

The rule book Binthi Land Holding Group Aboriginal Corporation

ICN 3394

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

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1. Name

The name of the corporation is Binthi Land Holding Group Aboriginal Corporation

2. Objectives and Functions

The corporation aims:

- to hold title to Binthi lands (including legal and equitable interests in land);
- to hold land transferred pursuant to the ALA;
- to be the grantee, including sole grantee, of grants of land made under the ALA;
- to own land, including legal and equitable interests in land;
- to receive royalty payments from the State under the ALA;
- to lawfully distribute any of the Corporation's property, in kind or otherwise, among any of its members either alone or with others.
- to conserve and manage country owned by Binthi people in accordance with Binthi Law and custom;
- to provide economic, environmental, social and cultural benefits to the members of the Corporation;
- to operate and maintain a gift fund to be known as 'The Binthi Land Holding Group Aboriginal Corporation Gift Fund' in accordance with the requirements of the *Income Tax Assessment Act 1997*;
- to assist in the relief of poverty, sickness, destitution, helplessness, distress, suffering, and misfortune, among Binthi Warra, through the process of supporting social and economic development;
- operate community enterprises and build a strong financial base for community development activities and infrastructure;
- promote community development by acting as a resource for the community and stakeholders in the areas of education, health, housing, employment and welfare to the community;
- act as a clearing house to facilitate the exchange of information and skills, participation and maintenance of community development activities, community services, employment and housing for the community.
- to acquire resources and conduct general affairs to facilitate all of the above.

Functions

- to fulfil the role and functions of a land holding entity in accordance with the ALA and the Aboriginal Land Regulation 1991 (Qld);
- to act as trustee of land granted pursuant to the Land Act 1994 (Qld), including ordinary freehold land;

- to act as trustee of any community purpose reserves pursuant to the Land Act 1994 (Qld);
- to act as trustee of any other trust, whether charitable or otherwise, established for the benefit of any of its members either alone or with others;
- to enter into compensation or other agreements for mining and other activities pursuant to the Mineral Resources Act 1989 (Qld), the NTA and any other legislation;
- to act as an Aboriginal cultural heritage body under the Aboriginal Cultural Heritage Act 2003 (Qld); and
- to exercise all powers necessary or convenient to perform its functions for the benefit of the Statutory Title Holders in all matters relevant to these objects.

3. Members

3.1 *Who is eligible?*

Who can apply to become a member (eligibility for membership)?

A person who is eligible to apply for membership must be:

- an Aboriginal person who is entitled by Aboriginal tradition to the use or occupation of land to which the Corporation holds title whether or not the traditional entitlement is qualified as to place, time, circumstances, purpose or permission; or
- a Statutory Title Holder (Refer to rule 15); and
- over the age of 18 years.

3.2 *How to become a member*

A person applies in writing.

A person is eligible under rule 3.1.

The directors agree.

The person's name 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, they must notify the applicant in writing of the decision and the reasons for it.

3.3 *Members' rights*

A member:

- can attend, speak and vote at general meetings

- can be made a director
- can put forward resolutions at general meetings
- can ask the directors to call a general meeting
- can look at the books and records of the corporation (if the directors have authorised them to do this, or if the members have passed a resolution which lets them do this).

3.4 *Members' responsibilities*

A member:

- must follow these rules
- lets the corporation know if they change their address
- treats other members with respect.

3.5 *Liability of members*

Members do not have to pay corporation debts if the corporation is wound up.

3.6 *How to stop being a member*

A person stops being a member if:

- they resign in writing
- they die
- their membership is cancelled.

The person's name and date they stopped being a member is put on the register of former members.

3.7 *Cancelling membership*

If a member:

- can't be contacted for two years
- misbehaves or
- is not an Aboriginal or Torres Strait Islander person

the member can only be removed by special resolution at a **general meeting**. The directors must then send that person a copy of the special resolution at their last known address, as soon as possible after it has been passed.

If a person is not eligible for membership for some other reason, the directors can cancel their membership by passing a resolution at a **directors meeting**. Before the meeting, directors need to give the member 14 days to object in writing.

If the member objects, the directors can't cancel the membership. The member can only then be removed at a general meeting by resolution.

