



**TJIWARL**  
ABORIGINAL CORPORATION (RNTBC)

# The Rule Book

# Tjiwarl (Aboriginal Corporation) RNTBC

## ICN 8628

This rule book complies with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act)

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## **PREAMBLE**

### *About the Tjiwarl (Aboriginal Corporation) RNTBC*

- Tjiwarl (Aboriginal Corporation) RNTBC is established to hold in trust native title rights and interests determined to exist in the Determination Area, and to protect those rights and interests.
- The Common Law Holders intend to use Tjiwarl (Aboriginal Corporation) RNTBC to maintain Traditional Law and Custom in the Determination Area and to look after land, law and culture for current and future generations.
- The law for the country will always be there, it will never change. It binds the Common Law Holders and keeps them together. The Tjiwarl (Aboriginal Corporation) RNTBC will be guided by the aspirations that the Common Law Holders have for their land, law and culture.

### *About the native title holders*

- The old people for the Determination Area owned the land and they were called the Ngaiawonga people – but they had other names for themselves. Burnadjarra, Tjupan, Koara and Ngalia are some of the names we use today.
- That tribe has always been there; they spoke the right language for their tribe and maintained their connection to the country. They were the people for the Determination Area and the law came from them, they laid it down and passed it on to their children and grandchildren and on to us through our connection to the old people. What was there has to still carry today.
- Many of those old people passed away from disease and violence when European people came to the Determination Area. The people were all mixed up with other groups from the desert but the old people welcomed them in and our people and our culture survived those dark times. People came to the Determination Area from the desert; from Darlot, Wongawol, Wiluna and beyond. They came to practice the law, the Tjukurrpa and they were here for law and ceremony.
- We inherited the laws and customs; traditions and practices from those old people and we share this now as Common Law Holders because of native title.
- We all respect and acknowledge the old people and the inheritance that they left for us through our ancestors to carry that law and ceremony. We respect each other as families and we come together in this Corporation as Aboriginal people for land rights, to claim our inheritance.

## **1. NAME**

The name of the Corporation is Tjiwarl (Aboriginal Corporation) RNTBC.

## **2. INTERPRETATION**

See Schedule 1 – ‘Dictionary and Interpretation’ for the meanings of terms and phrases used in this Rule Book.

## **3. OBJECTIVES**

The objectives of the Corporation are to:

- hold the Native Title in trust for the Common Law Holders;
- be the Registered Native Title Body Corporate in relation to the Determination Area for the purposes of sections 56 and 57 of the NTA;
- perform the functions of a Registered Native Title Body Corporate that holds Native Title Rights and Interests in trust for the Common Law Holders;
- maintain, protect, preserve, promote and support land, law and culture as practiced and observed in accordance with the Traditional Law and Custom;
- identify and support any Common Law Holder whose Native Title Rights and Interests have been or may be Affected;
- negotiate, enter into and manage agreements in relation to native title matters on behalf of the Common Law Holders;
- relieve the poverty, misfortune, disadvantage and suffering of the Common Law Holders;
- advance the cultural, social, political, economic and legal interests of the Common Law Holders, including by assisting them to establish legal entities to achieve these objects;
- take advantage of investment and commercial opportunities that arise or relate to the Common Law Holders and to use those opportunities to generate assets and funds for charitable purposes and employment opportunities for the Common Law Holders;
- provide environmental, social, economic and cultural benefits to Aboriginal people and in particular the Common Law Holders;
- support and provide education, training and employment for Aboriginal people, and in particular the Common Law Holders;
- on behalf of the Common Law Holders, invest and spend money received from the Commonwealth, the State of Western Australia and from other sources;

- hold title to any Vested Land;
- help build trust and friendship between the Common Law Holders Aboriginal and non-Aboriginal people; and
- establish and manage a fund to support and develop any of these objectives.

***Not-for-profit***

- The assets and income of the Corporation shall be applied solely in furtherance of the above-mentioned objects and no portion shall be distributed directly or indirectly to the Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Corporation.

## **4. POWERS AND FUNCTIONS OF THE CORPORATION**

- (a) The Corporation shall, subject to this Rule Book, have the power to do all such lawful things as seen by the Directors as necessary or desirable for the purpose of achieving the Objects of the Corporation.
- (b) Without limiting Rule 4(a), in order to perform its functions, the Corporation may, on behalf of the Common Law Holders and in accordance with these Rules:
- i) consult other persons or bodies;
  - ii) enter into agreements;
  - iii) exercise procedural rights under the NTA or otherwise;
  - iv) accept notices required by any law of the Commonwealth or the State of Western Australia to be given to the Common Law Holders; and
  - v) appoint and remove or suspend contractors, employees and agents and determine the powers, duties and payments of contractors, employees or agents.
- (c) The Corporation must only exercise its powers in relation to the management, use and control of the Tjiwarl Land in accordance with this Rule Book, the Regulations and the Act.

