

Gellung Warl Allegations of Misconduct (Gellung Warl Members) Rules



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Lighting the Fire Stick

1 Name

The name of these rules is the Gellung Warl Allegations of Misconduct (Gellung Warl Members) Rules.

2 Authority

- (a) As First Peoples, the source of our authority is our inherent rights.
- (b) The authority to make these rules derives from the Statewide Treaty, and they are made by the First Peoples' Assembly under sections 33 and 156 of the Statewide Treaty Act and Schedule 1, Item 6 to that Act.
- (c) The Assembly consulted with the Treaty Authority before making this rule pursuant to section 36 of the Statewide Treaty Act.

3 Teachings that have Informed the Creation of these Rules

3.1 Our Identity, Our Strength, Our Wisdom

"We, the First Peoples of this Country now called Victoria, affirm that Aboriginal Lore and Law continue. Passed down through Ancestors and Elders, carried in language, story, ceremony and Country. Though colonisation sought to silence them, they were never ceded or extinguished. These rules are created not in isolation, but as a part of this continuing legacy – a living expression of cultural authority and the right to self-determination.

In developing these rules, we are guided by the Gitjawil Yurpa.¹ Gitjawil Yurpa reminds us that governance is not only about structure or policy – it is about relationships, responsibility and respect. Our rules honour the authority of those who hold knowledge, uphold the protocols that connect us to each other and to Country, and reflect the way our communities have always made decisions. Decisions through yarning, consensus building, accountability and care.

¹ Gitjawil Yurpa expresses *many having to put forth* in Dja Dja Wurrung language.

We acknowledge that we exist within a time of legal pluralism. Aboriginal Lore and Law, the first lore/law of this place, has never ceased to operate, even as a colonial legal system has tried to deny it. We recognise the need to navigate between legal systems, and in doing so, we affirm that Aboriginal Lore and Law are not secondary, symbolic or historical – but are legitimate, living and continuing. These rules are created as a bridge between systems. They speak to our people, they speak back to the state, they speak to all who wish to engage with it.

The fact that we are here, making rules in our own name, is a testament to our survival. It reflects generations of resistance – through public leadership, quiet strength, cultural practice and legal knowledge carried in kinship, Country and ceremony. This is not a new beginning, but a continuation of what has always been true, that we are the First Peoples.

As we are our Ancestors, and we are our Country, we claim our Ancestral birthright. It is in this spirit that the fire stick has been lit, to tend to the fires awoken by our Elders and Ancestors, for this fire stick to be carried and nurtured by Gellung Warl. The fire stick is how we take fire across Country, across generations – for Gellung Warl to light its own fire. One that will cleanse, will nourish, will maintain Country, will draw on many voices to carry forward one strength.

In a time now shaped by treaty-making, truth-telling and institutional change, we hold firm to what must not be lost – our ways of being, our cultural foundations, our obligations to future generations. These rules are made not only to meet current needs but to reflect who we are, where we come from, and where we are going. They are made with respect for the past, commitment to the present, and vision for the future we traverse in the Treaty era.”

3.2 Grounded in Culture

Acting in the wrong ways, breaking our lore and law, has always had consequences. When there has been hurt and harm caused to each other, our Communities, our Country, then there must be processes of accountability and restoration. Consequences are carried out in a way that recognises healing and justice, truth-telling, and a teaching of what it means to act in proper ways. We hold the responsibility as a collective to ensure we act with integrity, in accordance with our lore and law, with respect to our relationality and kinship, and a dedication to prevent further wrongdoing.

4 Purpose

These rules set out procedures for dealing with alleged Misconduct and Serious Misconduct by Gellung Warl Members, including internal review, to uphold and respect:

- (a) integrity, fairness and accountability;
- (b) cultural protocols; and

- (c) the role of the Treaty Authority in supporting culturally strong approaches to addressing and responding to allegations of Misconduct and Serious Misconduct.

5 Application

These rules apply to Gellung Warl, Gellung Warl Members and Reporting Persons, and involve the Treaty Authority.

6 Commencement

These rules commence on the day they are made by the Assembly.

7 Definitions

- (a) Unless the contrary intention appears, a term has the same meaning given to it in the Statewide Treaty Act or in any other internal rule made by the Assembly.
- (b) Unless the contrary intention appears, in these rules the following terms have the corresponding meaning:

Term	Meaning
Allegations Coordinator	A Gellung Warl staff member appointed by the CEO to perform the functions conferred on the Allegations Coordinator under these rules.
Allegations Receiver	A Gellung Warl staff member assigned by the CEO to undertake the function of Allegations Receiver under these rules.
Allegations Response Panel	A panel appointed by the Membership Oversight Committee under rule 9.8.5(a) to handle a Misconduct Allegation under these rules.
Appellant	A person who: (a) may seek internal review of a Decision under rule 9.11.1 ; and (b) makes an Application in accordance with rule 9.11.2 .
Application	An application for internal review of a decision under these rules.
Assembly	First Peoples' Assembly.
Assembly Internal Governance Rules	Internal rules made or amended by the Assembly and in force from time to time under section 33 of the Statewide Treaty Act

	that provide for the matters set out in Schedule 1, Items 1, 4 and 5 to that Act relating to internal governance.
Assembly Member	A member of the First Peoples' Assembly.
CEO	The Chief Executive Officer of Gellung Warl.
Decision	(a) a decision of the Assembly Co-Chairs, CEO, Allegations Coordinator or Allegations Response Panel to decline a Misconduct Allegation under rule 9.4 or 9.6(e); (b) a decision of the Allegations Coordinator that no further action is to be taken in respect of a Misconduct Allegation under rule 9.8.4(b)(vi); or (c) a determination made by an Allegations Response Panel under rule 9.8.5(l).
Elders' Group	A group of Elders to be determined by the Assembly, from time to time, to whom the Assembly assigns, from time to time, functions that are culturally appropriate for Elders to perform.
Facilitated Discussion or Yarning Circle	A meeting where parties and a facilitator appointed by the Allegations Coordinator or the Allegations Response Panel meet in a safe, non-judgmental environment to share perspectives, listen inclusively, and collaboratively seek to reach resolution. A facilitator should be a First Peoples facilitator, where possible.
Gellung Warl Member	(a) An Assembly Member; (b) a Nyerna Yoorrook Telkuna member; or (c) a Nginma Ngainga Wara member.
Gellung Warl Member Standards of Conduct	Standards made or amended by the Assembly and in force from time to time under section 152 of the Statewide Treaty Act.
Gellung Warl Membership Rules	Internal rules made or amended by the Assembly and in force from time to time under section 33 of the Statewide Treaty Act that provide for the matters listed in Schedule 1, Items 1, 3-5 and 9 to that Act relating to membership.
Mediation or Conciliation	Mediation or conciliation conducted in accordance with the Australian Mediator and Dispute Resolution Accreditation Standards Code of Ethics (as in force from time to time) with reasonable cultural adaptations made by the person conducting the mediation or conciliation.
Membership Oversight Committee	The committee established by the Assembly Internal Governance Rules.
Misconduct	Misconduct as defined by rule 8.2(a) .
Misconduct Allegation	A Misconduct Allegation as defined by rule 8.1 .