3.8 *The register of members*

The register must contain:

- members' and former members' names and addresses
- the date when the names were put on the list
- if a member is not an Aboriginal or Torres Strait Islander person (if your rule 3.1 allows non-Aboriginal and Torres Strait Islander members)
- for former members, the date when they stopped being a member.

It must be kept at the corporation's document access address.

It must be available at the annual general meeting (AGM).

4. Meetings

4.1 *AGM timing*

AGMs must be held before the end of November each year.

4.2 *AGM business*

AGMs are for:

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

4.3 *General meetings*

A director can call a general meeting.

Members can ask directors to call a general meeting.

The directors must call the general meeting within 21 days.

Number of members in corporation	Number of members needed to ask for 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% of members

4.4 *General meeting business*

General meetings are for:

- confirming the minutes of the previous general meeting
- everything in the notice of the meeting.

4.5 *Notice for general meetings*

At least 21 days' notice must be given.

Notice must be given to members, directors, officers, the contact person and 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, and what it is
- if a member can appoint a proxy.

Notices can be given to members personally (or in a manner which accords with Aboriginal or Torres Strait Islander custom), sent to their address, sent by fax or sent by email.

A notice of meeting:

- sent by post is taken to be given 3 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

4.6 *Members' resolutions*

Members can propose a notice of a resolution and then give it to the corporation.

Number of members in corporation	Number of members needed 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% 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 people entitled to it (see rule 4.5).

The corporation must consider the resolution at the next meeting which is being held at least 28 days after the notice has been sent out.

4.7 *Quorum at general meetings*

Number of members in corporation	Number of members to make a quorum
30 or less 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's no quorum after one hour, the meeting is adjourned until the next week at the same time. If there's still no quorum, the meeting is cancelled.

4.8 *Chairing general meetings*

The chairperson will chair general meetings. If the chairperson is not available, the directors can elect someone to chair the meeting. If they don't, the members must elect someone.

4.9 *Using technology*

General meetings can be held at more than one place using any technology that gives members a way of taking part.

4.10 Voting

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 general meeting may only be made at the meeting, and must be determined by the chair, whose decision is final.

A resolution can be decided by majority on a show of hands, unless a poll is demanded. (A poll is a formal vote, not by show of hands—for example, by writing on a voting paper or placing marbles in labelled jars.)

The chair tells the meeting whether they have received any proxy votes and what they are.

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

4.11 Demanding a poll

Any member entitled to vote on the resolution or the chair can demand a poll.

A poll can be held before or after a show of hands vote.

A poll on the election of a chair or on the question of an adjournment must be taken immediately. A poll demanded on other matters must be taken when and in the manner the chair directs.

4.12 Proxies

Members can appoint a person as proxy to attend meetings and vote for them.

Proxies can also speak at meetings and join in demanding a poll. They can vote if their appointment allows them to.

A proxy appointment must contain the member's name and address, the corporation's name, the proxy's name, the meeting where the proxy is going, and it must be signed by the member.

The corporation must receive the proxy's appointment at least 24 hours before the meeting.

A person must not be a proxy for more than three members.

5. Directors and reserve directors

5.1 Number of directors and reserve directors

The number of directors of the corporation shall be six (6) members and three (3) reserve directors. Each of the three (3) ancestor groups shall nominate two (2)

directors and one (1) reserve director. The reserve director only acts as a director (including attending directors' meetings) if the director they are a reserve for is unable to act as a director or stops being a director. The rules dealing with reserve directors are intended to replace section 246-30 of the CATSI Act, which deals with alternate directors.

5.2 *Eligibility of directors and reserve directors*

A director must be:

- at least 18 years old
- a member of the corporation
- have a Director ID or apply for a Director ID within 24 days of their appointment and give the Corporation their Director ID as soon as they have it.

5.3 *Majority of director requirements*

A majority of directors of the corporation must:

- be individuals who are Aboriginal or Torres Strait Islander persons (if your rule 5.2 allows non-Indigenous people as directors)
- usually reside in Australia
- members of the corporation
- not be employees of the corporation.

The chief executive officer may be a director but cannot chair the directors' meetings.