## **5. MEMBERSHIP OF THE CORPORATION**

### **5.1 *Membership on registration***

Members' names must be entered on the Register of Members.

## **5.2 *Membership by application***

A person becomes a member if:

- (a) the person applies in writing using the membership application form approved by the Corporation from time-to-time;
- (b) the person is eligible to be a Member (see Rule 5.3);
- (c) the Directors accept the application to be a Member (see Rules 5.41)(a) to 5.4(f)); and
- (d) the person's name and address is entered on the Register of Members (see Rule 5.5).

## **5.3 *Eligibility for membership***

A person is eligible to be a Member if that person:

- (a) is at least 18 years of age;
- (b) is a Common Law Holder (including through adoption in accordance with Traditional Law and Custom);
- (c) establishes to the reasonable satisfaction of the Directors that they acknowledge and observe Traditional Law and Custom;
- (d) establishes to the reasonable satisfaction of the Directors that they have visited the Tjiwarl Determination Area within the past three years prior to making an application for membership; and
- (e) confirms that he or she will abide by the Rule Book and the Code of Conduct and act in the best interests of the Corporation.

## **5.4 *Deciding membership applications***

- (a) The Directors must consider and decide applications to be a Member.
- (b) Applications must be considered and decided in the order in which the Corporation receives them.
- (c) The Directors must not accept an application to be a Member of the Corporation unless the applicant:
  - i) applies according to Rule 5.2; and
  - ii) meets all the eligibility requirements to be a Member.
- (d) The Directors may delay the acceptance or otherwise of an application to be a Member if the Directors consider they require further information from the applicant or advice from the Members or Common Law Holders as to whether the applicant meets all the eligibility requirements to be a Member.

- (e) The Directors may, on reasonable grounds, refuse to accept the application to be a Member even if the applicant has applied according to Rule 5.2 and meets all the eligibility requirements to be a Member.
- (f) Within 14 days of a decision to refuse an application to be a Member, the Directors must notify the applicant in writing, by telephone or in person of the decision and the reasons for it.

### **5.5 *Entry on the Register of Members***

- (a) If the Directors accept an application to be a Member, the applicant's name and address must be entered on the Register of Members. Subject to Rule 5.5(b), the Corporation must do so within 14 days.
- (b) If:
  - i) the applicant applies to be a Member after a notice has been given for the holding of a General meeting; and
  - ii) the General meeting has not been held when the Directors consider the application,

then the Corporation must not enter the person on the Register of Members until after the General meeting has been held.

### **5.6 *Membership fees***

The Corporation must not impose fees for membership of the Corporation.

### **5.7 *Members rights***

- (a) In addition to rights under the Act, all Members may:
  - i) attend, speak at and – subject to Traditional Law and Custom -participate in and be involved with decision-making at a General meeting;
  - ii) not be removed as a Member unless the Directors and the Corporation have complied with Rules 5.121(a) to 5.12(j) ;
  - iii) access:
    - (A) the Register of Members, under Rule 6.4(b);
    - (B) the minute books, under Rule 10(h);
    - (C) the Corporation's Rule Book, under Rule 11(b);
    - (D) certain reports prepared by or for the Directors and the Corporation, in accordance with the Act; and

- iv) have disputes with another Member, the Directors, the Corporation or Common Law Holders dealt with under the dispute resolution process in Rules 16(a) to 16(d).
- (b) In addition to the rights in Rule 5.7(a), Members may:
- i) be appointed as a Member-Director;
  - ii) with the authorisation of the Directors, inspect the Books of the Corporation; and
  - iii) put forward resolutions to be considered at a General meeting in accordance with Rules 7.31(a) to 7.3(c);
  - iv) ask the Directors to call a General meeting in accordance with Rule 7.1(b) to 7.1(d).
  - v) Members do not have the right to share in the profits of the Corporation or take part in the distribution of the Corporation's assets if it is wound up.

## **5.8 *Members' responsibilities***

Each Member must:

- (a) comply with the Act and this Rule Book;
- (b) behave in a way that does not significantly interfere with the operation of the Corporation or of the meetings of the Corporation; and
- (c) consider, be guided by and, where possible, comply with Traditional Law and Custom.

