

KOKATHA ABORIGINAL CORPORATION RNTBC ICN 8093

**Annual General Meeting
Saturday 25 and Sunday 26 February 2023 at 10.00am**

Held at West Augusta Football Club, 13 Gardiner Avenue, Port Augusta West

MINUTES

1. Chairperson's Welcome, Attendees and Apologies

1.1 Introduction and Apologies

The Chair, Elaine Moosha, opened the meeting at 10.20am, welcomed all attendees and gave an Acknowledgement of Country.

The following apologies were advised later in the meeting:

Andrew Starkey

Tanya Gill

Mia Starkey

Andrew Thomas

Nina Starkey

Max Thomas

Luke Eyre

James Thomas

Matthew Meredith Moore

Lorraine Thomas

Eliza Wilson

Eunice Andrew

Steven Welgraven

Dion Saunders

Ben Swales

1.2 Quorum

It was noted that the meeting was quorate.

1.3 Minute's Silence

A minute's silence was observed in recognition of members who have passed.

1.4 Code of Conduct

Members noted the Code of Conduct.

The Chair introduced independent meeting facilitators, Ian Dixon and Kylie Cutten, who explained the voting process and advised that, at a meeting of KAC Directors held on 24 February 2023, a motion was passed to record the meeting for minute taking purposes and that members were advised of this via the KAC Facebook page. However, permission to record the meeting is required before proceeding.

Members were invited to ask questions or provide comments, which included:

- A competent minute taker is present at the meeting so the meeting does not need to be recorded.
- The meeting should not be recorded in the interest of cultural safety of members, and because of concerns that the recording may be shared and/or subpoenaed.
- The meeting should be recorded due to the nature of proceedings during previous general meetings.

In response to questions regarding the recording and minutes of the last general meeting, the following points were noted:

- It was agreed to record the last general meeting as it was held in two locations, Port Augusta and Adelaide; however this did not occur.
- It became apparent after the meeting that the minute taker had not been present during the meeting in either location.
- The minutes of the previous meeting are supposed to be made available in hard copy at this meeting, but this is not the case. It was noted that the minutes are available on the KAC website and a link had been provided with the meeting agenda. Hard copies would be made available during the meeting.

In response to questions regarding the Directors' meeting on 24 February, the following points were noted:

- The Chair closed the Board meeting when it became apparent that the agenda included other matters not previously advised; however this was overruled by the other Directors and the meeting went ahead without the Chair.
- There were some concerns that the meeting had continued without the Chair.
- A motion had been passed at a previous Board meeting that the Board Chair be appointed Chair of this general meeting and that matters regarding agenda items and the order of proceedings may be referred to the Chair during this meeting.

Members agreed to consider a resolution for the meeting not to be audio recorded.

MOTION 1: That the Annual General meeting held on 25 February 2023 and the Common Law Holders meeting held on 26 February 2023 not be audio recorded. Moved: Joyleen Thomas Seconded: Chris Larkin (For: 87 Against: 19 Abstain: 0 MOTION CARRIED)

The meeting adjourned for morning tea at 11.07am and reconvened at 11.35am.

Ian Dixon advised that the facilitators have been made aware that the KAC Board has received correspondence from a KAC member which proposes resolutions for the removal of current KAC Directors and election of new Directors at this meeting, and suggested that there will be opportunity to discuss this matter under Item 8 (Directors Nominations).

The Chair advised that the sentiment of members present is that they wished to deal with this matter immediately.

KAC member, Chris Larkin, addressed the meeting and advised that he had submitted a petition to KAC 21 days prior to this general meeting. The petition contained two resolutions regarding the removal of the current KAC Directors and the election of new KAC Directors and was signed by over 10% of KAC members pursuant to the Rule Book. The Rule Book states that notice of these resolutions are to be provided to all KAC members prior to the general meeting, which had not occurred.

Advice was sought from KAC Lawyer, Stephen Kenny, as to whether the two resolutions could be put forward at this meeting. Mr Kenny advised that there is an agenda for the meeting; however the Chair has the ability to exercise discretion with the agenda and has, in this instance, recommended that this matter be dealt with before moving on to other agenda items.

Tanya Swales advised that she would like to obtain legal advice before proceeding. Following discussion with Ian Dixon, she agreed to address the meeting in the first instance.