Reporting Person	A person who makes a Misconduct Allegation under these rules.
Review Decision	A decision made by a Reviewer under rule 9.11.10(a) .
Reviewer	A reviewer appointed to conduct an internal review under rule 9.11.3 .
Serious Misconduct	Serious Misconduct as defined by rule 8.2(b) .
Statewide Treaty Act	The <i>Statewide Treaty Act 2025</i> (Vic).
Treaty Authority Member	A Treaty Authority Member as defined in the Treaty Authority Agreement (the agreement made between the Aboriginal Representative Body and the State of Victoria under section 27 of the <i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i> (Vic)).
Treaty Authority staff member	A person employed by the Treaty Authority, including the CEO, as defined in the Treaty Authority Agreement (the agreement made between the Aboriginal Representative Body and the State of Victoria under section 27 of the <i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i> (Vic)).

Carrying the Fire Stick

8 Scope of Rules

Outline

Rule 8 sets out rules about what is a Misconduct Allegation, what is Misconduct and what is Serious Misconduct.

8.1 What is a Misconduct Allegation?

- (a) An allegation is a Misconduct Allegation if it is:
- (i) a formal claim in writing that a Gellung Warl Member has engaged in Misconduct or Serious Misconduct; and
 - (ii) the claim has not, at the time the claim is made, already been dealt with under these rules.

8.2 What is Misconduct and Serious Misconduct?

- (a) Misconduct means conduct that constitutes a contravention of the Gellung Warl Member Standards of Conduct.

- (b) Serious Misconduct is Misconduct that:
- (i) is intentional, wilful or deliberate; or
 - (ii) occurs frequently or forms part of a pattern of behaviour.

9 Procedures for Dealing with Alleged Misconduct and Serious Misconduct

Outline

Rule 9 sets out the rules for dealing with Misconduct Allegations including internal review of decisions and includes:

- Principles for dealing with a Misconduct Allegation
- Confidentiality
- Making a Misconduct Allegation
- Declining a Misconduct Allegation
- Withdrawing a Misconduct Allegation
- Postponing a Misconduct Allegation
- Who handles a Misconduct Allegation
- Process for dealing with a Misconduct Allegation
- Costs
- Outcomes
- Internal Review and costs and procedures in relation to internal review
- Effect of Member term ending

9.1 Principles for dealing with a Misconduct Allegation

- (a) The following principles apply to all Misconduct Allegations.
- (i) **Good Faith:** Misconduct Allegations should be made in good faith, without frivolous, malicious, or vexatious intent. Outcomes sought should be proportionate, reasonable, and deliverable.
 - (ii) **Fairness, Respect and Proportionality:** All persons must be treated fairly, equitably, and respectfully. All sides must be listened to and heard. The process acknowledges and

seeks to address power imbalances and ensure responses are proportionate to the nature and severity of the allegation.

- (iii) **Efficiency and Timeliness:** Misconduct Allegations should be addressed as efficiently as possible and in a timely manner, with clear outcomes and finality.
 - (iv) **Responsiveness and Restoration:** The process is outcome-oriented and forward-looking, designed to prevent Misconduct Allegations from causing division. Cultural harm and trauma are considered. A harm reduction approach is applied to support healing and strengthen relationships.
 - (v) **Transparency and Openness:** Discussions should be open and transparent, focused on finding common understandings and maintaining relationships, rather than adopting an adversarial approach.
 - (vi) **Cultural Respect:** Cultural values and practices inform the Misconduct Allegation process. The process recognises the interconnectedness of communities that may be affected by a Misconduct Allegation and respects local and regional cultural protocols.
 - (vii) **Accountability and Integrity:** The Misconduct Allegation process upholds high standards of accountability, honesty, integrity, and wellbeing, maintaining public confidence in Gellung Warl and its constituent arms.
 - (viii) **Support and Representation:** Each party to a Misconduct Allegation may have a support person present during meetings and discussions.
 - (ix) **Impartiality:** The Misconduct Allegation process is impartial and independent. Those with conflicts of interest are excluded from decision-making and the process may be modified to the extent necessary to achieve this.
 - (x) **Record-Keeping and Data Collection:** Records in the Misconduct Allegation process should be accurate, contemporaneous, and securely maintained, and data collected and stored appropriately.
- (b) The principles in [rule 9.1\(a\)](#) apply to all Misconduct Allegations. However, the specific application of each principle may be adapted based on the nature, seriousness, and circumstances of the individual Misconduct Allegation. The Allegations Coordinator, Allegations Response Panel or Reviewer will exercise reasonable judgment to ensure the process remains fair, effective, and appropriate to each situation.
- (c) A person must comply with their obligations under the *Public Interest Disclosures Act 2012* (Vic) and these rules are not intended to limit or modify the operation of that Act.

9.2 Confidentiality

- (a) All Misconduct Allegations will be treated as confidential, to the extent that confidentiality may be reasonably maintained, having regard to the proper processing, assessment or investigation of the Misconduct Allegation, and subject to any disclosure permitted or required by this rule.