## **5.9 *Liability of Members***

The Members are not liable to contribute to the property of the Corporation on winding up.

Members and former Members are not liable to contribute towards the payment of the debts and liabilities of the Corporation.

## **5.10 *How a person stops being a Member***

- (a) A person will stop being a Member if the person:
  - i) resigns as a Member (see Rule 5.11);
  - ii) dies; or
  - iii) has their membership cancelled (see Rule 5.12); and has their name removed from the Register of Members.



- (b) The Member ceases to be a member when the member's name is removed from the Register of Members as a current member of the Corporation.

### **5.11 *Resignation of Members***

A Member may resign by giving notice to the Corporation in writing.

Within 14 days after receiving the notice, the Corporation must remove the Member's name from the Register of Members.

### **5.12 *Membership may be cancelled***

- (a) A membership may be cancelled if a Member:
  - i) is not eligible to be a Member (see Rules 5.3 and 5.12(b) to 5.12(e));
  - ii) is un-contactable (see Rules 5.12(f) to 5.12(g)); or
  - iii) has misbehaved (see Rules 5.12(h) to 5.12(i)).

#### **If the Member is ineligible**

- (b) The Directors may by resolution cancel a membership if the Member does not meet the eligibility requirements in Rule 5.3. Before cancelling the membership, the Directors must give the Member notice in writing stating that the:
  - i) Directors intend to cancel the membership for the reasons specified in the notice; and
  - ii) Member has 30 days to object in writing, by telephone or in person to the cancellation of the membership.
- (c) If the Member does not object, the Directors must cancel the membership.
- (d) If the Member does object:
  - i) the Directors must not cancel the membership; and
  - ii) the Directors may refer the matter of whether the membership should be cancelled to a General meeting.
- (e) If a membership is cancelled, the Directors must provide the Member with a copy of the resolution (being either the resolution of the Directors or the resolution of the General meeting) as soon as practicable after the resolution has been passed.

#### **If the Member is un-contactable**

- (f) A membership may be cancelled by Special Resolution at a General meeting if the Corporation:

- i) has not been able to contact the Member at their address as entered on the Register of Members for a continuous period of two years before the General meeting; and
  - ii) has made two or more reasonable attempts to contact the Member in another way during that two-year period but has been unable to.
- (g) If the Corporation cancels the membership, the Directors must send the Member a copy of the resolution at their last known address as soon as practicable after the resolution has been passed.

**If the Member misbehaves**

- (h) A membership may be cancelled by Special Resolution in a General Meeting, if the General meeting is satisfied that the Member has behaved in a way that significantly interfered with the operation of the Corporation or of Corporation meetings.
- (i) If the Corporation cancels the membership, the Directors must send the Member a copy of the resolution at their last known address, as soon as practicable after the resolution has been passed.

**Amending Register of Members after a membership is cancelled**

- (j) Within 14 days of a membership being cancelled, the Corporation must remove the Member's name from the Register of Members.

## **6. REGISTERS OF MEMBERS AND FORMER MEMBERS**

### **6.1 *Register of Members***

The Corporation must set up and maintain a register of members.

The Register of Members must contain:

- (a) the Member's given and family name;
- (b) the Member's address;
- (c) the date on which the entry of the Member's name in the Register of Members was made.

The Register of Members may also contain any other name by which the Member is or was known, such as their Aboriginal name.

If the Corporation is informed by a Member of any corrections that need to be made to the Member's entry – including at the AGM – the Corporation must update the Register of Members within 14 days of that advice.

## **6.2 Register of Former Members**

The Corporation must set up and maintain a register of former members.

The Register of Former Members must contain the following information about each individual who stopped being a Member of the Corporation within the last seven years:

- (a) the Member's given and family name;
- (b) the Member's address when they ceased to be a Member;
- (c) the date on which the entry of the Member's name in the Register of Members was made;
- (d) the date on which the individual stopped being a Member; and
- (e) whether the Member stopped being a Member due to Rule 5.10(a)i), 5.10(a)ii) or 5.10(a)iii).

The Register of Former Members may also contain any other name by which the Member is or was known, such as their Aboriginal name.

The Corporation may maintain the Register of Former Members in one document with the Register of Members.

## **6.3 Location of Registers**

The Corporation must keep the Registers at its:

- (a) registered office, if it is registered as a large corporation; or
- (b) document access address, if it is registered as a small or medium corporation.

The Registers must be open for inspection by any person.

