



Western Australia

Aboriginal Communities Act 1979

**Mugarinya Community Association
Incorporated By-laws**

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Mugarinya Community Association Incorporated By-laws

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Mugarinya Community Association Incorporated By-laws

Part 1 — Preliminary

1. Citation

These by-laws may be cited as the *Mugarinya Community Association Incorporated By-laws*¹.

2. Commencement

These by-laws shall come into effect when approved by the Governor and published in the *Government Gazette*¹.

3. Definitions

In these by-laws unless the context requires otherwise —
by-law means one of these by-laws;

deleterious substance means glue or any volatile liquid containing hydrocarbons;

liquor means liquor as defined in the *Liquor Licensing Act 1988*;

the Act means the *Aboriginal Communities Act 1979*;

the community means (as the context requires) Mugarinya Community Associated Incorporated (Yandearra) and that collective group comprising the membership of Mugarinya Community Associated Incorporated (Yandearra), their

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spouses and dependants (where not members in their own right) and *members of the community* has a correlative meaning;

the Council means the Council of Mugarinya Community Association Incorporated (Yandearra);

vehicle means any motor vehicle, designed and manufactured to be capable of self propulsion and includes any trailer or caravan while attached to a vehicle.

These by-laws shall apply —

- (a) on all community land; and
- (b) to all persons on community land, whether members of the community or not.

Part 2 — Community lands

4. Permission required to enter community land

Save as otherwise provided by any law of the State or Commonwealth —

- (a) no person who is not recognised by the Council to be Aboriginal, may enter or remain on community land without prior permission of the Council;
- (b) such permission may be given either orally or in writing and may be subject to such terms or conditions as the Council sees fit;
- (c) the Council may revoke such permission at any time and without the necessity of stating any reason for the action;
- (d) the Council may order any person whatsoever (other than a member of the community) to leave community land and to remain off community land for such a time as the Council may direct;
- (e) employees of government departments of the State or Commonwealth entering or being on community lands in connection with their duties shall be deemed to have permission under paragraph (a);
- (f) the Council may act through any of its members to make or to revoke any of the permission or directions referred to in this by-law.

5. Remaining on community lands

- (a) A person who requires permission under these by-laws shall not enter or remain on community land without permission.
- (b) A person who has permission under these by-laws to enter or remain on community land shall not contravene any term or condition of that permission to be or remain on community land.

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- (c) Any person ordered by the Council to leave community land shall do so as is reasonably possible.

6. Restriction of entry into areas

Subject to the provisions of any Act or regulation to the contrary —

- (a) the Council may place signs on community land for the purpose of prohibiting entry to the part of land on which the sign is placed or to such part of the community land as indicated by the inscription of the sign;
- (b) any person who fails to obey directions of the inscription on such a sign commits a breach of these by-laws.

7. Homes

Any person who is told (by the principal occupant or by the person then in charge thereof) to leave the house of another and who refuses to leave as directed commits a breach of these by-laws.

Part 3 — Liquor and deleterious substances

8. Restriction of liquor

The Council may, in its discretion and subject to such terms, conditions and restrictions as it sees fit —

- (a) permit any person to bring, possess, use or supply liquor on community lands;
- (b) no person shall, without the permission of the Council, bring, possess, use or supply liquor on community lands;
- (c) no person shall enter onto or remain on community land whilst under the influence of liquor to the extent that his behaviour causes alarm, annoyance or upset to members of the community.

9. Pharmaceutical

Pharmaceutical preparations and substances properly used in the ordinary course of medical practice shall exempt from the operation of this by-law whilst in the possession or control of a medical professional or where properly prescribed and issued to a patient by a medical professional.

10. Deleterious substance or petrol

- (a) A person shall not be in possession of a deleterious substance or petrol on community land for the purpose of inhalation.
- (b) A person shall not sell or supply a deleterious substance or petrol to another person on community land if there are reasonable grounds for suspecting that the other person —
 - (i) intends to use the deleterious substance or petrol for the purpose of inhalation; or
 - (ii) intends to sell or supply the deleterious substance or petrol for the purpose of inhalation.

Part 4 — Traffic

11. Traffic signs

- (a) The Council may place signs (“**traffic signs**”) on community land for the purpose of regulating vehicle traffic.
- (b) Any person who fails to obey the directions of the inscription on a traffic sign commits a breach of these by-laws.

12. Careless and dangerous driving

- (a) No person shall drive a vehicle on community land without due care and attention.
- (b) No person shall drive a vehicle on community land in a manner which, having regard to all of the circumstances, is dangerous to any person.
- (c) No person shall drive a vehicle owned by the community or leased or hired to the community —
 - (i) without first having the permission of the Council or of a person placed by the Council in charge or control of the vehicle for the time being;
 - (ii) when under the influence of liquor or a deleterious substance;
 - (iii) without being the holder of a current valid motor driver’s licence of a class appropriate to the vehicle to be driven.

