



Billabong Aboriginal Development Corporation

ACN 134 041 115 ABN 90948186186

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Ms Amanda Bresnan MLA
Chair
Select Committee on Estimates 2012-13
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

28/06/2012

Dear Ms Bresnan

I am writing to you in relation to evidence that was given to the Select Committee on Estimates 2012-13 on Friday, 22 June 2012.

The evidence was given by the Minister for Aboriginal and Torres Strait Islander Affairs, Dr Bourke MLA, and a number of his officials during discussion of the estimates for Aboriginal and Torres Strait Islander Affairs within the Community Services Directorate.

I am very disappointed with the evidence that was given in relation to Billabong Aboriginal Development Corporation. There were factual errors in relation to the name of our Corporation, in relation to the nature of the original registration of our Corporation and in relation to the current status of the registration of our Corporation.

I enclose with this letter a copy of the original registration of Billabong Aboriginal Corporation under the *Aboriginal Councils and Associations Act 1976*, a copy of the advice of the transfer of Billabong Aboriginal Corporation from the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* to the *Corporations Act 2001* and a copy of the notice of registration of Billabong Aboriginal Development Corporation as a company. In all instances, the original entity continued essentially unchanged in terms of the rules under which it commenced operating. I have also enclosed an extract from the ORIC website titled "**Other laws for incorporation**" which explains in 'plain language' the options for incorporation by Indigenous Organisations. The website address is also attached

I would respectfully request you to ask the Minister for Aboriginal and Torres Strait Islander Affairs, on behalf of himself and on behalf of his officials, to withdraw the misleading evidence that was given to your Committee on 22 June 2012. Further, I would seek an apology from the Minister for the promulgation of this misleading information about Billabong Aboriginal Development Corporation.

Thank you for your assistance in this important matter.

Yours sincerely

AJQ Best
Chairman

<http://www.orac.gov.au/Content.aspx?content=startCorporation/default.htm&menu=start&class=start&selected=Registration%20options>

Other laws for incorporation

Corporations and associations

Indigenous organisations don't have to be incorporated with ORIC. For example, many are incorporated under the Northern Territory *Associations Act 2003* and are listed on the Northern Territory Associations Registry. Indigenous organisations can also incorporate under the *Corporations Act 2001*—which is managed by the Australian Securities and Investments Commission (ASIC).

ORIC has prepared a table listing key features of the different Commonwealth, state and territory incorporation laws and highlights the benefits of incorporating under the CATSI Act. This table will help you learn more about which laws might suit your organisation best.

- [Comparative table of incorporation legislation, March 2008 \[14 pages, Word, 202Kb\]](#)
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You can also learn more about incorporation under these other laws by visiting their websites:

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- [Northern Territory Department of Justice—Consumer Business Affairs](#)
- [Northern Territory Business Channel](#)
- [Western Australian Department of Consumer and Employment Protection—Associations](#)
- [South Australian Office of Consumer & Business Affairs—Associations](#)
- [Australian Capital Territory Department of Justice and Community Safety](#)
- [Tasmanian Department of Consumer Affairs and Fair Trading](#)
- [Queensland Office of Fair Trading—Associations](#)
- [Consumer Affairs Victoria—Associations](#)
- [New South Wales Office of Fair Trading—Associations](#)

Cooperatives

An Indigenous organisation might also choose to form a cooperative. A cooperative is type of organisation which exists for the benefit of its members. You can learn more about forming a cooperative under state or territory laws by following the links to other websites below:

- [New South Wales Registry of Co-operatives & Associations](#)
- [Northern Territory Department of Justice](#)
- [Northern Territory Co-operatives Act](#)
- [Queensland Office of Fair Trading](#)
- [South Australian Office of Consumer & Business Affairs](#)
- [Tasmanian Department of Justice—Consumer Affairs and Fair Trading](#)
- [Consumer Affairs Victoria](#)
- [Western Australian Department of Consumer & Employment Protection](#)
- [Australian Capital Territory Cooperatives Act 2002.](#)