## **6.4 Inspection and copies of Registers**

Any person has a right to inspect the Registers.

- (a) If the Registers are:
  - i) not kept on a computer, the corporation must allow the person to inspect the actual Registers;
  - ii) kept on a computer, the corporation must allow the person to inspect a hard copy of the Registers, unless the person and the Corporation agree that the person may access the Registers by computer.
- (b) A Member or Former Member may inspect the Registers without charge.

- (c) A person who is not a Member or a former Member may inspect the Registers only on payment of any fee required by the Corporation.
- (d) The Corporation must give a person a copy of the relevant Register (or a part of the Register) within seven days (or such longer period as the Registrar may allow) if the person:
  - i) asks for the copy; and
  - ii) pays any fee required by the Corporation.

## **6.5 *Making the Register of Members available at AGM***

The Corporation must:

- (a) make the Register of Members available for inspection (without charge) by Members at the AGM; and
- (b) ask each Member attending the AGM to:
  - i) check the entry for that Member in the Register of Members; and
  - ii) inform the Corporation of any corrections that need to be made to that entry.

## **7. GENERAL MEETINGS, INCLUDING AGMS**

### **7.1 *Calling General meetings***

- (a) A Director may call a General meeting without receiving a request to do so from the Members under Rule 7.1(b).
- (b) The Directors must call and arrange to hold a General meeting on the request of where the corporation has:
  - i) between 2 and 10 Members – at least 1 Member;
  - ii) between 11 and 20 Members – at least 3 Members; and
  - iii) more than 20 Members – the greater of 5 members or 10% of the members.
- (c) The request must:
  - i) be in writing; and
  - ii) state any resolution to be proposed at the meeting; and
  - iii) be signed by the Members making the request; and
  - iv) nominate a Member (the nominated member) to be the contact Member on behalf of the Members making the request; and
  - v) be given to the Corporation.

- (d) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (e) If the Directors resolve:
  - i) that a request under Rule 7.1(b) is frivolous or unreasonable; or
  - ii) that complying with the request would be contrary to the interests of the Members as a whole,a Director, on behalf of all the Directors, may apply to the Registrar for permission to deny the request.
- (f) The application to the Registrar must:
  - i) be in writing;
  - ii) set out the ground on which the application is made; and
  - iii) be made within 21 days after the request is made.
- (g) The Directors must, as soon as practicable after making the application to the Registrar, give the nominated member notice that an application has been made.
- (h) If a Director has not applied to the Registrar for permission to deny the request, the Directors must call the meeting within 21 days after the request is made.
- (i) If a Director has applied to the Registrar for permission to deny the request, and the Registrar's decision is that the ground for the application is not made out, the Directors must call the meeting within 21 days after being notified of the Registrar's decision.

## **7.2     *How to call General meetings***

- (a) Subject to Rule 7.2(c), at least 21 days' notice must be given of a General Meeting.
- (b) At least 21 days' notice must be given of a General meeting at which a resolution will be moved to:
  - i) remove a Director under Rule 8.10(d); or
  - ii) appoint a Director in place of a Director removed under that Rule; or
  - iii) remove an auditor.
- (c) The Corporation may call:
  - i) an AGM on shorter notice if all Members agree beforehand; and
  - ii) any other General meeting on shorter notice if at least 95% of the Members agree beforehand.

The Corporation cannot call an AGM or other General meeting on shorter notice if it is a meeting of the kind referred to in Rule 7.2(b).

- (d) The Corporation must give written notice of a General meeting to the following persons:
  - i) each Member;
  - ii) each Director;
  - iii) the Secretary or Contact Person.
- (e) The Corporation may give the notice of the General meeting to a Member:
  - i) personally; or
  - ii) by sending it by post to the address for the member in the Register of Members or the alternative address (if any) nominated by the Member; or
  - iii) by sending it to the fax number or electronic address (if any) nominated by the Member; or
  - iv) by sending it to the member by other electronic means (if any) nominated by the Member; or
  - v) by placing the notice on community notice boards.
- (f) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.
- (g) The Corporation must give its auditor (if any):
  - i) notice of a General meeting in the same way that a Member is entitled to receive notice; and
  - ii) any other communications relating to the General meeting that a Member is entitled to receive.
- (h) A notice of a General meeting must, in a clear, concise and effective manner:
  - i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - ii) state the general nature of the meeting's business; and
  - iii) if a Special Resolution is to be proposed at the meeting – state the resolution and set out:
    - an intention to propose the Special Resolution; and
    - the basis on which the Special Resolution is proposed.