5.4 *How to become a director and a reserve director*

The corporation can appoint a director and reserve director by resolution passed at a general meeting. Directors and reserve directors must give the corporation their consent in writing to be a director (or a reserve director). Each respective ancestor group is responsible for determining the process by which it will select two directors and a reserve director from its ancestor group to nominate to the corporation.

The nominated directors and reserve directors must be confirmed by a resolution of members at the AGM. The directors take office from the close of the AGM at which their nomination is confirmed.

The corporation can develop prerequisites and criteria which members must follow prior to being elected as a director (for example: obtaining a police check that shows that the member has been convicted of a criminal offence which is punishable by imprisonment for 12 months or more).

5.5 *Directors' terms of appointment and rotation*

Directors and reserve directors are appointed at the annual general meeting for a term of two years. They are eligible to be re-elected.

5.6 *How to become an office bearer (chairperson, vice-chairperson and treasurer)*

At the first directors' meeting after each AGM, the directors elect the office bearers of the corporation from the directors.

There shall be a chairperson, a vice-chairperson and a treasurer who shall be the office bearers.

5.7 *How to become an independent or specialist non-member director*

The directors may appoint non-member directors. Non-member directors may be selected for their independence or skills in financial management, corporate governance, accounting, law or a field relating to the corporation's activities, or both.

Non-member directors must give the corporation their consent in writing to be a director before being appointed. Non-member directors are appointed for the term specified in writing by the directors in their appointment. The term of appointment cannot exceed two years, but they can be reappointed.

5.8 *How to fill vacancies and reserve directors*

Directors can fill casual director vacancies, including office bearers.

Directors can appoint someone as a director to make up a quorum. Their appointment must be confirmed by resolution at the next general meeting or they stop being a director.

If a director is unable to act as a director or stops being a director (ceased director) their vacancy shall be filled by the reserve director from the same ancestor group. If the reserve director from the same ancestor group is unable or unwilling to fill the vacant director position, the board can appoint another member from the same ancestor group as the ceased director who vacated the position, after liaising with the members of that ancestor group.

A casual vacancy in the position of reserve director can be filled by the directors with a member from the same ancestor group as the ceased reserve director who vacated the position, after liaising with the members of that ancestor group.

A person who is appointed to fill a casual vacancy as director or a reserve director will remain in that position until the next general meeting when their appointment must be confirmed or they stop being a director or a reserve director.

Where there are less than the minimum number of directors or reserve directors, then those directors remaining in office shall have the power to appoint members to fill a casual vacancy or vacancies.

5.9 *How to stop being a director and reserve director*

A director or reserve director dies.

A director or reserve director resigns, in writing.

A director's or reserve director's appointment expires.

A director or reserve director is removed as a director by the members or the other directors.

A director or reserve director is disqualified from managing a corporation.

5.10 *How to remove a director or reserve director*

By the members:

- A notice for a resolution to remove a director or reserve director must be given to the corporation at least 21 days before the meeting.
- The corporation must give the director or reserve director concerned a copy of the notice as soon as possible.
- The director or reserve 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 4.5).

By 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 by resolution.

5.11 Directors' and officers' duties

The duties are:

- a duty of care and diligence
- a duty of good faith
- a duty to disclose a conflict of interest (material personal interest)
- a duty not to improperly use position or information
- a duty to not trade while insolvent.

The business of the corporation is to be managed by or under the direction of directors. 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 general meeting.

5.12 Conflict of interest (material personal interest)

A director who has a material personal interest in a corporation matter must tell the other directors.

This notice must give details of what the interest is and how it relates to the corporation. It must be given at a directors' meeting as soon as possible, and it must be recorded in the minutes of the meeting.

A director who has a material personal interest must not:

- be present at the directors' meeting while the matter in question is being considered;
- vote on the matter in question unless allowed to do so under the CATSI Act.

5.13 Payment

(a) The Directors may be paid remuneration in relation to attending meetings in their capacity as a Director. The rate of remuneration and circumstances in which it will be paid will be determined by the corporation through a resolution at a general meeting.

