

APPROVED 28 NOVEMBER 2018 BY APY AGM
Changes to the constitution of APY to comply with the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* and recent amendments.

CONSTITUTION OF ANANGU PITJANTJATJARA YANKUNYTJATJARA

1. Name

- (a) The name of the body corporate is “Anangu Pitjantjatjara Yankunytjatjara”, which was constituted under that name by the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* and that body corporate shall be referred to as “Anangu Pitjantjatjara Yankunytjatjara” in the Constitution.
- (b) Anangu Pitjantjatjara Yankunytjatjara must have a common seal and in any legal proceedings, a document which bears the common seal of Anangu Pitjantjatjara Yankunytjatjara and the signatures of –
- (i) a majority of members of the Executive Board; or
 - (ii) any two (2) of the following: Chairperson, Deputy Chairperson, Director of Administration or General Manager will be presumed to have been duly executed by Anangu Pitjantjatjara Yankunytjatjara.
- (c) The common seal shall not be used or placed on any document unless authorized by a Delegation or Resolution passed by at least six members at an Executive meeting.

2. Interpretation

- (a) In this Constitution, unless the contrary intention appears –

Act means the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* and any statutory modification thereof from time to time and words and expressions defined in the *Act* shall have the same meanings.

Anangu means a person who is

- (i) a member of the Pitjantjatjara, Yankunytjatjara or Ngaanyatjarra people; and,
- (ii) a traditional owner of the Lands or a part of them.

Delegation means a delegation of authority of an administrative function to the Director or General Manager.

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Member community means the following 7 community groups (and each community group will constitute an electorate):

Pipalyatjara/Kalka; Watarru/Kanyp/Nyapari/Angatja; Amata/Tjurma; Kaltjiti/Irintata/Watinuma; Anilalya/Turkey Bore/Pukatja/Yunyarinyi; Mimili; Iwantja/Amuruna/Railway Bore/Witjintitja/Wallatinna.

- (b) Unless the contrary intention appears words in the singular number shall include the plural and vice-versa and words importing one gender shall include any other gender.
- (c) This Constitution shall be interpreted in all respects subject to the Act, and if there is any inconsistency between this Constitution and the Act, the Act will prevail to the extent of the inconsistency.

3. Office

Legal process, notices and other documents may be served upon Anangu Pitjantjatjara Yankunytjatjara or the Executive Board at the office of the Aboriginal Legal Rights Movement, 329 King William Street, Adelaide, South Australia 5000.

4. Membership

All Anangu are members of Anangu Pitjantjatjara Yankunytjatjara.

5. Functions, Powers and Requirements

- (a) The functions of Anangu Pitjantjatjara Yankunytjatjara are as set out in Section 6(1) of the Act.
- (b) The powers of Anangu Pitjantjatjara Yankunytjatjara are set out in Section 6(2) – (8), of the Act.
- (c) The requirement of Anangu Pitjantjatjara Yankunytjatjara to consult with traditional owners is set out in Section 7 of the Act.

6. General Meetings

- (a) There shall be an Annual General Meeting of Anangu Pitjantjatjara Yankunytjatjara once in every calendar year.
- (b) An Annual General Meeting of Anangu Pitjantjatjara Yankunytjatjara shall be held not more than fifteen months after the last preceding Annual General Meeting.

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- (c) A special general meeting of Anangu Pitjantjatjara Yankunytjatjara must be held if
 - (i) the Executive Board passes a resolution that such a meeting be held; or
 - (ii) not less than ten members of Anangu Pitjantjatjara Yankunytjatjara make a request to the Executive Board that such a meeting should be held.
- (d) Not less than seven (7) days notice shall be given of any general meeting. The Notice shall be given and shall specify the place, date and time for commencement of the meeting. Notice may be given by radio transmission on the Anangu frequency or be sent by fax, post, email or telegram addressed to the member communities of Anangu Pitjantjatjara Yankunytjatjara.
- (e) If members are present from half or more of the member communities, then the meeting can be held.
- (f) The Chairperson shall preside at every general meeting at which s/he is present, or in his absence, the Deputy Chairperson. In their absence the members present shall decide who is to chair the meeting.
- (g) Every question for decision at a general meeting shall be decided by the adult members present in person. Every effort shall be made to reach a consensus. If a consensus on any question is not reached but the adult members present decide to resolve the question by voting, a vote shall be taken in such manner as 2/3 of the majority of adult members present shall approve.

