

# NGADJU CHARITABLE TRUST NO. 2

## Annual Report Financial Year 2018/19

**Prepared by:**

**Abbott Trustee Services Pty Ltd**

**(Trustee for the Ngadju Charitable Trust No.2)**

**October 2019**

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## 1. Executive Summary

- This report provides information about the operations of the Ngadju Charitable Trust No. 2 for the period 1 July 2018 to 30 June 2019, the 2018/19 Financial Year (FY19).
- The Trust Deeds were amended during the reporting period with approval of the Advisory Committee, The Trustee recommends further amendments which will need to be approved at a meeting of the beneficiaries.
- Policies and Procedures were modified and implemented on the 21 September 2019 and the 1 March 2019
- The Trustee has worked closely with NNTAC to review the database of beneficiaries to remove deceased, duplicate, incorrect names and to add new names.
- During the reporting period the Advisory Committee has met on three (3) separate occasions for a total of seven (7) days.
- During the course of the reporting period the Trustee has spent time working with the Advisory Committee and building their understanding of and capacity to undertake their roles and responsibilities.
- The Trustee continues to work to finalise the transfer of assets to the Trust from Mutual Trustee (shares) and Goldfields Land and Sea Council (cash).
- Income for the year was \$3.7m which was almost \$1m, or 21%, below budget.
- While the trust spent more than it received in the reporting period over all its expenditure was broadly in line with budget with a 4% overspend. It was determined by the Trustee that it was appropriate to do so on this occasion in order to help meet the charitable objectives of the Trust.
- The Trust finished the year with total equity \$2.5m of which \$1.2m is cash in the bank.
- The Trust ran 11 charitable programs during the year
- Total Funding Programs Assistance was \$1,894,528 with
  - 532 Ngadju Beneficiaries assisted
  - 3278 Payments Made
  - On average this is 6 payments per beneficiary
- The hourly average rate charged by the Trustee for the reporting period was \$165.68
- The Trustee has discounted the fees charged to the Trust by \$66,664 during this time.

## 2. Introduction

There is a requirement in the Trust Deed for the Trustee to provide a number of reports including various financial statements along with a “self-rate” report. This report provides information about the operations of the trust for the period 1 July 2018 to 30 June 2019, the 2018/19 Financial Year (FY19).

An independent audited report has been prepared for the 2018/19 financial year and is attached as Appendix A.

### 3. Background

Abbott Trustee Services Pty Ltd (**'Abbotts'**) was appointed Trustee of the Ngadju Charitable Trust No.2 (**'The Trust'**) on the 2<sup>nd</sup> February 2018. Prior to the execution of The Trust Deed Abbotts was involved, along with its legal advisers in the drafting of this Deed.

#### OBJECTS OF TRUST (Clause 4 of the Trust Deed)

##### Objects

(a) Subject to the powers that the Trustee has to vest the Trust or the Trust being vested by the Supreme Court of Western Australia the Trustee is to hold the Trust Fund in perpetuity and shall pay or apply the capital and income (subject to this Deed, the Policies and Procedures, any relevant terms of any agreement under which monies are paid into the Trust, to the advice and recommendations of the Advisory Committee and the consultation requirement in clause 14.6) for:

- (i) the purpose of advancing the health of the Beneficiaries;
- (ii) the purpose of advancing the education of the Beneficiaries;
- (iii) the purpose of advancing social or public welfare of the Beneficiaries;
- (iv) the purpose of advancing the Beneficiaries' religions;
- (v) the purpose of advancing the culture, including without limitation the native title rights and interests and cultural heritage rights and obligations, of the Beneficiaries;
- (vi) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- (vii) the purpose of promoting or protecting the Beneficiaries' human rights;
- (viii) the purpose of advancing the Beneficiaries' natural environment.

(b) Without limiting the generality of the foregoing, the Trustees may pay and apply the capital and income of the Trust Fund for:

- (i) prevent and relieve sickness, disease or human suffering;
- (ii) relieve poverty, distress or disadvantage of individuals or families;
- (iii) relieve the poverty, distress or disadvantage of individuals or families;
- (iv) care for and support:
  - a. the aged; or
  - b. individuals with disabilities;
- (v) care for, support and protect children and young individuals;
- (vi) promote or foster the Beneficiaries culture and care for, preserve and protect the Beneficiaries heritage;
- (vii) provide assistance to Beneficiaries to undertake training, education, personal advancement programs and sports programs;
- (viii) assist with funeral and medical expenses;

- (ix) assist with housing and accommodation needs;
- (x) provide money, property or benefits to incorporated and/or unincorporated entities which will benefit one or more of the Beneficiaries; and
- (xi) provide money, property or benefits to the NNTAC so that it can carry out its functions for the benefit of the Ngadju People.