Ian Dixon invited KAC Directors present, Tanya Swales and Sabrina Starke, to respond and share with members the actions the Board had undertaken following receipt of the petition. They advised that:

- They reviewed the Rule Book in relation to the requirements for proposing resolutions at a general meeting. There is some inconsistency with references to both 28 days' and 21 days' notice.
- They believe there may be some discrepancies with some of the members' signatures contained in the petition.
- They had spoken with KAC lawyer, Stephen Kenny, as well as the Office of the Registrar of Indigenous Corporations (ORIC) and received different opinions on the matter. Mr Kenny had advised the Board to seek independent legal advice on the matter.
- The Board passed a motion to engage the services of a Barrister to obtain independent legal advice on the matter, which they had done and were awaiting that advice.
- The Board decided to refer the matter of the signatures to the police and that, as the matter was under investigation, the resolutions would not be put forward at the general meeting. The Board would advise the community of the outcome of the investigation at the next community meeting.

The Chair suggested that the person engaged by the Board was not a Barrister and that he has a conflict of interest in this matter. The Directors disputed this.

Members were invited to ask questions or provide comments on the matter, which included:

- Not all members saw or signed the petition before it was submitted to KAC.
- There have been some procedural issues and there is some ambiguity but we are here to hear about KAC's position and make decisions about what we want for members. If we have to come back in 28 days about the Directors then we'll do that.
- Concern about KAC funds being spent on legal fees when there are other priorities for members.
- Sadness that the Board has referred the matter to the police and concern that this may compromise the members' relationship with the police. It should be put to the floor now and let the community vote.
- Why did the Board refer the matter to the police and not the KAC Lawyer.
- It is unfair to vilify the two Directors present.
- The Board is trying to do the right thing and it is a positive that they are investigating something they believe may be unlawful when these things have been overlooked in the past.

The Chair advised that she wished for the proposed resolutions to be put to members immediately. The Directors declined the offer to provide further comment.

MOTION 2: Pursuant to clauses 7.10 and 7.11 of the Rule Book and section 249-10 of the CATSI Act the members direct the removal of all current Directors as the Directors of the KAC because members have no confidence in the current Directors. Moved: Chris Larkin Seconded: Janice Wingfield

Voting on the motion was conducted via secret ballot and vote counting commenced.

Member registration closed at 11.20am.

2. Minutes of the Previous Meeting

The minutes of the 2022 Annual General Meeting had been provided in hard copy to members.

MOTION 3: That the minutes of the Annual General Meeting of the Kokatha Aboriginal Corporation held on Saturday 9 April 2022 and Sunday 10 April 2022 be accepted. Moved: Lynette Strangways Seconded: Carly Chamberlain (For: 91 Against: 0 Abstain: 1 MOTION CARRIED)

The meeting adjourned for lunch at 1.00pm and reconvened at 2.05pm.

Ian Dixon advised the outcome of the voting on Motion 2. ***(For: 141 Against: 32 Invalid: 18 MOTION CARRIED)***

As Motion 2 was carried, the following motion was put forward.

MOTION 4: That the members agree that new Directors are to be elected/appointed at the general meeting (to replace the current Directors) pursuant to clause 7.4 of the Rule Book. Moved: Chris Larkin Seconded: Janice Wingfield (For: Majority MOTION CARRIED)

The election of new Directors would be addressed at Item 8 (Directors Nominations).

Item 5 was brought forward on the agenda.

5. Audited Financial Statements – Matthew Gordge, RSM

Matthew Gordge of RSM presented a summary of the consolidated Audited Financial Report for the 2022 financial year which includes Kokatha Aboriginal Corporation and its controlled entities, Kokatha Enterprises Pty Ltd, Kokatha Pastoral Pty Ltd and Kokatha Holdings Ltd. It was noted that the auditor,

Basso Newman, had not identified any new matters or other issues requiring follow up by management or the Board.

Members' questions, comments and responses included:

- The Kokatha Martin Joint Venture does not appear to be financially viable and it was recommended that the Joint Venture be reviewed.
- 20% of profit being returned to members is not enough given KAC's financial position. The 20% distribution to members was determined by the Board. Income is also used to fund commercial activities and other community projects, and invested to provide financial sustainability for KAC and its members for future generations. The process for the management and distribution of funds meets the requirements of a not-for-profit entity.
- Another 20% is intended to be distributed to members through a Wellbeing Round; however there have been delays with the process for this.
- While Basso Newman have been KAC's auditor for some years, RSM's view is that they provide a good service at a reasonable fee. The appointment of a new auditor would require a tender process and member approval at a general meeting. It was recommended that the Board consider appointing a new auditor for the 2024 financial year.