7. Executive Board

- (a) There shall be an Executive Board of Anangu Pitjantjatjara Yankunytjatjara consisting of up to 14 members, elected and appointed in accordance with Schedule 3 to the Act, "Rules of election under Section 9 of the Act".
- (b) Each of the 7 electorates will be able to elect 1 male and 1 female member of the Executive Board.
- (c) A member of the Executive Board may hold office from the date of his/her election for no more than three (3) years but is eligible for re-election.
- (d) The functions and powers of the Executive Board are as set out in Section 9B of the Act.

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- (e) The Chairperson and Deputy Chairperson are elected by secret ballot unless the election is uncontested.

- (f) A casual vacancy occurs should the Executive Board, by resolution passed by at least a 2/3 majority, remove a member of the Executive Board from office if the member –
 - (i) becomes physically or mentally incapable of carrying out official duties satisfactorily; or
 - (ii) fails to comply with a duty imposed under Section 12B, 12C, 12D or 12 F of the Act; or
 - (iii) is absent without leave of the Executive Board from 3 or more consecutive meetings; or
 - (iv) resides, without leave of the Executive Board, other than in the electorate from which he or she was elected for a total period of more than 3 months in any 12 month period; or
 - (v) engages in serious misconduct.

- (g) The office of a member of the Executive Board becomes vacant if the member -
 - (i) dies; or
 - (ii) completes a term of office and is not re-elected or reappointed; or
 - (iii) resigns in writing to the Chairperson; or
 - (iii) is sentenced to imprisonment for an offence; or
 - (iv) is found guilty of a serious offence; or
 - (v) is disqualified from managing corporations under the *Corporations Act 2001 (Cth)*; or
 - (vi) is appointed to be Director, Administration or General Manager of *Anangu Pitjantjatjara Yankunytjatjara*; or
 - (vii) is removed from office by the Executive Board under section 9D(1) of the Act.

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- (h) Where a casual vacancy occurs in the office of a member of the Executive Board, a supplementary election, only of a person of the same gender as the member, must, subject to s.7(i) of this Constitution, be held in the electorate from which the member was elected as soon as possible after the vacancy occurs. The supplementary election is conducted by the Electoral Commissioner in accordance with Schedule 3 of the Act.
- (i) If no person nominates for a supplementary election, or the casual vacancy occurs within six (6) months of the expiry of the term of the Executive Board, the Executive Board may appoint a suitable male or female Anangu (as the case requires) from the member community absent from the Board, to fill the vacancy for the balance of the term.

8. Procedure of Meetings of the Executive Board

Calling of Meetings by the Chairperson

- (a) A meeting may only be called by the Chairperson.
- (b) The Chairperson shall call a meeting at least once every 2 months.
- (c) The Chairperson shall call a meeting pursuant to Section 10(1) of the Act by means of informing the General Manager (or other person acting in the position or upon the authority of the General Manager) in writing of:
 - (i) The fact the Chairperson has called for a meeting; and
 - (ii) The date and time of the meeting; and
 - (iii) The location of the meeting; and
 - (iv) Whether notice of a conference by telephone link is to be available for the meeting, and if so, the details of the telephone link such that all members are capable of communicating with each other during the meeting; and
 - (v) The agenda for the meeting.
- (d) The Chairperson shall not call any meeting pursuant to Section 10(1) of the Act (or otherwise) without written notification to the General Manager (or other person acting in the position or upon the authority of the General Manager) in accordance with these provisions.

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Notice of Meetings

- (e) The General Manager (or other person acting in the position or upon the authority of the General Manager) shall give notice of the meeting to all members at least 3 days before the date of the meeting, in writing, to the address or location which has been provided by each member to the General Manager for the service of notices of meetings, and additionally by such further means as the General Manager (or other person acting in the position or upon the authority of the General Manager) thinks fit.
- (f) The General Manager (or other person acting in the position or upon the authority of the General Manager) shall also give public notice of the meeting to all Anangu as soon as reasonably practicable after being informed of the calling of the meeting by the Chairperson.
- (g) Notice of the meeting given by the General Manager (or other person acting in the position or upon the authority of the General Manager) shall include:
 - (i) The date and time of the meeting; and
 - (ii) The location of the meeting; and
 - (iii) If a conference by telephone link is to be available for the meeting, the details of the telephone link such that all members will be capable of communicating with each other during the meeting; and
 - (iv) The agenda for the meeting; and
 - (v) Any notices of motion in writing for the meeting at that time held by the General Manager (or other person acting in the position or upon the authority of the General Manager).
- (h) Public notice of meetings is to be given to all Anangu by the General Manager (or other person acting in the position or upon the authority of the General Manager) in the manner as directed from time to time by resolution of the Executive Board, and additionally by such further means as the General Manager (or other person acting in the position or upon the authority of the General Manager) thinks fit.