COMMONWEALTH OF AUSTRALIA

Aboriginal Councils and Associations Act 1976

Certificate of Incorporation of an Aboriginal Association

I,

NOUREDDINE BOUHAFS

the Registrar of Aboriginal Corporations,

*in pursuance of paragraph 45(1)(a) of the Act,
hereby certify that***BILLABONG ABORIGINAL CORPORATION***has this day been incorporated under the Act.**Dated this* TWENTY-NINTH *day of* JUNE . 19 98 .
REGISTRAR

This is Annexure "A" of 31 pages referred to in Form 202 Application for registration of a body corporate as an Australian company.



.....
Anthony James Best

CORPORATIONS ACT 2001(Cth)

CONSTITUTION

of

BILLABONG ABORIGINAL DEVELOPMENT CORPORATION

A COMPANY LIMITED BY GUARANTEE

Symbolic Systems Pty. Ltd Attn: Trevor Taylforth
GPO Box 2472
Canberra ACT 2601

Remove this top section if desired before framing



Certificate of Registration of a Body Corporate as a Company

This is to certify that

**BILLABONG ABORIGINAL DEVELOPMENT
CORPORATION**

Australian Company Number 134 041 115

is a registered company under the Corporations Act 2001 and
is taken to be registered in the Australian Capital Territory.

The company is **limited by guarantee**.

The company is a **public** company.

The day of commencement of registration is
the sixth day of November 2008.

Issued by the
Australian Securities and Investments Commission
on this sixth day of November, 2008.

A handwritten signature in black ink, appearing to read 'A. D'Aloisio'.

Anthony Michael D'Aloisio
Chairman



CERTIFICATE

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GENERAL

DEFINITIONS

In this Constitution, if not inconsistent with the subject or context, the following words shall have the following meanings:

"Aboriginal" means a member of the Aboriginal race of Australia or a member accepted by the Aboriginal Community in which he or she is currently or has lived.

"Act" means the *Corporations Act 2001* (Cth) and regulations and any statutory modification of the Act or any statutory provisions substituted for the Act;

"Annual General Meeting" means the annual general meeting of the company as prescribed in the Act;

"Associate Member" means a member referred to in Clause 8.4(b).

"Auditor" means the Auditor of the Company as appointed by the Board under sub- Clause 9

"Australia" means the Commonwealth of Australia and its Territories.

"BAC CATSI" means Billabong Aboriginal Development Corporation "the Corporation under CATSI Act 2006"

"BAC" means Billabong Aboriginal Development Corporation "the company registered under ASIC Commonwealth Act 2001

"Board" means the Directors in meeting;

"Chair" means the person appointed to that office under Clause 29.2 and, where appropriate, shall extend to include a person authorised in writing to act on behalf of the Chair;

"Chief Executive Officer" means the person appointed Chief Executive Officer under Sub-Clause 46.1;

"Clause" means a clause of this Constitution, as originally framed, or as altered by special resolution;

"Company" means Billabong Aboriginal Development Corporation "registered under the ASIC Act Cth 2001;

"Constitution" means the Constitution of the Company;

"Directors" means the persons constituting the Board or any one of them as Circumstances require;

"Electronic Mail" includes facsimile, email or other means of electronic transmission of data approved by the Board;

"Employees" mean employees of Billabong Aboriginal Development Corporation and its predecessor;

"Full Membership" means a member referred to in Clause 8.4;

"General Meeting" means meeting of the Members, other than an Annual General Meeting;

"In Writing" means written or produced by any substitute for writing or partly one or partly another;

"Member" means a person who is registered as a member of the Company in accordance with this Constitution;

"Month" means a calendar month;

"Nominee" means the Chairperson of the Board;

"Nominee/s Delegate" means the person nominated by Chairperson of the Board;

"Objects" means the objects of the Company set out in this Constitution;

"Office" means the registered office of the Company;

"Person" means natural person;

"Register" means the register of Members of the Company;

"Seal" means the common seal of the Company;

"Territory" means: when used in the geographical sense, the Australian Capital Territory; and when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth), the Australian Capital Territory.

