

# Information for the Jabirr Jabirr / Ngumbarl People

## Correction of information given at GAC's Special General Meeting held on 30 November 2022

December 2022

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### Background

On 30 November 2022, Gogolanyangor Aboriginal Corporation ("GAC") held a special general meeting ("GAC SGM"). During that meeting a number of statements were made, and actions taken, that were wrong, misleading or inappropriate.

**This handout provides further information about the conduct of the GAC SGM.**

### Have Waardi and Guumbarr been removed from their roles under the Browse Agreement?

No, Waardi is still the Administrative Body and Guumbarr is still the Corporate Trustee.

The Native Title Holders decided that GAC, Waardi and Guumbarr will each have particular jobs, supporting the interests of the Jabirr Jabirr / Ngumbarl People. Each of these entities signed a contract with the State that confirms the jobs they have under the Browse Agreement.

A resolution of GAC's members does not overturn a decision made by the Native Title Holders or cancel the contracts that were made with the State.

GAC's decisions also don't take away your rights as members of Waardi and beneficiaries of the Guumbarr trusts.

The Browse Agreement sets out a process that must be followed to remove Waardi as the Administrative Body and Guumbarr as the Corporate Trustee, which includes nominating different entities to do these jobs. This has not yet happened.

Waardi and Guumbarr will keep doing their jobs until the Native Title Holders decide that they should be removed and the process in the Browse Agreement has been followed.

### Was the objection to people voting allowed?

No, there were no grounds to object to the right of directors and employees of Waardi and Guumbarr to vote at the SGM.

An objection to a right to vote can only be made if it is thought that a person is not a member (i.e. to make sure that everyone at the meeting is actually a member) or if a proxy is not properly appointed (i.e. if the form wasn't correctly filled out).

**It is not to be used where there is a perceived conflict of interest.**

The chair is allowed to make a decision about a person's right to vote by GAC's Rule Book and the CATSI Act but only if it is for a proper purpose (i.e. allowed under the rules).

### Should GAC members, who are also directors and employees of Waardi and Guumbarr, have been removed from the GAC meeting?

No, there was no valid reason why the GAC members who are directors and employees of Waardi and Guumbarr were removed from the GAC meeting.

At the SGM, members were told that these people needed to leave the meeting because they would stop receiving payments if the resolution was passed (and therefore had a conflict). This was incorrect because:

- a GAC member can vote on a resolution that they might benefit from – the rules about conflicts of interest only apply to the directors of GAC (i.e. the people that look after GAC's activities can't vote if they will **personally benefit**, or stop benefiting, from a particular resolution);
- every member of GAC is impacted in the same way as the directors and employees of Waardi and Guumbarr as they all have the right to apply to be appointed as a director of, or be employed by, Waardi and Guumbarr; and
- directors and employees of Waardi will still have jobs to do if Waardi stops being the administrative body – Waardi receives government funding to deliver programs and this funding (and the programs) are not impacted by the resolutions.

It was unfair, oppressive and unlawful to remove those people from the meeting.

**Was every person that was involved with Waardi or one of its related entities asked to leave the meeting?**

No.

Waardi owns 50% of Morrgul Pty Ltd.

A director of Morrgul, who is also a member of GAC, was not asked to leave the meeting.

GAC did not apply the same rules to every member.

**Can people be asked to leave a meeting for inappropriate or threatening behaviour?**

Yes, people can be asked to leave, or be removed from, a meeting if they behave inappropriately (i.e. shout, don't allow people to talk, use intimidating language, use physical force).

This rule must be applied in the same way to everyone that is attending the meeting.

It was not right that one member was removed from the meeting for simply asking a question, but a director was **not** removed for pushing a member.

**Do members have the right to talk and ask questions at a general meeting?**

Yes, every member has a right to ask questions and participate in discussions about the things that are on the agenda or any other business that comes up during the meeting. The CATSI Act guarantees this.