(c) The objects of the Trust shall be carried out without purpose of private gain.

## 4. Trust Deed

### Deed of Variation No.2

The Trust Deeds were amended on 29 May 2019.

The amendment was made in line with Clause 14.2 of the deed and followed consultation and agreement from the Advisory Committee at its meeting on 23 May 2019. This variation is Deed of Variation No.2 and is as follows:

The Trustee varies the Trust Deed by:

(a) Amending sub clause 6.2(g) by adding at the end of the sub clause as follows:

*save that the Trustee may lend or advance money or give credit to any Beneficiary on any terms (to avoid any doubt the terms do not need to be commercial terms) and without any form of security.”*

(b) Amending sub clause 6.2(i) by adding at the end of the sub clause as follows:

*and if the repayments of moneys lent or advanced was to a Beneficiary then no security will be required to secure the repayments of moneys lent or advanced to or the liabilities incurred by that Beneficiary and the Trustee is permitted, at its discretion, to forgive the monies lent or advanced and change the monies lent or advanced to a distribution:*

The purpose of this change was not to add a power to lend because this already existed within the Deed. What was changed was the previously existing requirement that any money lent to a Beneficiary had to be done so “*on prudent commercial terms and with adequate security*”. This was an outcome of the recommendations from the Western Australian Attorney General’s Report into the Njamal Trust.

### Other Variations

The Trustee also recommends that the following changes to the deed be proposed to the beneficiaries at the next Trust Annual General Meeting because the Trustee considers these will improve the operation of the trust.

#### RECOMMENDED AMENDMENT

The Trustee varies the Trust Deed by:

(a) Amending the clause 1.1 Definitions by adding:

*“casual vacancy” means an Advisory Committee member:*

- (i) Resigns;
- (ii) Dies;

- (iii) *Is removed as a member of the Advisory Committee by the Trustee for misconduct;*
- (iv) *Is convicted of fraud;*
- (v) *Is convicted of any offence where the sentence is 12 months' imprisonment or more; or*
- (vi) *Any other reason is no longer a member of the Advisory Committee.*

**(b) Deleting sub clause 9.8(b) in its entirety and replacing it with the following:**

*A quorum for an Advisory Committee meeting is 7 Advisory Committee members present at the meeting.*

**(c) Amending clause 9.10(d) by deleting it in its entirety and replacing it with the following:**

- (i) Where a casual vacancy occurs and it is possible for the former Advisory Committee member to do so, the former member will nominate their replacement with another member from their family group.
- (ii) Where a casual vacancy occurs because of a death then by majority vote the remaining Advisory Committee members will nominate a replacement Advisory Committee member from the family group which has the casual vacancy except where it is a Belang Advisory Committee member. If there is a causal vacancy of the Belang Advisory Committee member then the remaining Belang Advisory Committee member(s) will nominate the replacement Advisory Committee member.
- (iii) If the nominated person accepts the nomination then they will become an Advisory Committee member until the next General Meeting is held and a new Advisory Committee is elected.

## Consolidated Deed

Prepared by the Trustee lawyer June Kenny of JDK Legal Services.

This working document combines the deed as executed on the 2nd February 2018 and

- Deed of Variation 1 which was endorsed on the 18th April 2018
- Deed of Variation 2 which was endorsed on the 29 May 2019.

It is a non-legal document intended to assist the Advisory Committee members, and others, to get a clearer version of how the large number of variations are incorporated into the deed. The Trustee will continue to maintain an up to date consolidated deed as required.

## 5. Beneficiaries

### Definition

Clause 3 of the Deed; Beneficiaries, defines beneficiaries of the Trust as follows.

#### “3.1 The Beneficiaries

- (a) *The Primary Beneficiaries of the Trust are members of the NNTAC, the NNTAC and any other person who is not a member of the NNTAC but who are nominated by the NNTAC Board as a Ngadju native title holder as defined by the Federal Court in items (1) and (2) of Schedule 6 to the court's determination in Graham on behalf of*

*the Ngadju People v State of Western Australia (2014) FCA 1247 (12 November 2014).*

- (b) *The Additional Beneficiaries of the Trust are the children of the people identified in sub-clause 3.1(a)."*

NNTAC is the Ngadju Native Title Aboriginal Corporation RNTBC. Effectively the Trust Register of Beneficiaries or database will reflect the membership of the corporation, with a few additions pursuant to clause 4(a) above.