"The Community" means the Aboriginal community of Australia.

"Wider Community" means a person who is a member of a cultural community other than a member of the Aboriginal race of Australia.

"Year" means a calendar year.

"Regular instrument" means a document such as a housing lease of which Billabong has currently a number of see Clause 65.2

Unless otherwise defined above, all words or expressions shall be interpreted in accordance with the provisions of the Acts Interpretation Act 1901 and of the Act as in force at the date at which this Constitution becomes binding on the Company.

INTERPRETATION

1. Interpretation

1.1 The following Clauses of interpretation apply unless the context requires otherwise:

- i. a gender includes all genders;
- ii. singular includes plural and conversely;
- iii. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- iv. a reference to a paragraph or sub paragraph is a paragraph or sub paragraph as the case may be of the Clause or paragraph respectively in which the reference appears; and
- v. a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and or regulations and statutory instruments issued under it.

Except in so far as a contrary intention appears in this Constitution, an expression has, if there is no provision of this Constitution which relates to a particular provision of the Act, the same meaning as in the Act.

REPLACEABLE CLAUSES

Replaceable Clauses

1.2 Subject to Part 2B.4 of the Act, the Replaceable Rules contained in the Act do not apply to the Company.

BILLABONG ABORIGINAL DEVELOPMENT CORPORATION

Billabong Aboriginal Development Corporation

1.3 The name of the Company is Billabong Aboriginal Development Corporation

1.4 The nature of Billabong Aboriginal Development Corporation

- (a) is a public company limited by guarantee under the Act;
- (b) is established solely for the Objects referred to in Clause 2.
- (c) will apply its profits (if any) or other income to promoting the Objects; and
- (d) is not carried on for the purpose of profit or gain to the Members.

OBJECTS

2. Objects

2.1 The objects for which the Company is established are:

- (a) For the purpose of owning land or the holding of leasehold interest in land, infrastructure associated with the owning of and or the leasehold interest in infrastructure;

2.2 Without limiting the generality of the principal purpose of Billabong Aboriginal Development Corporation

Billabong Aboriginal Development Corporation may pursue in addition, all or any of the following ancillary objects or purposes either in part or in full that arise from time to time, and/or which may seem calculated directly or indirectly to advance the Billabong Aboriginal Development Corporation interests:

- (a) To relieve the poverty, sickness, destitution, distress, suffering, misfortune, homelessness or helplessness of needy members of Aboriginal Communities as a priority but not excluding the community and members of the wider community;