Part 5 — The regulation of other matters

13. Offensive behaviour

No person shall cause a disturbance or annoyance to other persons by using abusive language, fighting or otherwise behaving in an offensive or disorderly manner.

14. Wilful damage

No person shall damage any tree, bush, lawn, building, structure, vehicle or other thing, whether the property of the community or of any individual person.

15. Disruption of meetings

No person shall interrupt any meeting of the Council or of the community, or any customary meeting, by noise or any offensive or disorderly behaviour.

16. Firearms, offensive weapons and dangerous materials

- (a) No person shall use or discharge any firearm or other offensive weapon without approval of the Council which approval may be withdrawn by the Council at any time without having to give any reason therefore.
 - (i) For the purpose of this by-law *offensive weapons* includes crossbow and bow and arrow.

Part 6 — Enforcement and proceedings

17. Powers of police

A member of the police force may —

- (a) take proceedings against any person for a breach of these by-laws;
- (b) where any person has committed or is found committing an offence against these by-laws and it appears to the police officer on reasonable grounds to be likely that injury to persons or damage to property will be caused by that person if left at large, apprehend and remove that person from community land;
- (c) request the name and address of any person who he believes on reasonable grounds —
 - (i) to be on community land, in breach of any by-law; or
 - (ii) to have, while on community land, committed a breach of a by-law;
- (d) if he has reasonable cause to suspect that liquor or a deleterious substance is in any vehicle in contravention of these by-laws, stop, detain and search such vehicle and seize any liquor or deleterious substance and any receptacle containing liquor or a deleterious substance which he may find in or on the vehicle and may retain in his custody or control any property so seized until dealt with according to these by-laws;
- (e) if a liquor or a deleterious substance is found in a vehicle through the exercise of the power conferred by by-law 17, seize the vehicle, search and detain it for up to maximum period of 14 days if such is considered necessary by the police officer, on reasonable grounds to prevent a repetition of the prescribed conduct.

18. Procedure

Subject to the *Child Welfare Act 1947*, proceedings for an offence against by-law shall be commenced by the way of complaint² and summons under and in accordance with the *Justices Act 1902*³ and shall be commenced within 6 months after the offence was committed.

Part 7 — Penalties and orders of the court

19. Penalties

- (a) Any person who breaches or fails to comply with any of these by-laws is guilty of an offence and is liable to a fine of not more than \$100.
- (b) In addition to any fine imposed under paragraph (a), the court may order any person convicted of an offence under these by-laws to pay compensation not greater than \$250 to the community or to any person, where, in the course of committing the offence, the person convicted has caused damage to property of the community or of that other person.
- (c) In any prosecution for an offence under these by-laws having as an element the possession or use of a prohibited substance a court upon proceeding to conviction of the person charged may make such orders as it sees fit concerning the destruction, disposal or forfeiture of property seized pursuant to an exercise of the power contained in by-law 17(d).

[By-law 19 amended: Gazette 14 May 2004 p. 1456.]

20. Defence of acting under custom

It is a defence to a complaint of an offence against these by-laws to show that the defendant was acting under and excused by an custom of the community.

21. Council members

- (a) Council member who is charged with an offence against by-law 8 shall be deemed to have ceased to be effective Councillor.
- (b) In the event that such charge against the Council member is withdrawn or is dismissed after trial then, by that occurrence he shall be restored to his former position.

Notes

- ¹ This reprint is a compilation as at 7 October 2005 of the *Mugarinya Community Association Incorporated By-laws* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Mugarinya Community Association Incorporated By-laws</i>	21 Jun 1991 p. 3005-8	21 Jun 1991 (see bl. 2)
<i>Sentencing Legislation (Short Sentences - Aboriginal Community By-Laws) Amendment Regulations 2004</i> r. 14	14 May 2004 p. 1451-8	15 May 2004 (see r. 2 and <i>Gazette</i> 14 May 2004 p. 1445)

Reprint 1: The Mugarinya Community Association Incorporated By-laws as at 7 Oct 2005 (includes amendments listed above)

- ² Under the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 81 a reference in a written law or book, document or writing to a complaint in the context of commencing proceedings in a court for an offence is, unless the contrary intention appears, to be taken to be a reference to a prosecution notice under the *Criminal Procedure Act 2004*.
- ³ The short title of the *Justices Act 1902* was changed to the *Criminal Procedure (Summary) Act 1902* by the *Courts Legislation Amendment and Repeal Act 2004* s. 23.
- The *Criminal Procedure (Summary) Act 1902* was then repealed by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 4. Under that section, a reference in a written law or book, document or writing to the *Criminal Procedure (Summary) Act 1902* is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to the *Criminal Procedure Act 2004*.

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
by-law	3
deleterious substance	3
liquor.....	3
members of the community	3
offensive weapons.....	16(a)
the Act.....	3
the community	3
the Council.....	3
vehicle.....	3