### Management of Database

The original list of beneficiaries was provided to the Trustee in February 2018 by NNTAC, the Trustee also received additional membership lists from NNTAC during the previous reporting period.

During the reporting period the Trustee was provided with a number of different NNTAC membership lists in November 2018, February 2019 and June 2019. During this time the Trustee worked closely with NNTAC to review the database to remove deceased, duplicate and incorrect names.

At the start of the reporting period there were 827 beneficiaries on the database by the end of the reporting period there were 1014.

## 6. Advisory Committee

### Meetings

During the reporting period the Advisory Committee has met on three (3) separate occasions:

- Advisory Committee Meeting #1 (Two Days)
  - Thursday, 20 September 2018 (Day 1)
  - Friday, 21 September 2018 (Day 2)
- Advisory Committee Meeting #2 (Three Days)
  - Wednesday, 27 February 2019 (Day 1)
  - Thursday, 28 February 2019 (Day 2)
  - Friday, 1 March 2019 (Day 3)
- Advisory Committee Meeting #2 (Two Days)
  - Thursday, 23 May 2019 (Day 1)
  - Friday, 24 May 2019 (Day 2)

### Committee Membership

Members of the Advisory Committee are representative of the following family groups (Schedule 2 of the Trust Deed):

Belang	Jacobs
Dalgetty/Ray/Munroe	Rule
Donaldson	Schultz
Flynn	Wicker
Graham	Wilson/Nine

Clause 9.8 (a) allows for up to 3 members of the Belang Family to be members of the Advisory Committee with each other Family having one member representative on the Advisory Committee.

The current members of the Advisory Committee were appointed at the November 2017 AGM of the Ngadju Native Title Aboriginal Corporation (NNTAC) and who are listed in the Trust Deed are:

	No of Meetings	No of Meeting Days	Attendance Days
Barry Michael Graham	3	7	7
Bronwyn Carmel Dora Thompson	3	7	7
Coralie Leslie Baumgarten	3	7	7
David Scott Graham	3	7	6
Donna Maria Beach	3	7	5
Loretta Smith	3	7	7
Michael Smith	3	7	5
Ruth Bonney	3	7	7
Sharon Joy Johnson	3	7	7
Warren Dimer	3	7	7

(One original member is deceased)

### Capacity Building

During the course of the reporting period the Trustee has spent time with the Advisory Committee talking to them about their roles and responsibilities. It ran two workshops to help better equip them to undertake their duties as committee members.

- A Trust Workshop was run for Advisory Committee on 27 February 2019

It covered the following items

- Ngadju Charitable Trust No. 2 Purpose
  - The Beneficiaries
  - Advisory Committee eligibility and responsibilities
  - Trustee
  - Interaction between Trustee and Advisory Committee
  - Legislation
  - Charitable Trust Rules
  - Policies and Procedures
  - Keeping Accounts
  - Investments
- At the same meeting the Trustees Lawyer presented to the committee; Findings and matters of interest in Attorney General's Report of the Njamal Trust. It covered the following points
    - Failings of the Trustee
    - Conflict of Interest
    - Trust Deed Issues
    - Policies and Procedures on advisory committee remuneration and meeting protocol
    - Trustees should not employ or engage Advisory Committee
    - Trustee Procedures for distributions and programs

## 7. Transfer of Funds/Shares to the NCT No.2

The majority of funds were transferred to the Trust in the previous reporting period, the 2017/18 financial year.

At the beginning of the reporting period the following shares were still due to be transferred to the Trust by the previous trustee Myer Family.

- Shares held have not yet been transferred and these are:
  - 26,400 units in Independence Group NL
  - 200,000 units in S2 Resources

The Myer Family Company now operates as Mutual Trust the change in name has impacted on the ability to transfer shares. Mutual have been attempting to rectify the problem and are dealing directly with the agents who will transfer the shares. The most recent correspondence received by the Trustee from Mutual on 7 October 2019 confirmed that the paper work had been resubmitted, by post, and that they will keep the Trustee informed of progress.