Rule 5.13 (a) does not prevent:

- (i) a Director who is an employee of the Corporation from receiving remuneration as an employee of the Corporation; or
- (ii) reasonable payments (having regard to the market costs of obtaining similar goods or services) to the Director for a contract for goods or services, provided that rule 5.12 has been complied with.
- (iii) Directors from receiving payment for temporary project work or cultural advisor activities.

5.14 *Delegation*

Directors can delegate, by passing a resolution, any of their powers to:

- another director
- a committee of directors
- an employee of the corporation.

5.15 *Related party benefit*

If a corporation wants to give a financial benefit to a director or related party (such as a spouse of a director) it must get the approval of the members by following the procedure in part 6.6 of the CATSI Act.

5.16 *Directors' meetings*

Directors must meet at least every three months.

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.

5.17 *Quorum for directors' meetings*

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

5.18 *Chairing directors' meetings*

The directors can elect a director to chair their meetings.

They must decide how long that director will be the chair.

5.19 *Using technology*

Directors' meetings can be held at more than one place using any technology, as long as they all agree to it.

5.20 *Resolutions at directors' meetings*

A resolution of directors must be passed by a majority of the votes.

The chair has a vote, plus a casting vote.

Resolutions can be passed without a directors' meeting if all directors sign a statement saying that they are in favour of it.

6. Contact person

The contact person must be at least 18 years old.

The directors appoint a contact person.

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

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

The contact person must give the corporation their consent in writing to become a contact person.

7. 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
- financial records.

They must be kept at the corporation's document access address.

8. Finances

All money of the corporation must be deposited into the corporation's bank account.

The corporation must give receipts for all money it receives.

All cheques, withdrawal forms and other banking documents must be signed by at least three directors.

All accounts must be approved for payment at a directors' meeting.

9. Application of funds

The corporation is a not-for-profit corporation.

Directors can use the money and property of the corporation to carry out its business. They cannot give the money and property to members of the corporation.

Note: This rule does not stop the corporation from making reasonable payment:

- to a member in their capacity as an employee;
- to a member under a contract for goods or services provided; or
- payment to a member in carrying out the corporation's objectives.

10. Winding up

10.1 Surplus Assets of the Corporation.

The winding up of the corporation shall be in accordance with the CATSI Act.

Where upon the wind up, voluntary or otherwise or cancellation of registration there remains any surplus assets, the land shall be disposed of the Indigenous Land and Sea Corporation on terms and conditions agreed to between the Corporation and the Indigenous Land and Sea Corporation.

The distribution of surplus assets must not be made to any member or to any person to be held on trust for any member.

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 or the members may pass a special resolution about how the surplus assets of the corporation are to be distributed.

The surplus assets must not be given to any member or to any person to be held on trust for any member and can only be given to a charitable organisation/s with similar charitable purposes.

10.2 Surplus assets of gift funds

If the Australian Tax Office allows the corporation to give tax deductible receipts for donations, and the corporation is wound up, any surplus gift funds must be given to another body with similar objectives and that gives tax deductible receipts for donations.

11. Dispute resolution

If a dispute arises, the parties 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 or any of the dispute parties may ask the Registrar for assistance.

The directors must help the parties resolve the dispute within 20 business days after the corporation receives the notice.

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

12. Powers

The Corporation shall have power to do all lawful things as may be necessary or desirable to carry out the objects of the Corporation and to manage the land vested in it including, but without limiting the generality of the foregoing, the power:

- raise funds by way of public appeal, government grant, bequest, gift or otherwise in such terms and in such manner as the Corporation thinks fit;
- purchase, take on lease, or in exchange, hire or otherwise acquire any real or personal property in any rights or privilege which the Corporation may think necessary or convenient for achieving its purpose and in particular, any land, buildings, easements, machinery, plant or stock in trade;
- manage and account for the funds of the Corporation for the benefit of members with power to deposit, invest, disburse and otherwise deal with such funds in a manner approved by the Directors;
- enter into any arrangement with Government or an authority, municipal, local or otherwise, that may seem conducive to the Corporation purposes; and to obtain for any government or authority, any rights, privileges or concessions which the Corporation may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

The Corporation shall not in any way:

- dispose of, charge, mortgage, pledge, encumber or otherwise deal with an asset of the Corporation which consists of or includes an interest in land that was acquire for and on behalf of the Corporation by Indigenous Land Corporation;

- enter into any agreements, arrangements or commitments with respect to the matters contained in rule 12 or which are otherwise inconsistent with the purposes of the Corporation without the consent of the ILC;
- use the Land that was acquired for and on behalf of the Corporation by the ILC in any manner which may result in the personal property or gain or any member, employee or officer of the Corporation.