MOTION 5: That the 2022 Audited Financial Report for Kokatha Aboriginal Corporation and controlled entities be accepted. Moved: Chris Larkin Seconded: Anna Strezlecki (For: Majority Against: 0 MOTION CARRIED)

MOTION 6: That Basso Newman be appointed as auditor for Kokatha Aboriginal Corporation and controlled entities for the 2023 financial year. Moved: Chris Larkin Seconded: Anna Strezlecki (For: Majority Against: 0 MOTION CARRIED)

3. Proxy Appointments

Members were asked to provide the details of any proxy appointments to KAC staff.

4. Board Report

The Chair provided a summary of the activities of KAC and the KAC Board for the 2022 Financial Year.

MOTION 7: That the Board Report be accepted. Moved: Roger Thomas Seconded: Michael Turner (For: Majority MOTION CARRIED)

6. Kokatha People Native Title Compensation Charitable Trust (KPNTCCT) Report – John Hender

John Hender provided a summary of the KPNTCC Report for the 2022 financial year.

In response to questions and comments from members, the following points were noted:

- There is a Trust Deed in place between KAC and Perpetual as Trustee of the KPNTCCT which determines the process for the KAC to apply for Trust funds and the criteria for the distribution of funds. The KAC must also then report to Perpetual that it has spent the funds in line with the application. The Trust Deed also outlines the criteria and process for the appointment of Directors to the Trust Board, which requires KAC Board approval.
- The Trust refers individual financial requests to the KAC.
- The KPNTCC was established following the receipt of \$9.5m in compensation from the South Australian Government in 2014. Some members believe the Trust existed before this.

7. Trust Resolutions

7.1 Special Resolution – Application of all income accumulated in the 2022 financial year

Of the \$619,901 net income earned in the Trust, half of this amount (\$309, 951) was made available for use by the KAC. Members were asked to consider the following resolution in order to release the remaining half for KAC use.

MOTION 8: Proposed under 4.5 of the Trust Deed, that the members consent to the Trustee applying or appropriating all income accumulated in the Accounting Period ending 30 June 2022 in pursuit of the Trust's Charitable Object. Moved: Khatija Thomas Seconded: Michael Turner (For: 119 Against: 14 Abstain: 0 More than 75% of members as required for the passing of a Special Resolution MOTION CARRIED)

It was noted that the special resolution regarding the amendment to the KPNTCCT Distribution Policy would be deferred to the next general meeting.

The meeting adjourned for afternoon tea at 3.40pm and reconvened at 4.05pm.

8. Directors Nominations

Ian Dixon advised that, following the approval of the resolution to remove all current KAC Directors (of which there were 10), up to eight Directors may be elected at this meeting, with two independent Directors to be appointed following this meeting.

14 members had nominated to be elected as a Director in accordance with the Rule Book:

Carly Chamberlain
Janice Wingfield
Nyani Thomas
Leeanne Strangways
Tracey Reid
Lynette Allen
Melissa Reid
Denise Thomas
Elaine Moosha
Derryn Gibson
Tanya Turner
Raymond Wingfield
Narelle Brady
Kimberly Marden- withdrew nomination

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It was noted that some of the Directors who had been removed as a result of the earlier resolution had not nominated to be elected as a Director. The Rule Book states that nominations must be submitted in writing no later than 14 days prior to the general meeting including the reasons for nomination as well as relevant skills and experience. If there are insufficient written nominations to fill the minimum number of Director positions (five including up to two independent Directors), nominations may be taken from persons attending the general meeting to make up that minimum number. As a sufficient number of written nominations had been received, it was not necessary to take nominations in this instance (including from former Directors); however members may allow this in the interest of procedural fairness.

A number of members provided comments that those Directors removed earlier in this meeting should not be allowed to be considered for election and a motion was put forward to this effect; however the motion was rescinded following clarification that all nominations had been received in accordance with the requirements outlined in the Rule Book.

The nominees were introduced to members and members were then invited to complete and submit the voting forms.

As the vote counting was going to take some time and to avoid the meeting being held open until this was completed, Stephen Kenny suggested that members consider the following motion:

That the four highest vote getters be appointed as Directors of the KAC Board for period of two terms and that the next four highest vote getters be appointed as Directors of the KAC Board for one term.

The motion was not moved and it was agreed to adjourn the meeting.

The meeting adjourned at 5.22pm and reconvened on Sunday 26 February 2023 at 10.25am.

The eight KAC Directors elected were:

Carly Chamberlain
Janice Wingfield
Nyani Thomas
Leeanne Strangways
Tracey Reid
Lynette Allen
Melissa Reid
Denise Thomas

Stephen Kenny advised that the Rule Book is silent on the terms for new Directors when there is an entirely new Board. In order to meet the requirements of the rotational system, whereby half of the Directors' terms should expire at the next general meeting, he proposed the following motion.