Attendance at Meetings by Members by Telephone Link or Video Link

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- (i) A conference by means of telephone link or video link (including by satellite link) between the members may be taken to be a meeting of the Executive Board.
- (j) No conference by means of telephone link or video link pursuant to Section 10(5) of the Act is taken to be a meeting at which any member is present by telephone link or video link unless the notice of the meeting given by the General Manager (or other person acting in the position or upon the authority of the General Manager) contains the details of the telephone link or video link, such that all members will be capable of communicating with each other during the meeting.

Proxies

- (k) Any member who has been appointed in writing as the proxy of another member for the purposes of a meeting pursuant to Section 10(10) of the Act shall provide to the General Manager and the Chairperson at the meeting a copy of the written instrument of appointment.
 - (i) Where the Chairperson is unable to attend a meeting, the Chairperson's proxy shall be provided to the General Manager and the Deputy Chairperson.

Quorum

- (l) For the purposes of the determination of a quorum pursuant to Section 10(2) of the Act, the following members shall be counted:
 - (i) All members physically present in the meeting room at the meeting; and
 - (ii) All members present by means of telephone link or video link, that are capable of communicating by means of that link, **provided that** the notice of the meeting given to all members by the General Manager (or other person acting in the position or upon the authority of the General Manager) contained the details of the telephone link or video link; and
 - (iii) Any member who has validly appointed a proxy pursuant to Section 10(10) of the Act, **provided that** the written instrument of the appointment of the proxy has been provided to the General Manager and the Chairperson (or Deputy Chairperson) at the meeting.
- (m) A member who has disclosed an interest in a matter to be decided at a meeting, and is not present in the meeting room, pursuant to Section 12D(1) of the Act shall cease to be counted for the purposes of a quorum.

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(n) No business can be considered at a meeting unless a quorum is present.

Minutes of Meetings

(o) Minutes of the proceedings of a meeting for the purposes of Section 10(7) and section 13E(c), of the Act shall be kept by the General Manager (or other person acting in the position or upon the authority of the General Manager), and shall include:

- (i) The names of the members present at the meeting; and
- (ii) The names of any members present and participating by telephone link or video link at the meeting; and
- (iii) The appointment of any member as a proxy of any other member for the meeting; and
- (iv) In the case of any meeting where a quorum is not present, that fact; and
- (v) Each motion put to the meeting for decision, the name of the member moving the motion, the person seconding the motion, and whether the motion was carried or not carried; and
- (vi) Any disclosure of interest made pursuant to Section 12D(1) of the Act by any member at the meeting; and
- (vii) A description of any document tabled or submitted to the meeting; and
- (viii) Any request for the holding of a special general meeting made to the meeting pursuant to Section 8(4)(b) of the Act, and the details as to how that request was made; and
- (ix) Details of any adjournment of the meeting.

(p) Minutes of the proceedings at a meeting shall be submitted for confirmation at the next meeting, and upon confirmation by resolution passed by the members, the General Manager (or other person acting in the position or upon the authority of the General Manager) shall initial each page of the minutes, and sign and date the last page of the minutes.

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- (q) Minutes of meetings, once confirmed, shall be kept by the General Manager (or other person acting in the position or upon the authority of the General Manager) at such places as required by Section 10(8) of the Act, and additionally made publicly available at such other places and by such other means as the General Manager (or other person acting in the position or upon the authority of the General Manager) thinks fit.