13. Associate Members

A person who is not entitled to become a member of the Corporation under rule 3.1 may apply for associate membership. Decisions on associate membership applications shall be made by the Corporation at general meetings.

An associate member shall have the same rights and responsibilities as a member but is not entitled to vote at meetings of the Corporation or to stand for election as a director.

The Contact Person / Secretary shall maintain a Register of associate members similar to the Register of members.

Associate members shall cease to be associate members in the same way as provided for members under rule 3.6.

14. Sub-Committees

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

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

- have a quorum of three (3) at its meetings, unless the sub-committee resolves that a larger number shall be the quorum;
- appoint one of its members to be responsible for calling meetings of the sub-committee and inform the directors of the name of the responsible person.

15. Gift fund

15.1 The Corporation shall maintain for the main purpose of the corporation a gift fund:

- (a) To be named “The Binthi Land Holding Group Aboriginal Corporation Gift Fund”
- (b) Which must receive gifts of money or property for the purposes of the objectives of the corporation

(c) Which must have credited to it any money received by the corporation because of those gifts.

15.2 The gift fund cannot receive any money or property other than that stated at (b)

15.3 The corporation shall use gifts made to the gift funds and any money received because of them only for the principal purpose of the corporation.

15.4 Receipts issued for gifts to the gift fund must state:

(a) The full name of the corporation

(b) The Australian Business Number (if applicable) and the Indigenous Corporation Number (ICN) of the corporation

(c) The fact that the receipt is a gift.

15.5 As soon as:

(a) The gift fund is wound up, or

(b) The corporation's endorsement as a deductible gift fund recipient be 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 be able to receive tax deductible gifts under division 30 of the Income Tax Assessment Act 1997.

16. Dictionary

“Aboriginal Tradition” means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals and includes those traditions, observance, customs and beliefs;

“Binthi Lands” is land and waters traditionally owned by the Binthi people in accordance with the custom and tradition of Binthi people;

“Native Title Holders” has the same meaning as that in the Native Title Act 1993.

“Indigenous Land Corporation” or ILC means the Indigenous Land Corporation, its successors and assigns;

“ILC Land” means land held by the Corporation which has been acquire with assistance of Indigenous Land Corporation.

ALA means Aboriginal Land Act 1991 (Queensland).

Statutory Title Holder means an Aboriginal person for whose benefit Statutory Title is held by the Corporation and includes those Aboriginal people particularly

concerned with the land or waters the subject of Statutory Title created under the ALA as defined by section 3 of the ALA.

Schedule 1 - Application for membership form

Application for membership

Binthi Land Holding Group Aboriginal Corporation – ICN 3394

I, _____

(First or given name)

(Surname)

of _____

(address)

hereby apply for membership of the Binthi Land Holding Group Aboriginal Corporation

I declare I am eligible for membership.

Signed: _____

Date: _____

Schedule 2 - Proxy form

Appointment of proxy

Binthi Land Holding Group Aboriginal Corporation – ICN 3394

I, _____

(Full name of member)

of _____

(address of member)

being a member of Binthi Land Holding Group Aboriginal Corporation

hereby appoint _____

(full name of proxy)

of _____

(address of proxy)

being a member of that Aboriginal and Torres Strait Islander Corporation, as my proxy to vote for me on my behalf at the general meeting of the corporation (annual general meeting or other general meeting, as the case may be)

to be held on the _____ day _____ 20_____ and at any adjournment of that meeting.

(Optional - if member wishes to specify the way the proxy is to vote on a particular resolution, include additional information here)

Signed: _____

(Signature of member appointing proxy)

Date: _____

NOTE: A person must not exercise proxies for more than 3 members.