- (b) Information contained in a Misconduct Allegation, or otherwise provided to the Assembly Co-Chairs, the CEO, Allegations Coordinator, Allegations Response Panel or Reviewer in carrying out their functions under these rules, may be disclosed to another person if:
 - (i) the person who provided the information consents to the disclosure;
 - (ii) disclosure is required by law or legal obligation;
 - (iii) disclosure is made for the purpose of seeking legal advice;
 - (iv) there is a compelling reason to disclose the information, such as the prevention of harm; or
 - (v) disclosure is permitted or required by these rules.
- (c) If consent to disclosure is not provided and the Assembly Co-Chairs, CEO, Allegations Coordinator, Allegations Response Panel or Reviewer reasonably considers that, as a result, they cannot properly discharge their functions under these rules, they may decline the Misconduct Allegation or Application. This decision must be notified in writing to the Reporting Person and any other relevant party within 10 business days of the decision being made and is not subject to internal review under these rules.
- (d) Despite any other rule, the confidentiality of the Reporting Person's identity in relation to all Misconduct Allegations will be maintained to the extent required by law, including, if applicable, the *Public Interest Disclosures Act 2012* (Vic).

9.3 Making a Misconduct Allegation

9.3.1 Where to make a Misconduct Allegation

- (a) A Misconduct Allegation about a Gellung Warl Member must be made to the Assembly Co-Chairs, the CEO or the Allegations Receiver.
- (b) A Misconduct Allegation about a Gellung Warl Member who is an Assembly Co-Chair must be made to the CEO or the Allegations Receiver.
- (c) A person who receives a Misconduct Allegation must notify the CEO of the allegation as soon as practicable after receiving it.

9.3.2 How to make a Misconduct Allegation

- (a) A Misconduct Allegation must be made within twelve months of the alleged conduct that gave rise to the Misconduct Allegation having occurred, subject to [rule 9.3.2\(b\)\(iv\)](#).
- (b) A Misconduct Allegation must be made in writing and must identify:
 - (i) the Reporting Person;
 - (ii) the person or persons against whom the allegation is made;
 - (iii) the basis for the allegation, including the alleged conduct giving rise to the allegation; and

- (iv) if outside the timeframe in [rule 9.3.2\(a\)](#), reasons why the making of the allegation was delayed.

9.4 Declining a Misconduct Allegation

- (a) A Misconduct Allegation, or purported Misconduct Allegation, may be declined by the Assembly Co-Chairs, the CEO, the Allegations Coordinator or the Allegations Response Panel to whom it is referred if they are reasonably satisfied, that:
 - (i) the allegation is frivolous, vexatious or lacking in substance;
 - (ii) the allegation is not a Misconduct Allegation as defined in [rule 8.1](#);
 - (iii) the allegation was made outside the timeframe in [rule 9.3.2\(a\)](#) and no circumstances justify accepting it;
 - (iv) the allegation fails to comply with [rule 9.3.2\(b\)](#) and the Reporting Person has not remedied the non-compliance after being given a reasonable opportunity to do so;
 - (v) the Reporting Person does not respond to reasonable requests for information or otherwise fails to engage with the Misconduct Allegation process; or
 - (vi) the allegation concerns a possible criminal offence, in which case the allegation may be declined and the Reporting Person referred to the police, however the person making the decision must first consider if postponement under [rule 9.6](#) is more appropriate than declining the allegation in the circumstances.
- (b) A decision to decline a Misconduct Allegation must be notified in writing to the Reporting Person by the person making that decision within 10 business days.
- (c) A decision-maker who declines a Misconduct Allegation under this rule may take steps to refer the Reporting Person to an alternative body that they consider more appropriate for dealing with the allegation.
- (d) If the decision-maker declines an allegation and refers the Reporting Person to an alternative body under [rule 9.4\(a\)\(vi\)](#) or (c), and considers that grounds for suspension or removal of the Member under the Gellung Warl Membership Rules may exist, the decision-maker must notify the Membership Oversight Committee of the Misconduct Allegation, the decision to decline it and the referral so that the Committee may consider whether to take action.
- (e) A decision to decline a Misconduct Allegation under this rule is final and no further action will be taken in relation to the Misconduct Allegation under these rules, unless that decision is internally reviewed in accordance with [rule 9.11](#).

9.5 Withdrawing a Misconduct Allegation

- (a) A Reporting Person may withdraw a Misconduct Allegation at any time by writing to the person to whom they made the allegation.
- (b) If a Reporting Person withdraws their Misconduct Allegation, the Assembly Co-Chairs, the CEO, the Allegations Coordinator or the Allegations Response Panel (as relevant) will in their



discretion determine whether any further action will be taken in relation to that Misconduct Allegation.

- (c) If a Misconduct Allegation is withdrawn at any time while Treaty Authority assistance is being provided under [rule 10.2](#), the Allegations Coordinator must notify the Treaty Authority that the Misconduct Allegation has been withdrawn.

9.6 Postponing a Misconduct Allegation

- (a) If the subject matter of the Misconduct Allegation, in whole or in part, is or becomes the subject of any proceeding, investigation, inquiry or complaint conducted by or before any other person, entity or body, including an integrity agency or law enforcement agency, the CEO, Allegations Coordinator or Allegations Response Panel (whichever relevant) may postpone the steps set out in these rules for dealing with a Misconduct Allegation for as long as they consider necessary, including until such time as the final outcome of the relevant proceeding, investigation, inquiry or complaint is known.
- (b) If the Allegations Coordinator makes a request for Treaty Authority assistance under [rule 10.1](#), the Allegations Coordinator:
 - (i) must postpone the steps set out in these rules for dealing with a Misconduct Allegation until the Treaty Authority returns the Misconduct Allegation to Gellung Warl under [rule 10.2](#); and
 - (ii) may make such reasonable variations to a timeframe prescribed by these rules as are necessary, having regard to steps taken or to be taken by the Treaty Authority.
- (c) If the Allegations Coordinator or the Allegations Response Panel postpones the steps set out in these rules under [rules 9.6\(a\)](#) or [9.6\(b\)](#), the Allegations Coordinator or the Allegations Response Panel (whichever relevant) must notify the parties to the Misconduct Allegation.
- (d) If the Allegations Coordinator or Allegations Response Panel postpones a Misconduct Allegation under this rule and considers that grounds for suspension or removal of the Member under the Gellung Warl Membership Rules may exist, they must notify the Membership Oversight Committee of the Misconduct Allegation and the decision to postpone so that the Committee may consider whether to take action.
- (e) Where a Misconduct Allegation is postponed under this rule, the Allegations Coordinator or Allegations Response Panel may subsequently decline the Misconduct Allegation if they consider that the matter has already been sufficiently dealt with by the other process or proceeding.
- (f) A postponement under this rule does not affect the right of a Reporting Person to withdraw a Misconduct Allegation under [rule 9.5](#).
- (g) [Rule 9.4\(b\)-\(e\)](#) applies, with any necessary modifications, to a decision to decline a Misconduct Allegation under [rule 9.6\(e\)](#).