Written Motions

- (r) Subject to these provisions, any member may bring forward any business for the meeting without notice.
- (s) Any member may also bring forward any business for the meeting by notice of motion in writing.
- (t) A notice of motion in writing must be given to the General Manager (or other person acting in the position or upon the authority of the General Manager) at least 2 days before the date of the meeting at which it is to be moved.
- (u) The General Manager (or other person acting in the position or upon the authority of the General Manager) shall forward to all members a copy of any notice of motion in writing as soon as practicable after receipt of such notice from a member.
- (v) The following matters of business may **only** be brought forward at a meeting by a member by notice of motion in writing:
- (i) Any motion for the grant of a lease or licence in respect to any part of the lands pursuant to Section 6(2)(b) of the Act; or
 - (ii) Any motion for a transfer, assignment, sublease or sublicense of any lease or licence of any part of the lands pursuant to Section 6(6) of the Act; or
 - (iii) Any motion seeking to commence any consultation with traditional owners pursuant to Section 7 of the Act; or
 - (iv) Any motion requesting the holding of a special general meeting pursuant to Section 8(4)(a) of the Act; or
 - (v) Any motion for the removal of any member pursuant to Section 9D(1) of the Act, or for the termination of the appointment of the Director of

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Administration or General Manager pursuant to Section 13G(1) of the Act;
or

(vi) Any motion to subject the Director of Administration, General Manager or any other employee to the direction of a member pursuant to Section 13M of the Act; or

(vii) Any motion seeking to revoke or rescind any resolution passed at a previous meeting.

(w) Subject to the above, a member may bring forward any business for a meeting by way of motion without notice.

Leases and Licenses of any part of the Lands

(x) No motion shall be put (by written notice of motion, or otherwise) by any member to any meeting for the granting of any lease or licence of any part of the lands pursuant to Section 6(2)(b) of the Act prior to the conclusion of the consultation conducted by APY, with the traditional owners required pursuant to Section 7 of the Act, and unless consent pursuant to Section 7(c) of the Act has been granted by the traditional owners.

(y) Consultation with traditional owners in respect to any proposal to grant a lease or licence of any part of the lands shall include details of:

(i) A description of that part of the lands proposed to be subject to any lease or licence; and

(ii) The period of any proposed lease or licence; and

(iii) The rent or fee to be paid for any proposed lease or licence, or the manner in which the rent or fee is to be calculated; and

(iv) A description of what use the proposed lessee or licensee intends for the land, and details of the activities proposed to be undertaken on the land; and

(v) Whether or not access to the land will still be permitted to the traditional owners during the period of the proposed lease or licence, and any terms, conditions or limitations upon any such access; and

(vi) Any proposed remedial activity.

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Adjournment of Meetings

- (z) A meeting may be adjourned from time to time and from place to place by resolution passed at a meeting.

9. Meetings to be open to all Anangu

Meetings of the Executive Board must be open to all Anangu but the Board may exclude Anangu if, in the opinion of the Executive Board, there are reasonable grounds for doing so. The grounds for excluding Anangu must be recorded in the Minutes.

10. Duties of Members of the Executive Board

- (a) The duties are set out in Section 12B, 12C, 12D, 12F of the Act and Executive Board members must comply with these duties.
- (b) Failure to comply with his/her duties may result in action as set out in Section 9D and Section 12 E of the Act.

11. Disclosure of Interest

- (a) A member of the Executive Board must disclose any direct or indirect pecuniary interest in a matter being considered by the Executive Board at an Executive Board meeting.
- (b) The disclosure must be recorded in the minutes of the meeting of the Executive Board and the member must not, without the approval of the Executive Board:
- (i) be present during any deliberation of the Executive Board about that matter; or
 - (ii) take part in any decision of the Executive Board on that matter.

12. Advisory Committees

- (a) The Executive Board may at any time establish an advisory committee to provide advice in relation to any functions of the Executive Board and shall determine the responsibilities and powers of the advisory committee.

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- (b) Unless otherwise decided by the Executive Board, an advisory committee shall:
 - (i) have a quorum of three (3) at its meetings, unless the advisory committee resolves that a larger number shall be the quorum;
 - (ii) appoint one of its members to be responsible for calling meetings of the advisory committee and inform the Executive Board of the name of the responsible person.

13. Code of Conduct

- (a) The Executive Board shall have a Code of Conduct in accordance with Section 12 F of the Act.
- (b) The Code of Conduct is to be observed by members of the Executive Board, the Director of Administration, the General Manager and any employees of Anangu Pitjantjatjara Yankunytjatjara.
- (c) Any amendment to or substitution of the Code of Conduct must be approved by a General Meeting of Anangu Pitjantjatjara Yankunytjatjara.