MOTION 9: That the four highest vote getters be appointed as Directors of the KAC Board for a period of two terms and that the next four be appointed as Directors of the Board for one term. Moved: Diane Welgraven Seconded: Chris Larkin (For: Majority Against: 4 MOTION CARRIED)

A number of members provided comments that the apical ancestor list is not accurate and that apical ancestors are not represented amongst the elected Directors. It was noted that this requirement had been amended in the Rule Book after KAC was placed under special administration, and that the eligibility and process for becoming a Director may need to be reviewed in due course. It is important that members support the new Directors who have been elected following due process.

9. Registered Aboriginal Representative Body (RARB)

Stephen Kenny provided an overview of the current status of KAC as a RARB in relation to Kokatha Native Title Area Determination, which was approved by the State Aboriginal Heritage Committee in October 2021, and the policies associated with KAC fulfilling its obligations in this regard. Members are now required to endorse this appointment of KAC as a RARB as well as some amendments to the Rule Book to reflect KAC's RARB status and obligations.

KAC will be required to consult with any non Kokatha people who register an interest in an area within Kokatha Lands; however the Board retains the right to determine whether such people are added to the Traditional Owner list and retains control of heritage matters should they arise. Ministerial involvement and approval would only be required in the case of potential destruction of land, with KAC retaining the right to negotiate all other matters. This is particularly important for agreements such as Olympic Dam, and a key reason for recommending this to members.

9.1 Resolution - Endorse the Appointment of KAC as RARB

MOTION 10: That the members of the Kokatha Aboriginal Corporation RNTBC (KAC) endorse the appointment of the KAC as a Recognised Aboriginal Representative Body (RARB) pursuant to the Aboriginal Heritage Act 1988(SA), and endorse the following policies;

- i. Introduction***
- ii. Consultation Policy***

- iii. *Heritage Management Principles*
- iv. *Dispute Resolution Policy*
- v. *Negotiation Framework*

Moved: Chris Larkin Seconded: Roger Thomas (For: Majority Against: 0 Abstain: 0 MOTION CARRIED)

9.2 Special Resolution – Amend Rule Book

MOTION 11: That the members of the KAC approve the amendment of the KAC Rule Book to include the following new parts.

- i. **3.2(k) To act as the Recognised Aboriginal Representative Body (RARB) pursuant to the Aboriginal Heritage Act 1988 (SA) for the Kokatha Lands**
- ii. **4.1(i) To carry out all the functions of a RARB as set out in the Aboriginal Heritage Act 1988 (SA).**

Moved: Chris Larkin Seconded: Elaine Kite (For: More than 75% of members as required for the passing of a Special Resolution)

10. Cultural Heritage Committee (CHC) Nominations

The following CHC nominations were received:

1. ALLEN- Elton Brady, Diana Allen
2. BAKER – Kym Chamberlain, Melissa Horace/Allan Wallace
3. DINGAMAN - Darryl Johnson-Dingaman
4. DAVIS-Rodney Dodd, Grant Warren
5. STRANGWAYS – Paul Strangways, Veronica Strangways
6. FATT – Jonathan Clifton, Jennifer Williams
7. KITE – Elaine Kite, Glen Newchurch
8. LARKINS - Joyleen Thomas and proxy Chris Larkin
9. REID – Max Reid
10. SMITH – Anna Strezlecki, Ken Smith
11. THOMAS - TJ Thomas – proxy Denise Thomas / Judith Welgraven
12. TURNER- Valerie Gibson, Asmund Bakka
13. STARKEY - Andrew Starkey, Mia starkey
14. WINGFIELD - Glen Wingfield, Janice Wingfield
15. DARE - Karen Joslyn, Michelle Joslyn

11. Membership Register Update

Members were asked to provide any updates to their membership registration details to KAC staff.

12. Other Business

Members were invited to raise other business.

Olympic Dam Agreement Payment

An update was requested on the \$5m payment from BHP to the three Aboriginal Corporations involved with Olympic Dam which has not yet been distributed. It was noted that BHP has not made any payment since approximately 2015; however KAC is expecting a \$1.5m payment from BHP.

Meeting Attendance

It was recommended that the KAC Board consider increasing the amount paid to members to attend the AGM and Common Law Holders meetings.

Minutes of previous AGM

Any questions or comments regarding the minutes of the 2021 AGM should be directed to the KAC Office in the first instance.

13. Close

The facilitators thanked members for their attendance and contributions and the meeting closed at 11.05am.

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