9.7 Who handles a Misconduct Allegation?

- (a) A Misconduct Allegation that has not been resolved through informal resolution under [rule 9.8.1](#) must be dealt with by the Allegations Coordinator in the first instance.
- (b) To the extent the Allegations Coordinator is:
 - (i) subject, either directly or indirectly, to the Misconduct Allegation; or
 - (ii) has a conflict of interest in relation to the Misconduct Allegation under the Conflicts of Interest Policy (Gellung Warl CEO and staff);the CEO must appoint a person to act as the acting Allegations Coordinator in respect of that Misconduct Allegation who is not captured by [rule 9.7\(b\)\(i\)](#) or [\(ii\)](#).

9.8 Process for dealing with a Misconduct Allegation

- (a) The following process applies to dealing with a Misconduct Allegation.

9.8.1 Informal Resolution

- (a) Wherever possible and appropriate, Misconduct Allegations should be resolved informally, through direct discussion, group meetings, training, or other support services to address the conduct in question.
- (b) The person who receives the Misconduct Allegation will facilitate this informal resolution.

Note: *The person who receives a Misconduct Allegation may authorise another person to facilitate the informal resolution on their behalf.*
- (c) Matters may be inappropriate for informal resolution because they are sensitive, because it would be culturally inappropriate to resolve it informally or because the conduct complained of is serious, including unlawful or unsafe behaviour that requires Gellung Warl to respond formally.
- (d) If the CEO, Allegations Receiver or Assembly Co-Chairs (whichever relevant) considers that a Misconduct Allegation cannot or should not be resolved by informal means, including where efforts to resolve the Misconduct Allegation by informal means have failed, the CEO, Allegations Receiver or Assembly Co-Chairs (whichever is relevant) will refer the Misconduct Allegation to the Allegations Coordinator to facilitate the process under this rule.
- (e) The CEO may appoint a Gellung Warl staff member as the Allegations Coordinator.

9.8.2 Notification of referral

- (a) If a Misconduct Allegation is referred to the Allegations Coordinator, the Allegations Coordinator must notify the parties to the Misconduct Allegation in writing of:
 - (i) the fact that the Misconduct Allegation has been referred to the Allegations Coordinator;
 - (ii) the name and contact details of the Allegations Coordinator; and



- (iii) the option to initiate a request for Treaty Authority assistance under [rule 10.1](#).

9.8.3 Information from Reporting Person

- (a) The Reporting Person may submit relevant information in writing to the Allegations Coordinator, including:
 - (i) information supporting the allegation;
 - (ii) the Reporting Person's preferred steps towards an outcome; and
 - (iii) the outcome sought by the Reporting Person.
- (b) The Allegations Coordinator may at any time request relevant information from the Reporting Person.

9.8.4 Allegations Coordinator Review and Action

- (a) Within a reasonable time of receiving a Misconduct Allegation that meets the requirements of [rule 9.3.2](#) and any further relevant information to enable the Allegations Coordinator to progress the allegation under [rule 9.8.3](#), the Allegations Coordinator will endeavour to take steps to address the Misconduct Allegation.
- (b) The Allegations Coordinator may take actions including (but not limited to) any one or more of the following:
 - (i) request information from any relevant persons;
 - (ii) discuss the Misconduct Allegation and potential resolutions with any relevant persons;
 - (iii) arrange Facilitated Discussions or Yarning Circles;
 - (iv) arrange mediation or conciliation;
 - (v) seek and obtain cultural, legal, or expert advice concerning the Misconduct Allegation including from the Elders' Group;
 - (vi) determine that no further action is to be taken and the allegation is finalised;
 - (vii) request the Membership Oversight Committee to establish an Allegations Response Panel and refer the Misconduct Allegation to that Allegations Response Panel;
 - (viii) make a request for Treaty Authority assistance in accordance with [rule 10.1](#); or
 - (ix) take any other step the Allegations Coordinator considers appropriate in the circumstances.
- (c) If a Misconduct Allegation is returned from the Treaty Authority under [rule 10.2](#), the Allegations Coordinator will endeavour to take steps to address the Misconduct Allegation and may take into account the steps that have already been undertaken by the Treaty Authority.



9.8.5 Allegations Response Panel

Appointment

- (a) The Membership Oversight Committee must appoint an Allegations Response Panel as soon as practicable following notification of a referral from the Allegations Coordinator under [rule 9.8.4\(b\)\(vii\)](#), which must consist of:
 - (i) two persons who in the Membership Oversight Committee's opinion are independent of the Misconduct Allegation, and
 - (ii) an Australian legal practitioner with expertise in dispute resolution.
- (b) The Allegations Response Panel must not include a person who is a Treaty Authority Member or a Treaty Authority staff member.
- (c) Where a person who is a member of the Allegations Response Panel has a conflict of interest, the Membership Oversight Committee must substitute that person with an equivalent office holder or Australian legal practitioner who does not have a conflict of interest.

Notification

- (d) If the Allegations Coordinator makes a referral under [rule 9.8.4\(b\)\(vii\)](#), they must:
 - (i) notify the CEO and the Membership Oversight Committee that the Misconduct Allegation has been referred to an Allegations Response Panel for determination and include:
 - A. the name of the person against whom the Misconduct Allegation has been made;
 - B. whether the Misconduct Allegation is an allegation of Misconduct or an allegation of Serious Misconduct or both;
 - C. the date on which the Misconduct Allegation was made;
 - D. the date on which the referral to the Allegations Response Panel was made; and
 - E. that no determination has been made substantiating the Misconduct Allegation; and
 - (ii) provide to the Allegations Response Panel all relevant information provided to, or obtained by, the Allegations Coordinator in relation to the Misconduct Allegation.

What the Allegations Response Panel must do

- (e) The Allegations Response Panel must conduct a review of the Misconduct Allegation by considering all relevant information available to it.