At the beginning of the reporting period The Goldfields Land & Sea Council (GLSC) GLSC had not transferred any funds to The Trust

During the reporting period the Trustee worked diligently to arrange for the GLSC funds to be transferred, to date this has not occurred. This is due to the status of the funds which are held in a quarantined bank account and the need for agreement from multiple parties, including NNTAC, for the funds to be released. The Trustee will continue to work to arrange the transfer of the funds which are earning interest and are reported to be \$261,598.79.

## 8. Trust Finances

### Summary

Below are the Trust financial accounts for the reporting period. The finalised audited accounts are attached as Appendix A and will also be available for viewing on the Australian Charities and Not-for-profit website.

Income for the year was \$3,683,051 which is \$990,000 below budget this was due to all of the main royalty payments being significant lower than the Trustee had been led to believe.

This is the main reason that the Trust is not in line with budget. The budgeted expenditure and programs were set based on anticipated income. While the trust spent more than it received in the period over all its expenditure was broadly in line with budget with a 4% overspend.

It was determined by the Trustee that it was appropriate to maintain budgeted expenditure on this occasion in order to help meet the charitable objectives of the Trust. The key areas that were over budget were the education and medical assistance programs, where demand was higher than anticipated. As these programs require a high level of administration, the costs for processing applications for assistance were also over budget.

It is fair to say that during the course of the year the Trustee has gained a greater understanding of the needs of the Ngadju people and how the trust needs to run in order to provide appropriate and effective support, not only through its programs abut also in terms of the scope and volume of work that the Trustee undertakes. This knowledge has been used when planning for the new 2019/20 Financial Year.

During the period the Trust provided NNTAC with \$1,550,000 for its day to day operations and \$113,000 for the NNTAC Strategic Intent Plan.

The Trust finished the year with total equity \$2.8m of which \$1.2m is cash in the bank.

### Profit and Loss Report

See table on next page

## NGADJU CHARITABLE TRUST #2

### Detailed Income and Expenditure Statement (Profit and Loss)

For the year ended 30 June 2019

	<u>30/06/19</u>
	\$
<b>INCOME</b>	
Avoca Mining – education contribution	28,500
Independence Nova – royalties	3,312,544
Independence Group - special purpose funds	335,253
Pioneer shares	-
Other	6,754
<b>TOTAL INCOME</b>	<u><b>3,683,051</b></u>
<b>EXPENDITURE</b>	
Administration fees	91,740
Applications for assistance	439,231
Audit fee	3,920
Bank fees	174
Consultant fees	14,000
Diminution – share value	9,565
Trust legal fees	68,007
Trust meeting costs	162,000
Education assistance	652,430
Elders assistance	633,178
Funeral assistance	147,892
Headstone funding	43,745
Lore & culture	10,013
Medical assistance	314,596
Sports assistance	51,562
NNTAC - funding	1,550,000
NNTAC – Strategic plan funding	113,000
Special purpose provisions	(407,260)
<b>TOTAL EXPENDITURE</b>	<u><b>3,897,793</b></u>
<b>OPERATING SURPLUS / (DEFICIT)</b>	<u><b>(\$214,742)</b></u>

## Balance Sheet

### NGADJU CHARITABLE TRUST #2

#### Balance Sheet

As at 30 June 2019

	<u>30/06/19</u>
	\$
<b>CURRENT ASSETS</b>	
Cash at bank	1,236,844
Accounts receivable	290,054
<b>TOTAL CURRENT ASSETS</b>	<u>1,526,898</u>
<b>NON-CURRENT ASSETS</b>	
Investment Shares	1,310,139
<b>TOTAL NON-CURRENT ASSETS</b>	<u>1,310,139</u>
<b>TOTAL ASSETS</b>	<u>\$ 2,837,037</u>
<b>CURRENT LIABILITIES</b>	
Accounts payable	56,795
GST liabilities	(51,988)
Provisions	-
<b>TOTAL CURRENT LIABILITIES</b>	<u>4,807</u>
<b>TOTAL LIABILITIES</b>	<u>302,706</u>
<b>NET ASSETS</b>	<u>\$ 2,832,230</u>
<b>MEMBERS FUNDS</b>	
Retained earnings	
<b>TOTAL EQUITY</b>	<u>\$ 2,832,230</u>

## 9. Trust Programs

### I. Program Summary

<b>Ngadju Charitable Trust No 2 STATS</b>	
Number of Programs	11
Total Funding Programs Assistance	\$1,894,528
Ngadju Beneficiaries assisted	532
Payments Made	3278
Average Payments Per Person	6

