12.3 The minutes shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting at which the minutes are confirmed.
- 12.4 Where minutes are entered and signed they shall, until the contrary is proved, be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held and that all appointments made at a meeting shall be deemed to be valid.

## **13. Financial Reporting**

- 13.1 The first financial year of the Association shall be the period ending on the next 30 June following incorporation and thereafter a period of 12 months commencing on 1 July and ending on 30 June of each year.
- 13.2 The Association shall keep and retain such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association in accordance with the Act.
- 13.3 The accounts, together with the auditor's report on the accounts, the Board's statement and the Board's report (if the association is a prescribed association), shall be laid before Board Members at a duly convened meeting within 5 months of the end of the financial year.
- 13.4 The Periodic Return shall be lodged with Consumer and Business Services within six months of the end of each financial year if the Association is a prescribed association under the Act. It must be accompanied by a copy of the accounts, the auditor's report, the Board's statement and the Board's report.

## **14. Appointment of an Auditor**

- 14.1 If the association is a prescribed association, the Board shall appoint a person to be Auditor of the Association.
- 14.2 The Auditor shall not be an officer, a partner, employer or employee of an officer, an employee, or a partner or employee of an employee of the Association.
- 14.3 The Auditor shall hold office for a period of twelve (12) and is eligible for re-appointment.
- 14.4 The Board must appoint or re-appoint the Auditor at the same Board meeting at which the annual audited report is tabled for endorsement.

## **15. Prohibition against Securing Profits for Board Members**

- 15.1 The income and capital of the Association shall be applied exclusively to the promotion of its objects and no portion shall be paid or distributed directly or indirectly to Board Members or their associates except as bona fide remuneration of a Board Member for services rendered or expenses incurred on behalf of the Association.

## **16. Winding up and Amalgamation**

- 16.1 The Association may be wound up or pursue amalgamation in accordance with the Act.
- 16.2 A special resolution is required for the Board Members to consider and determine the question of winding up or amalgamating the Association.
- 16.3 If after winding up of the Association there remains surplus assets as defined in the Act, such surplus assets shall be distributed to any organisation which has similar objects and has rules which prohibit the distribution of its assets and income to its members.
- 16.4 Such organisation(s) or charity(ies) shall be identified and determined by an ordinary resolution of Board Members in a duly convened meeting.
- 16.5 If the Association is to amalgamate, the assets and liabilities of the Association become the assets and liabilities of the new association.
- 16.6 Surplus assets at the completion of a winding up shall not be distributed to Board Members or former Board Members or associates of those persons.

## **17 The Rules of the Association**

- 17.1 These rules may be altered (including an alteration to the Association's name) by special resolution of the Board Members of the Association. This includes rescinding or replacement by substitute rules.
- 17.2 These rules may be altered by ordinary resolution of the Board if the amendment does not change the intent or meaning of the rule.
- 17.3 The alteration shall be registered with Consumer and Business Services, as required by the Act.
- 17.4 The registered rules shall bind the Association and every Board Member to the same extent as if they have respectively signed and sealed them and agreed to be bound by all of the provision thereof.
- 17.5 An alteration to the rules (except change of name) becomes effective from the time the alteration is passed.
- 17.6 An alteration to the name of the Association becomes effective only once it is registered with Consumer and Business Services.