Procedural fairness

- (f) The Allegations Response Panel must provide procedural fairness to any person against whom the Misconduct Allegation is made and who may be the subject of a determination, but only to the extent that it is reasonably practicable, lawful and safe to do so, including by:
 - (i) notifying them in writing that a Misconduct Allegation has been made, the grounds on which the Misconduct Allegation has been made, and of at least the substance of any

- information provided to the Allegations Response Panel by any person that the Allegations Response Panel considers relevant to the Misconduct Allegation;
- (ii) notifying them in writing of any potential determination and recommendations, if any, and the estimated timeframe in which they will be made; and
- (iii) inviting them to provide written submissions or information in response to **rule 9.8.5(f)(i) and (ii)** within 30 days of any such notification.
- (g) If a person provides written submissions or information to an Allegations Response Panel within the timeframe in **rule 9.8.5(f)(iii)**, the Allegations Response Panel must take that written response or oral response into account before making a determination.
- (h) If the Allegations Response Panel is satisfied, having regard to the nature and complexity of the Misconduct Allegation, that the matter is extremely serious or might otherwise bring Gellung Warl into disrepute, it may decide to impose a shorter period of time than as required by **rule 9.8.5(f)(iii)**. Any such shorter period must be notified to the person against whom the Misconduct Allegation is made in writing.

Seeking information

- (i) The Allegations Response Panel may seek any information from any Gellung Warl Member, the CEO or a Gellung Warl staff member, or any other persons, it considers relevant to the Misconduct Allegation.
- (j) To avoid doubt, the Allegations Response Panel does not:
 - (i) have the power to compel any person to provide any information to it, and no person or entity is obliged to comply with any such request unless these rules specify otherwise; and
 - (ii) if there is a request made to a person to provide information, while the Allegations Response Panel may request the person to keep the matter confidential, it does not have the power to impose any confidentiality requirements on any person.

Legal representation

- (k) Any person subject to the processes of an Allegations Response Panel may be represented by an Australian legal practitioner or other support person, at their own cost, in their dealings with the Allegations Response Panel.

Determination

- (l) Where a Misconduct Allegation is referred to an Allegations Response Panel, the Panel must, as soon as practicable within three months of receiving that referral (unless it determines to postpone dealing with the Misconduct Allegation under **rule 9.6**):
 - (i) determine that the Misconduct Allegation is not substantiated;
 - (ii) determine that the Misconduct Allegation is substantiated and on that basis make a finding of Misconduct or Serious Misconduct; or
 - (iii) make any other such determination as the Allegations Response Panel considers appropriate in the circumstances.

- (m) When an Allegations Response Panel makes a determination, it may also make any recommendations it thinks fit, including to:
 - (i) the CEO;
 - (ii) the Assembly Co-Chairs;
 - (iii) the Membership Oversight Committee; or
 - (iv) the Assembly.
- (n) Without limiting the scope of recommendations that the Allegations Response Panel may make, they may include a recommendation about what steps should be taken with respect to the Gellung Warl Member's position or office.

Notification of determination and recommendations

- (o) The Allegations Response Panel must notify each of the following persons in writing of their determination and any recommendations as soon as practicable after the determination is made:
 - (i) the Reporting Person;
 - (ii) the person against whom the Misconduct Allegation was made;
 - (iii) the Allegations Coordinator who referred the Misconduct Allegation to the Panel;
 - (iv) the Assembly Co-Chairs;
 - (v) the CEO;
 - (vi) the Membership Oversight Committee;
 - (vii) any person to whom a recommendation is made; and
 - (viii) if the Misconduct Allegation was made against an Assembly Co-Chair, all Assembly Members.

9.9 Costs

- (a) Gellung Warl will not seek to recover costs from any relevant persons to a Misconduct Allegation nor charge for the time of its staff or Members involved in any steps taken under these rules.
- (b) All relevant persons to a Misconduct Allegation must bear their own costs in respect of any steps taken under these rules including in relation to travel to and from and attendance at any venues in relation to the steps taken under these rules and similar expenses, unless the CEO, on the recommendation of the Allegations Coordinator or the Allegations Response Panel, determines that one or more persons' costs will be reimbursed by Gellung Warl.
- (c) The CEO, on the recommendation of the Allegations Coordinator or the Allegations Response Panel, may determine that one or more persons' costs will be reimbursed by Gellung Warl, having regard to whether the Misconduct Allegation is substantiated or in cases of extreme hardship.



9.10 Outcomes

- (a) The Gellung Warl Membership Rules provide, among other matters, for:
 - (i) suspension procedures that apply where there is a Misconduct Allegation;
 - (ii) suspension and removal procedures that apply where a finding of Misconduct or Serious Misconduct has been made under these rules in respect of a Gellung Warl Member.

9.11 Internal review

9.11.1 Who may seek internal review

- (a) A Reporting Person who made a Misconduct Allegation in respect of which a Decision has been made, or a Gellung Warl Member the subject of a Decision, may seek an internal review of that Decision by making an Application in accordance with [rule 9.11.2](#).

9.11.2 Applying for an internal review

How to make an Application

- (a) An Application must be made to the CEO within 30 days of the Appellant being notified of the Decision in writing under these rules.
- (b) The CEO may accept an Application made more than 30 days after the Appellant was notified of the Decision, if the CEO is satisfied that
 - (i) there is a good reason for the delay having regard to such matters such as:
 - A. the length of the delay and the reasons for it;
 - B. whether the Appellant took reasonable steps to comply within time;
 - C. any relevant illness, absence or other circumstance beyond the Appellant's control;
 - D. any prejudice to the respondent or other affected persons that would result from an extension of time; and
 - (ii) it is otherwise fair and reasonable in the circumstances to accept the Application out of time.
- (c) An Application must be submitted in writing to the CEO and must include:
 - (i) a copy of the Decision in respect of which the Application is made;
 - (ii) a clear statement of the basis for seeking an internal review;
 - (iii) any supporting information the Appellant wishes be taken into account in any internal review of the Decision;
 - (iv) the preferred steps toward an outcome sought by the Appellant; and
 - (v) the outcome sought by the Appellant.



Withdrawing an Application

- (d) The Appellant may withdraw an Application at any time by writing to the CEO, and no further action will be taken in relation to the Application.

Effect of internal review

- (e) Any resolutions passed by the Assembly in respect of a Gellung Warl Member related to a Decision which is the subject of an Application remain in force regardless of the Application.