14. Finance

Pursuant to Section 13 of the Act:

- (a) Anangu Pitjantjatjara Yankunytjatjara shall cause proper accounts to be kept of the financial business of Anangu Pitjantjatjara Yankunytjatjara.
- (b) The Executive Board must cause the accounts of Anangu Pitjantjatjara Yankunytjatjara for each financial year to be audited by a registered Company Auditor.
- (c) The Auditor is to be appointed at each Annual General Meeting.
- (d) The Executive Board must at the Annual General Meeting of Anangu Pitjantjatjara Yankunytjatjara –
 - (i) make copies of the Audited accounts for the previous financial year to Anangu; and
 - (ii) provide an explanation of the audited accounts, or a part of the audited accounts, if requested by any Anangu.

15. Annual Report

Pursuant to Section 13A of the Act, the Executive Board:

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- (a) Must not later than 31 December in each year prepare and submit to the Minister an Annual Report.
- (b) Must at the Annual General Meeting of Anangu Pitjantjatjara Yankunytjatjara
 - (i) make copies of the annual report for the previous financial year to Anangu; and
 - (iii) provide an explanation of the annual report, or a part of the annual report.

16. Budget

Pursuant to section 13A(2) of the Act, the Executive Board shall prepare and submit to the Minister for approval a budget setting out estimates of the Executive Board's proposed expenditure for the next financial year.

17. Director of Administration and General Manager

- (a) The appointment, functions and duties of the Director of Administration and General Manager of Anangu Pitjantjatjara Yankunytjatjara are set out in Part 2, Division 4A of the Act.
- (b) The Director of Administration, the General Manager and any employee of Anangu Pitjantjatjara Yankunytjatjara are not subject to direction by an individual member of the Executive Board unless the member of the Executive Board is acting in accordance with a resolution of the Executive Board.

18. Appointments and Removal of Director of Administration, General Manager and Employees

- (a) Appointment and removal of the Director of Administration and the General Manager are subject to Sections 13B, 13D and 13G of the Act.
- (b) In accordance with Section 13L of the Act, the General Manager is responsible for appointing, managing, suspending and dismissing the employees of Anangu Pitjantjatjara Yankunytjatjara on behalf of Anangu Pitjantjatjara Yankunytjatjara.

The General Manager may only appoint an employee of Anangu Pitjantjatjara Yankunytjatjara if the appointment is consistent with an approved budget for the financial year in which the appointment is made or with approval from the Executive Board and the Minister.

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Subject to the Act, the remuneration and other conditions of service of an employee of Anangu Pitjantjatjara Yankunytjatjara will be as determined by the General Manager.

19. Changes to Constitution

- (a) Anangu Pitjantjatjara Yankunytjatjara may by resolution, passed by at least a two-thirds majority of members present at an Annual General Meeting or Special General Meeting of Anangu Pitjantjatjara Yankunytjatjara, propose an amendment to the constitution.
- (b) As soon as practicable the amendment is to be submitted to the Minister for approval and the proposed amendment will come into effect on such approval being granted.
- (c) The Minister must not unreasonably withhold approval to a proposed amendment.
- (d) Any person is entitled to inspect the Constitution and may receive a copy of the Constitution upon payment of a fee.

20. Disputes

Pursuant to sections 35 – 37 of the Act:

- (a) There will be a panel of Conciliators for the lands appointed by the Minister, after consultation with Anangu Pitjantjatjara Yankunytjatjara, for a term, and on conditions, determined by the Minister.
- (b) Any Anangu who is aggrieved by a decision or action of the Executive Board may apply to the Minister for conciliation in relation to that decision or action.
- (c) On receiving an application for conciliation, the Minister must refer it to a member of the panel of Conciliators who will decide if the application is serious and made with good intentions. If it is assessed that the application has merit, the Minister will appoint a different member of the panel of Conciliators to hear the matter.
- (d) The Conciliator shall deal with the dispute in accordance with Section 36 of the Act.
- (e) If a person or body refuses or fails to comply with a direction of the

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Conciliator, any party may apply to the District Court for an order to compel that person or body to comply with the direction.

- (f) The District Court shall deal with the dispute in accordance with Section 37 of the Act.

21. Bylaws

Pursuant to sections 43(3)-(6) of the Act:

- (a) *Anangu Pitjantjatjara Yankunytjatjara* may make bylaws in accordance with Section 43 of the Act.
- (b) The operation of a bylaw is restricted to the lands.

22. Elections

Elections for the Executive Board are held in accordance with Schedule 3 Rules of Election under Section 9 of the Act.