### II. Education Assistance

<b>Total Expenditure</b>	<b>\$488,531</b>
People Assisted	275
Payments Made	1019
Average Payments Per Person	4

### III. Adult Education Assistance

<b>Total Expenditure</b>	<b>\$163,035</b>
People Assisted	48
Payments Made	106
Average Payments Per Person	2

### IV. Sports Assistance

<b>Total Expenditure</b>	<b>\$51,561</b>
People Assisted	103
Payments Made	207
Average Payments Per Person	2

### V. Elders Assistance

<b>Total Expenditure</b>	<b>\$633,177</b>
People Assisted	159
Payments Made	1050
Average Payments Per Person	7

## VI. Headstone Assistance

<b>Total Expenditure</b>	<b>\$43,745</b>
People Assisted	7
Payments Made	7
Average Payments Per Person	1

## VII. Lore & Culture Assistance

<b>Total Expenditure</b>	<b>\$10,013</b>
People Assisted	5
Payments Made	22
Average Payments Per Person	4

## VIII. Medical Assistance

<b>Total Expenditure</b>	<b>\$255,027</b>
People Assisted	235
Payments Made	634
Average Payments Per Person	3

## IX. Emergency Medical Assistance

<b>Total Expenditure</b>	<b>\$53,670</b>
People Assisted	54
Payments Made	214
Average Payments Per Person	4

## X. Palliative Care Assistance

<b>Total Expenditure</b>	<b>\$6,899</b>
People Assisted	2
Payments Made	13
Average Payments Per Person	7

## XI. Funeral Assistance

<b>Total Expenditure</b>	<b>\$147,892</b>
People Assisted	24
Payments Made	42
Average Payments Per Person	2

## 10. Annual Plan for 2019/20 Financial Year

The requirements for the Trust's Annual Plan are set out in its Policies and Procedures. The Annual Plan which contains the planned operating budget for the period 1 July 2019 to 30 June 2020 is included as Appendix B.

## 11. Policies & Procedures (Refer Appendix C)

The Policies and Procedures are a document that the Trustee uses to manage the day to day operation of the Trust. It also informs the Advisory Committee members on the process and approach not only of the Trusts management but committee meetings along with their responsibilities. The Policies and Procedures identifies the scope, approach and intent of the Trust's programs.

The Ngadju Native Title Aboriginal Corporation, Strategic Intent 2017 – 2020 also forms part of the Policies and Procedures as an appendix as this informs the Trustee's and Advisory Committee's approach.

The first version of the Policies & Procedures were drafted by the Trustee and the NNTAC. These were adopted at the time of the execution of The Trust Deed on the 2<sup>nd</sup> February 2018 they have been amended as appropriate since then.

During the reporting period the Policies and Procedures were modified and implemented as follows:

- 21 September 2019
  - Amendment to Palliative Care Program
  - Amendment to Home Owner Program
  - Amendment to Headstone Program
  - Amendment to Funeral Program
  -
- 1 March 2019; Clauses
  - 6 Relating to the Advisory Committee
  - 8 Relating to General Meetings of the Trust

## 12. Trustee Fees

Fees charged by the Trustee during the period were as follows

<b>Administration Fees</b>	
Trust Administration	\$ 80,612
Applications for Assistance	\$ 439,231
Trust Bookkeeping	\$ 11,128
Trust Meeting Fees	\$ 56,912
Total	\$ 588,080

The Trustee has discounted the fees charged to the Trust by \$66,664 during this time.

At the June 2018 Advisory Committee meeting it was resolved that the Trustee fees would be based on an average hourly rate not exceeding \$195.00.

The hourly average rate for the reporting period was \$165.68

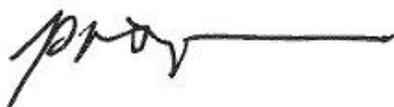
During this period the Trustee's staff have spent 3548.39 hours working on Ngadju Charitable Trust No. 2. The level of phone calls relating to applications has been high in the months of July and August 2018 the Trustee has taken between 30 and 50 calls per day from Ngadju People.

The Trustee will consult with the Advisory Committee and keep NNTAC informed of any variation to Trustee Fees.

## 13. Appendices

- Appendix A. Audited Report for 1 July 2018 to 30 June 2019
- Appendix B. Annual Plan for 1 July 2019 to 30 June 2020
- Appendix C. Policies and Procedures Implemented on 1 March 2019

Signed by:



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DELEGATED TRUSTEE