9.11.3 Appointing a Reviewer

- (a) Upon receiving an Application, the CEO must appoint a Reviewer, unless the CEO declines the Application under [rule 9.11.4](#).
- (b) The Reviewer may either be:
 - (i) an Australian legal practitioner with at least 10 years post qualification experience; or
 - (ii) a panel of up to three persons who are in the CEO's opinion suitably qualified to conduct a review of the Decision the subject of the Application, and which must include at least one person who meets [rule 9.11.3\(b\)\(i\)](#); and
 - (iii) in either case, must not be a Gellung Warl Member, Treaty Authority member or Treaty Authority staff member.
- (c) In appointing a Reviewer, the CEO must:
 - (i) have regard to the gender of the persons involved in the Application and the nature of the allegation; and
 - (ii) have a First Peoples' Reviewer (including as a member of a panel), where possible.
- (d) On the appointment of a Reviewer, the CEO must provide the Reviewer with the Application and any further documents or information provided to the CEO by the Appellant in relation to the Application.

9.11.4 Declining an Application

- (a) An Application may be declined at any time by the CEO or the Reviewer (as relevant) if they are reasonably satisfied that:
 - (i) the Application is frivolous, vexatious or lacking in substance;
 - (ii) the Misconduct Allegation the subject of the Application is not within the scope of these rules as set out under [rule 8](#);
 - (iii) the Application was made outside the timeframe in [rule 9.11.2\(a\)](#) and no circumstances justify accepting it outside that timeframe;
 - (iv) the Application fails to comply with [rule 9.11.2\(c\)](#) and the Appellant has not remedied the non-compliance after being given a reasonable opportunity to do so;
 - (v) the Appellant does not respond to reasonable requests for information or otherwise fails to engage with the internal review process; or



- (vi) the Misconduct Allegation the subject of the Application concerns a possible criminal offence, in which case the Application may be declined and the matter referred to the police, however the person making the decision must first consider if postponement under [rule 9.11.5](#) is more appropriate in the circumstances.
- (b) Where an Application is declined under [rule 9.11.4\(a\)](#) that decision must be notified in writing to the Appellant by the CEO or the Reviewer within 10 business days.
- (c) Where an Application is declined under [rule 9.11.4\(a\)](#), the CEO or the Reviewer (as relevant) may take steps to refer the Appellant to an alternative body that they consider more appropriate for dealing with the allegation.
- (d) Where an Application is declined under [rule 9.11.4\(a\)](#), the decision is final, no application for internal review of that decision can be made, and no further action will be taken in relation to that Application under these rules.

9.11.5 Postponing an internal review

- (a) An internal review in relation to an Application may be postponed by the Reviewer by notice in writing to the Appellant if the subject matter of the Misconduct Allegation, in whole or in part, is or becomes the subject of any proceeding, investigation, inquiry or complaint conducted by or before any other person, entity or body, including an integrity agency or law enforcement agency.
- (b) The postponement may be for so long as is determined necessary by the Reviewer, including until such time as the final outcome of the relevant proceeding, investigation, inquiry or complaint is known.

9.11.6 Guiding principles applicable to Reviewer during internal review

- (a) In addition to the principles outlined in [rule 9.1](#), the following principles guide an internal review under these rules.
 - (i) **Skill and diligence:** The Reviewer must assess information provided to it in relation to the Application with skill and diligence.
 - (ii) **Fairness:** The Reviewer must work towards a Review Decision that is fair, reasonable and proportionate.
 - (iii) **Timeliness:** The Reviewer must work in a timely way, avoiding both unnecessary delays and inappropriate haste.
 - (iv) **Care:** The Reviewer must work with an ethos of care for all involved.
 - (v) **Transparency:** The Reviewer must seek to ensure transparency of standards, processes, timeframes and consequences.

9.11.7 The Reviewer's powers and obligations during internal review

- (a) The Reviewer may request from the CEO, Assembly Co-Chairs, Allegations Receiver, Allegations Coordinator or Allegations Response Panel that made the Decision the subject of the Application, any material or information that they considered in reaching the Decision.

- (b) On receiving a request under **rule 9.11.7(a)**, the CEO, Assembly Co-Chairs, Allegations Receiver, Allegations Coordinator or Allegations Response Panel who receives that request must as soon as practicable provide the material or information requested, unless they are prohibited from doing so by law.
- (c) The Reviewer may request that the CEO provide the Reviewer any information relevant to the Application, which may include, among other things:
 - (i) any information relevant to the Misconduct Allegation the subject of the Application; and
 - (ii) details of any process conducted under these rules;
- (d) On receiving a request under **rule 9.11.7(c)**, the CEO must as soon as practicable provide the material or information requested, unless they are prohibited from doing so by law.
- (e) The Reviewer may request any information from any person the Reviewer considers is relevant to the Application, including from:
 - (i) the Appellant;
 - (ii) the Reporting Person (if they are not the Appellant);
 - (iii) the person who provided the information to the Reviewer;
 - (iv) Gellung Warl;
 - (v) any Gellung Warl Member, the CEO or a Gellung Warl staff member;
 - (vi) any other person identified in the information provided to the Reviewer under this rule.
- (f) To avoid doubt, the Reviewer:
 - (i) does not have the power to compel any person to provide any information to it, and no person or entity is obliged to comply with any such request unless these rules specify otherwise; and
 - (ii) if there is a request made to a person to provide information, may request the person to keep the matter confidential, although the Reviewer does not have the power to impose any confidentiality requirements on any person beyond the requirements imposed by these rules.

9.11.8 Confidentiality of the Application and information, documents or materials provided

- (a) Subject to **rule 9.2** and unless required by law, by these rules, or to respond to a significant health and safety risk, the Reviewer must not disclose to any other person other than:
 - (i) the CEO;
 - (ii) the Allegations Coordinator;
 - (iii) the Allegations Response Panel that made the Decision the subject of the Review;
 - (iv) the Reporting Person (if they are not the Appellant);
 - (v) the person against whom the Misconduct Allegation the subject of the Application was made (if they are not the Appellant);



- (vi) any person or entity to whom the Reviewer makes a request for any information, document or material under these rules; and
- (vii) any Gellung Warl Member, CEO or Gellung Warl staff member who is or may be the subject of information, documents or materials provided to the Reviewer under these rules;

that it has received any information, documents or materials under these rules in relation to an Application or that the internal review relevant to the Application is taking place, until such time as the Reviewer has made a Review Decision or recommendation under these rules.