- (b) To establish, promote and carry out any charitable undertaking;
- (c) To provide access to a welfare and or relief fund / fund/s for members in the community, The Community and Members of the Wider Community; when surplus funds permit. The welfare and or relief fund may be used to provide any or all of the following: food, sustenance, clothing, goods, essential services, financial relief or for the relief of any other need that arises from time to time for the immediate relief of distress and / or suffering of needy members, the community and members of the wider community;
- (d) To do anything to improve the conditions of the urban, regional and or rural life of members, the community and members of the wider community in relation to the objects of the Company;
- (e) To promote Aboriginal Cultural values;
- (f) To strengthen, build up and contribute to the identity, sense of purpose and culture of persons of Aboriginal descent;
- (g) To lobby for and on behalf of Billabong Aboriginal Development Corporation, its Members and or the community and members of the wider community;
- (h) To encourage and develop programs for members of the community that enable Aboriginal people to participate in media, social, cultural, economic and educational activities relating to the reconstruction of their society;
- (i) To encourage and support Aboriginal Community initiatives and strategies in all areas of community development;
- (j) To actively seek funds from various community, government or independent sources, to assist and promote the Objects of the Company;
- (k) To attract funding to provide health, aged and disability care services as well as social, economic, cultural and legal support for members and for any other purpose that promotes a healthier community for members;
- (l) To establish, develop, or assist in establishing and administering legal, medical, physical and mental health, agricultural, educational, housing, employment, enterprise development, cultural, aged, disability projects, programs and initiatives for Members and or the community and members of the wider community;
- (m) To provide and maintain buildings and grounds for members and or members of the community / wider community for education, training, employment, health, arts and craft, culture, social, recreational, child minding, legal, medical, nursing, and any other purpose, community purpose and promote and assist clubs, associations, community groups including workshops, seminars, information sessions etc. for any such purposes;
- (n) To support and develop training/skills development programs for members and or the community and members of the wider community on whatever basis is appropriate;
- (o) To establish / provide or assist in halfway house/s and or appropriate dwelling type accommodation for persons, members, the community and members of the wider community; their families and their dependants and to assist such persons in the smooth and secure entry into independent life;
- (p) To establish / provide or assist in the provision of emergency, temporary, short term, long term, aged, youth and special needs accommodation;
- (q) To conduct education, training and employment programs, activities, enterprise/s for the cultural, environmental, educational, legal, medical, housing, agricultural, industrial, technological, physical and mental health and any other requirements of the Members of this Company and or the community and members of the wider community that may arise from time to time, from any need that may arise from time to time, and/or which may seem calculated directly or indirectly to be conducive to and or advance the Company interests.

- (r) To conduct a business enterprise/s for the cultural, environmental, educational, legal, medical, housing, agricultural, industrial, technological, physical and or mental health and any or any other requirements for and or on behalf of the Members of this Company the community and members of the wider community from any need that may arise from time to time, and/or which may seem calculated directly or indirectly to advance the Company interests; and
- (s) To provide any and / or all such services which may seem calculated directly or indirectly to advance the Company interests, and or that of the members, the community and members of the wider community from time to time for any length of time, to needy and / or low income and/or welfare dependant members and / or other members of the community and or wider community who find themselves in need of support and/or assistance;

POWERS

3. Powers

3.1 Billabong Aboriginal Development Corporation capacity and powers

- (a) Billabong Aboriginal Development Corporation has the legal capacity and powers of a company set out under section 124 of the Act, which must be exercised solely for furthering the Objects.

3.2 How Billabong Aboriginal Development Corporation may exercise its powers under the Act

In exercising its powers under Clause 3.1, Billabong Aboriginal Development Corporation may:

- (a) acquire (by purchase, gift, lease or otherwise) any real or personal property and any rights or privileges which Billabong Aboriginal Development Corporation may think necessary or convenient;
- (b) dispose (by sale, gift, lease or otherwise) any real or personal property and any rights or privileges which Billabong Aboriginal Development Corporation may think necessary or convenient;
- (c) borrow or raise such monies in such manner, either with or without security over any of the property of Billabong Aboriginal Development Corporation, and for that purpose execute or issue such mortgages, charges, debentures or other instruments as the Board from time to time may deem necessary;
- (d) invest any moneys and funds of Billabong Aboriginal Development Corporation in such manner as may be permitted by law for the investment of funds and generally to manage and control the assets and property of Billabong Aboriginal Development Corporation and to acquire and dispose of the same; and
- (e) do all such things incidental or conducive to the attainment of the Objects of Billabong Aboriginal Development Corporation.

PATRONS

4. Patrons

- 4.1 The Board may invite Persons, whom it judges to be of appropriate standing in the community, to become patrons of the Company. The Board will determine the rights and obligations of the patrons.

AUDIT AND ACCOUNTS

5. Accounts and Records

- 5.1 The Board will cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.
- 5.2 Subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution, the books of account must be kept at the Office and any other place the Board think fit and will be open to the inspection of the Board at any time.