The members' right to talk and discuss is important to make sure that everyone at the meeting understands what is going on, all of the relevant information is available and different views can be considered.

It was wrong that members were prevented from participating in discussion at the meeting because:

- they were removed from the meeting;
- their microphone was muted (if they were attending by video);
- they were interrupted;
- they were intimidated; or
- they were too scared to talk.

**Do members have a right to receive all relevant information before making a decision?**

Yes.

It is important that people have all the information they need to make a good decision, and it is accurate information.

GAC must make sure that all decisions that relate to native title are only made with the **free, prior and informed consent** of the Native Title Holders.

**Was the information given at the SGM about the restructure accurate?**

In Waardi's view, the information given to members at the SGM was misleading.

Waardi and Guumbarr have been trying to work with GAC for more than 12 months to implement the restructure, put good governance measures in place and prepare distribution policies.

GAC has refused to cooperate or engage about good governance measures.

This SGM demonstrates why it is so important that good governance measures be adopted, and that Waardi did to the right thing by doing the job it was asked to do – protect the interests of the Native Title Holders, as it was asked to do.

More information about how Waardi and Guumbarr have tried to work with GAC are set out in the document called "Information for Jabirr Jabirr / Ngumbarr People: Update – Governance Restructure" dated October 2022.

**Could GAC's members make a decision to remove Waardi and Guumbarr?**

No.

The Native Title Holders made a decision that GAC will look after native title, Guumbarr will look after the money and Waardi will deliver programs.

The only way this decision can be changed, and Waardi and Guumbarr be removed from their job, is by a decision of the Native Title Holders made at a properly called Native Title Meeting. After the decision is made, a number of extra steps will need to be taken to make the changes.

### Has Waardi received more money from the State?

Waardi has not received any money from the State under the Browse Agreement. The only money that Waardi receives from government is grants from the Commonwealth Government to deliver programs to the community.

Earlier this year, Guumbarr received \$30 million (plus interest of about \$5.5 million) from the State. This money was payable under the Browse Agreement and is now held in the Land Trust.

\$10 million must be used for economic development activities and \$20 million must be used to support Jabirr Jabirr / Ngumbarr People to find housing.

GAC needs to work with Waardi and Guumbarr to decide how to use this money (i.e. what particular programs will be supported).

### Does Waardi have any secret bank accounts?

No, Waardi and Guumbarr do not have any secret bank accounts.

Waardi's finances are regularly checked by accountants and carefully reviewed each year by independent auditors. This report is given to the State and published on the ACNC's website.

No concerns have ever been raised by anyone, including by auditors or regulators, about how Waardi or Guumbarr are managing and dealing with money.

### Do Waardi's assets belong to GAC's members?

No, Waardi is a company and it owns its assets in its own right and must use them to further its objects (i.e. the assets must be used to benefit Waardi's members).

Similarly, GAC is an Aboriginal corporation and it owns its assets in its right and must use them to further its objects (i.e. the assets must be used to benefit GAC's members).

Waardi's members, GAC's members and the Native Title Holders do not own Waardi's assets.

The assets in the Land Trust belong to the trustee (currently Guumbarr) and the trustee must look after and use these assets in accordance with the rules in the Land Trust Deed. The trustee has duties under the law and the trust rules.

**Has Waardi or Guumbarr refused to give GAC money?**

No.

Waardi and Guumbarr have told GAC that they are willing to help GAC do its job, including providing it with funding. Waardi and Guumbarr can only give money to GAC if it is used for particular reasons (this is required under the Trust Deed, the constitutions and the law).

Waardi and Guumbarr asked GAC to let them know how much money it wanted and what the money would be used for. Waardi and Guumbarr needed this information so that it could follow the rules and provide accurate reports to its accountants, auditors, the State and regulators.

GAC has not asked for funding in the right way, nor has it given Waardi and Guumbarr the information needed.