- (b) **Rule 9.11.8(a)** does not prevent the Reviewer from notifying the Membership Oversight Committee and Assembly Members of an internal review referred to the Reviewer, where that internal review is relevant to the possible suspension of a Gellung Warl Member under the Gellung Warl Membership Rules.

9.11.9 The internal review process

Matters the Reviewer may take into account

- (a) In conducting an internal review under these rules, the Reviewer will take into account any matter it considers relevant, including:
 - (i) the source of information relevant to the Application, including whether that information has been provided anonymously or by an identifiable person;
 - (ii) any assessment, investigations, review, findings and reports relating to the information, including:
 - A. for information provided to the Reviewer by or on behalf of the CEO, any assessments, investigations and reviews undertaken by Gellung Warl and their outcome; and
 - B. for information provided by or derived from a source other than Gellung Warl, the extent to which the information has been independently investigated, assessed or otherwise substantiated by a person or body with relevant expertise;
 - (iii) the nature of any allegations made against a Gellung Warl Member which form part of the information provided to the Reviewer; and
 - (iv) how the internal review process respects Aboriginal Lore and Law and relevant cultural considerations.

Procedural fairness

- (b) In conducting an internal review under these rules, the Reviewer must provide procedural fairness to any person against whom the Misconduct Allegation relevant to the Application was made and who may be the subject of a Review Decision, but only to the extent that it is reasonably practicable, lawful and safe to do so, including by:
 - (i) notifying them in writing that the Application has been made, the grounds on which the Application has been made, and of at least the substance of any information provided to the Reviewer by any person that the Reviewer considers relevant to the Application;



- (ii) notifying them in writing of any potential Review Decision or recommendation and the estimated timeframe in which that Review Decision or recommendation will be made; and
 - (iii) inviting them to provide written submissions or information in response to [rule 9.11.9\(b\)\(i\)](#) and (ii) within 30 days of any such notification.
- (c) In conducting an internal review under these rules, where the Appellant is the person against whom the Misconduct Allegation the subject of the Application was made, the Reviewer must provide procedural fairness to the Reporting Person, but only to the extent that it is reasonably practicable, lawful and safe to do so, including by:
 - (i) notifying them in writing that the Application has been made, the grounds on which the Application has been made, and of at least the substance of the information provided to the Reviewer relevant to the Application;
 - (ii) notifying them in writing of any potential Review Decision or recommendation and the estimated timeframe in which that Review Decision or recommendation will be made; and
 - (iii) inviting them to provide written submissions or information in response to [rule 9.11.9\(c\)\(i\)](#) and (ii) within 30 days of any such notification.
- (d) Any written submissions or information provided to the Reviewer within the timeframe in [rules 9.11.9\(b\)](#) and (c) must be taken into account by the Reviewer before making a Review Decision or recommendation.
- (e) If the Reviewer is satisfied, having regard to the nature and complexity of the Misconduct Allegation the subject of the Application, that the matter is extremely serious or might otherwise bring Gellung Warl or its constituent arms into disrepute, they may decide to impose a shorter period of time than as required by [rule 9.11.9\(b\)\(iii\)](#) and (c)(iii). Any such shorter period must be notified to the person against whom the Misconduct Allegation relevant to the Application was made and who may be the subject of a Review Decision in writing.

Consultation

- (f) Subject to the procedural fairness obligations under [rule 9.11.9\(b\)-\(e\)](#) in undertaking the review, the Reviewer may also consult:
 - (i) any Aboriginal person with authoritative knowledge on matters of Aboriginal Lore and Law about the Application or any information received by the Reviewer under these rules in relation to the Application, but only on a confidential basis and subject to the consent of any person who may be subject to a Review Decision;
 - (ii) any publicly available document; and
 - (iii) any Australian legal practitioner for the purpose of legal advice in relation to the internal review.

9.11.10 Review Decision and recommendations

Review Decision

- (a) As soon as practicable after having undertaken an internal review in accordance with these rules, and within three months of being provided the Application (unless it determines to postpone the internal review under [rule 9.11.5](#)), the Reviewer must either:

- (i) affirm the Decision the subject of the Application;
- (ii) vary the Decision the subject of the Application; or
- (iii) set aside the Decision the subject of the Application and make a new Decision in its place;

and where the Decision includes a finding of Misconduct or Serious Misconduct, must affirm, vary or set aside that finding as relevant to the Review Decision.

Recommendations

- (b) When a Reviewer makes a Review Decision, the Reviewer may also:
- (i) affirm any recommendation the subject of the Application;
 - (ii) vary any recommendation the subject of the Application;
 - (iii) set aside any recommendation the subject of the Application and make a new recommendation in its place; or
 - (iv) make any further recommendation it thinks fit, including to:
 - A. the CEO;
 - B. the Assembly Co-Chairs;
 - C. the Membership Oversight Committee; and
 - D. the Assembly.
- (c) Without limiting the scope of recommendations that the Reviewer may make, they include a recommendation about what steps should be taken with respect to a Gellung Warl Member's position or office.

Notification of Review Decision and any recommendations

- (d) The Reviewer must notify the following persons in writing of their Review Decision and any recommendations as soon as practicable after the Review Decision is made:
- (i) the Reporting Person;
 - (ii) the person against whom the Misconduct Allegation was made;
 - (iii) the Allegations Coordinator;
 - (iv) the Allegations Response Panel;
 - (v) the Assembly Co-Chairs;
 - (vi) the CEO;
 - (vii) the Membership Oversight Committee;



- (viii) any person to whom a recommendation is made; and
- (ix) if the Misconduct Allegation was made against an Assembly Co-Chair, all Assembly Members.

9.11.11 Costs

- (a) Gellung Warl will not seek to recover costs from any relevant persons to an Application nor charge for the time of its staff or Members involved in any steps taken under these rules.
- (b) All relevant persons to an Application must bear their own costs in respect of any steps taken under these rules in respect of the Application including in relation to travel to and from and attendance at any venues in relation to the steps taken under these rules and similar expenses, unless the CEO, on the recommendation of the Reviewer, determines that one or more persons' costs will be reimbursed by Gellung Warl.
- (c) The CEO, on the recommendation of the Reviewer, may determine that one or more persons' costs of the Application and of any previous Misconduct Allegation process under these rules relevant to the Application will be reimbursed by Gellung Warl, having regard to whether the Misconduct Allegation the subject of the Application is substantiated or in cases of extreme hardship.