Office of the Registrar of Indigenous Corporations - Registration options - Mozilla Firefox

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Office of the Registrar of Indigeno... +

www.orac.gov.au/Content.aspx?content=startCorporation/default.htm&menu=start&class=start&selected=Registration options#3

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Registration options

Steps to register

Transfers

Forms for registering

Rule book

Printable version

Registration options

There are advantages to an Indigenous group in becoming a corporation. ORIC provides help in this process. However, organisations don't have to be incorporated with ORIC. Depending on their circumstances, they can be registered with other agencies. Options for incorporation are discussed below.

Contents

- [Registering under the CATSI Act](#)
- [Why choose CATSI?](#)
- [Other laws for incorporation](#)

Registering under the CATSI Act

Aboriginal and Torres Strait Islander organisations can apply to be registered with ORIC under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). The about incorporation under the CATSI Act were written to meet their needs.

One of the central features of a corporation registered under the CATSI Act is that it is incorporated, which means that it is a distinct legal entity. That legal entity is created when the Registrar of Aboriginal and Torres Strait Islander Corporations processes an application by a group wishing to become incorporated and registers the corporation name on the Register of Aboriginal and Torres Strait Islander corporations.

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Why choose CATSI?

The main benefits of registering under the CATSI Act are that:

- the members can choose, when they register the corporation, not to be liable for the debts of the corporation
- the rule book that governs how the corporation is run can take into account Aboriginal or Torres Strait Islander customs and traditions
- Aboriginal and Torres Strait Islander corporations can operate nationally—they are not limited to the state or territory in which they are registered
- it is free to register as an Aboriginal and Torres Strait Islander corporation—unlike alternative regimes that may charge a fee
- in some cases corporations may be exempted from annual reports
- profits of the corporation can be distributed to members if the rule book allows for this
- Indigenous corporations can access client assistance, support, and information and training programs, offered by the Registrar of Aboriginal and Torres Strait Islander Corporations

Other laws for incorporation

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- [Consumer Affairs Victoria](#)
- [Western Australian Department of Consumer & Employment Protection](#)
- [Australian Capital Territory Cooperatives Act 2002](#)

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Got a question? Call ORIC on 1800 622 431



Australian Government

Office of the Registrar of Aboriginal
and Torres Strait Islander Corporations

ICN 3270

The Directors
Billabong Aboriginal Corporation
PO Box 5638
LATHAM ACT 2615

Dear Directors

Transfer Declaration – Section 540-10
Corporations (Aboriginal and Torres Strait Islander) Act 2006 (the CATSI Act)

I am writing to you about your request to transfer your corporation's registration.

Pursuant to section 540-10 of the CATSI Act, I am satisfied that:

- 1) Your corporation has lodged:
 - ✓ a copy of the special resolution that resolves to change the corporation's registration to a registration under the *Corporations Act 2001* (cth)
 - ✓ a statement signed by the directors of the corporation that in their opinion the corporation's creditors are not likely to be materially prejudiced by the change and that sets out their reasons for that opinion.
- 2) The corporation's creditors are not likely to be materially prejudiced by the transfer of the corporation's registration
- 3) The *Corporations Act 2001* (cth) adequately provides for:
 - ✓ the continuation of the corporation's legal personality after the transfer; and
 - ✓ the preservation of any rights or claims against the corporation (other than the right of a member as a member) that accrued while the corporation was registered under the CATSI Act.

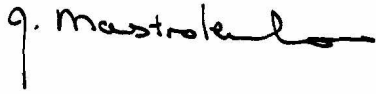
I therefore make the transfer of registration declaration for Billabong Aboriginal Corporation under section 540-10 of the CATSI Act.

Once I am satisfied that your corporation has registered under the *Corporations Act 2001* (cth), this office will proceed to deregister your corporation. In order for this to occur, please provide a copy of your new certificate of registration under the *Corporations Act 2001* (cth).

Please be aware that officers of the corporation may still be liable for things done before the corporation is deregistered.

Please contact my office if you have any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read "J. Mastrolemba". The signature is written in a cursive style with a long horizontal stroke at the end.

Joe Mastrolemba
Deputy Registrar

24 December 2007