9.12 Procedures

- (a) The Assembly may, develop procedures to support the operation of these rules, in consultation with the Treaty Authority where relevant.

9.13 Effect of Member term ending

- (a) If a Gellung Warl Member's term ends after a Misconduct Allegation has been made against them but before it has been resolved or a decision has been made under these rules:
 - (i) if they are re-elected or re-appointed the steps set out in these rules for dealing with a Misconduct Allegation continue as if the term had not ended; and
 - (ii) if they are not re-elected or re-appointed the Misconduct Allegation ceases because the person is no longer a Member.



10 Requests for Treaty Authority assistance

Outline

Rule 10 sets out rules for requesting Treaty Authority assistance in dealing with a Misconduct Allegation.

10.1 Request for Treaty Authority assistance

- (a) At any time while a Misconduct Allegation is being handled by the Allegations Coordinator, a party may request the Allegations Coordinator to make a request to the Treaty Authority to facilitate the resolution of or otherwise assist in dealing with a Misconduct Allegation by giving advice, providing mediation or dispute resolution, or doing any other thing to assist in dealing with a Misconduct Allegation.
- (b) Where the Allegations Coordinator receives a request from a party under [rule 10.1\(a\)](#), the Allegations Coordinator:
 - (i) must seek the consent of all other parties to the Misconduct Allegation to the making of a request to the Treaty Authority; and
 - (ii) must, where all parties have given consent to the making of a request to the Treaty Authority:
 - A. make a request to the Treaty Authority to assist in dealing with the Misconduct Allegation; and
 - B. seek the consent of all parties to the Misconduct Allegation to provide their personal or sensitive information and any information provided in confidence, to the Treaty Authority for the purpose of facilitating the resolution of, or otherwise assisting in dealing with, the Misconduct Allegation. If a party consents, then this information may be provided to the Treaty Authority for this purpose.
- (c) A request for the Treaty Authority to assist in dealing with a Misconduct Allegation under [rule 10.1\(b\)](#) should include:
 - (i) the name and contact details of all parties to the Misconduct Allegation, where disclosable;
 - (ii) the basis for the Misconduct Allegation;
 - (iii) the dates of the alleged conduct, the date the Misconduct Allegation was made, and a summary of steps taken up to the date of the request;
 - (iv) each party's consent that has been received to the request for Treaty Authority assistance;
 - (v) each party's consent that has been received in relation to the sharing of their information with the Treaty Authority;



- (vi) whether the subject matter is, in whole or in part, before another complaints body, integrity body or law enforcement agency;
 - (vii) the form of Treaty Authority assistance sought, having regard to the forms of support available under any policy or procedures made by the Treaty Authority under this rule; and
 - (viii) a summary of any requests a party has made in relation to being contacted or providing information
- (d) If the Allegations Coordinator makes a request for assistance in accordance with this rule, they must notify the parties of the request and that the steps in these rules for dealing with the Misconduct Allegation have been postponed under [rule 9.6\(b\)](#).

10.2 Treaty Authority assistance

- (a) The Treaty Authority may, at its discretion, accept or decline a request for assistance.
- (b) Without limitation the Treaty Authority may consider the information in a request for assistance when deciding whether to accept or decline a request for assistance.
- (c) If the Treaty Authority accepts a request for Treaty Authority assistance, it should provide the assistance as efficiently as possible and in a timely manner.
- (d) If the Treaty Authority declines a request for assistance or closes its assistance role, it must:
 - (i) notify the parties and the Allegations Coordinator; and
 - (ii) return the Misconduct Allegation to Gellung Warl.
- (e) If at any time during the Treaty Authority's assistance, the Treaty Authority considers that all or part of a matter should be referred to another person, entity or body, including an integrity agency or law enforcement agency, the Treaty Authority may:
 - (i) make a referral and keep the Treaty Authority's assistance role open; or
 - (ii) notify the CEO of the Treaty Authority's opinion as to what referral should be made and keep the Treaty Authority's assistance role open; or
 - (iii) close its assistance role and return the Misconduct Allegation to the CEO and the Allegations Coordinator with the Treaty Authority's opinion as to what referral should be made.
- (f) If the Treaty Authority makes a referral under [rule 10.2\(e\)\(i\)](#):
 - (i) The Treaty Authority must notify the CEO and Allegations Coordinator of the referral and the reasons for the referral; and
 - (ii) The steps set out in these rules for dealing with a misconduct allegation remain postponed under [rule 9.6\(b\)](#).
- (g) The Treaty Authority may, in consultation with the Assembly, develop procedures for the making and granting of requests under this [rule 10](#).



11 Requests for Treaty Authority advice

Outline

Rule 11 sets out rules for the Allegations Coordinator to request Treaty Authority advice in relation to dealing with a Misconduct Allegation.

- (a) At any time while a Misconduct Allegation is being handled by the Allegations Coordinator, the Allegations Coordinator may request that the Treaty Authority gives advice in relation to dealing with a Misconduct Allegation.
- (b) The Treaty Authority may, at its discretion, accept or decline a request under [rule 11\(a\)](#).
- (c) To avoid doubt:
 - (i) the Allegations Coordinator must not share confidential information without consent;
 - (ii) a request for advice is not a request for assistance under [rule 10](#), and all requests for Treaty Authority assistance must be made under [rule 10](#); and
 - (iii) this [rule 11](#) does not create procedural rights for a party to a Misconduct Allegation.
- (d) The Treaty Authority may, in consultation with the Assembly, develop procedures for the making and granting of requests under this [rule 11](#).

12 Validity of Acts

An act done by a person under or in connection with these rules is taken to have been done in accordance with these rules even if there was a vacancy in the role or office, or it is later discovered the appointment of that person to the role or office was defective or had ceased.

Nurturing the Fire Stick

13 Information Walking with these Rules

At the time these rules were made, the following rules and other documents are relevant to their operation. Other rules and other documents may be made from time to time that are also relevant to their operation.

13.1 Internal rules

- (a) Assembly Internal Governance Rules

- (b) Gellung Warl Membership Rules

13.2 Other instruments

- (a) Gellung Warl Member Standards of Conduct
- (b) Australian Mediator and Dispute Resolution Accreditation Standards

14 Amendments

Version	Date Approved	Approved By	Review Date