- (i) A General meeting, or any proceeding at a General meeting, will not be invalid just because:
  - i) notice of the General meeting has accidentally not been given; or
  - ii) a person has not received notice of the meeting.

### **7.3 *Members' resolutions at a General meeting***

- (a) Notice of a resolution that they propose to move at a General meeting may be given to the Corporation by where the corporation has:
  - i) between 2 and 10 Members – at least 1 Member;
  - ii) between 11 and 20 Members – at least 3 Members; and
  - iii) more than 20 Members – the greater of 5 Members or 10% of the Members.
- (b) The notice must:
  - i) be in writing; and
  - ii) set out the wording of the proposed resolution; and
  - iii) be signed by the members proposing to move the resolution.
- (c) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (d) If the Corporation has been given notice of a resolution under Rule 7.3(a), the resolution is to be considered at the next General meeting that occurs more than 28 days after the notice is given.
- (e) The Corporation:
  - i) must give all its Members notice of the resolution at the same time as, or as soon as practicable afterwards, and in the same way as, it gives notice of a General meeting;
  - ii) is responsible for the cost of giving Members notice of the resolution; and
  - iii) need not give notice of the resolution if it is defamatory.

### **7.4 *Members' statements prior to a General meeting***

Members may request the Corporation to give to all its Members a statement provided by the Members making the request about:

- (a) a resolution that is proposed to be moved at a General meeting; or
- (b) any other matter that may be properly considered at a General meeting.

The request must be made by where the corporation has:

- (a) between 2 and 10 Members – at least 1 Member;
- (b) between 11 and 20 Members – at least 3 Members; and
- (c) more than 20 Members – the greater of 5 members or 10% of the members.

The request must:

- (a) be in writing; and
- (b) be signed by the members making the request; and
- (c) be given to the Corporation.

Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

The Corporation:

- (a) must distribute to all its Members a copy of the statement at the same time as, or as soon as practicable afterwards, and in the same way as, it gives notice of a General meeting;
- (b) is responsible for the cost of making the distribution; and
- (c) need not comply with the request if the statement is defamatory.

## **7.5      *General meetings***

A General meeting must be held:

- (a) for a proper purpose; and
- (b) at a reasonable time and place preferably located within the Tjiwarl Determination Area.

The Corporation may hold a General meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

The business at each General meeting must include:

- (a) confirmation of the minutes of the previous General meeting; and
- (b) all matters set out in the notice of the General meeting.



## **7.6 Quorum for General meeting**

The quorum for a General meeting is:

- (a) 25% of the Corporation's Members or 20 Members, whichever is the lesser; and
- (b) must include at least six Members descended from separate Tjiwarl Ancestors.

The quorum must be present at all times during the meeting.

## **7.7 Adjourned meeting**

If a General meeting does not have a quorum within 4 hours after the time for the meeting set out in the notice of meeting, it is adjourned to a date and time determined by the Members present, unless the Directors specify otherwise.

New business, other than matters:

- (a) the subject of Rules 7.2(b) and 9.41(a), or
- (b) that require a Special Resolution,

may be transacted at a General meeting resumed after an adjournment.

Reasonable notice must be given of date and time of the adjourned meeting and any new business, in the same manner as notice of the original meeting.

If no quorum is present at the resumed meeting within 4 hours after the time for the meeting, the meeting is dissolved.

A resolution passed at a General meeting resumed after an adjournment is passed on the day it was passed.

## **7.8 Chairing General meetings**

The Members may elect an individual to chair General meetings. This election may be for a particular meeting, a particular year or ongoing.

The Directors at a General meeting – or the Members if the Directors do not – must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the Members to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).

The chairperson must adjourn a General meeting if the Members present agree or direct by Consensus that the chairperson must do so, including because particular Members are not in attendance or consultation with Common Law Holders who are not present is required.

## **7.9 Auditor's right to be heard at General meetings**

If the Corporation has an auditor, the auditor is entitled to:

- (a) attend any General meeting of the Corporation.
- (b) be heard at the meeting on any part of the business of the meeting that concerns the auditor in the auditor's capacity as auditor, even if:
  - i) the auditor retires at the meeting; or
  - ii) the meeting passes a resolution to remove the auditor from office.

The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any General meeting.

## **7.10 Proxies**

A Member may not appoint another member to act as their proxy at a General meeting.

## **7.11 Decisions at General meetings**

Decisions at General meetings are to be made:

- (a) in accordance with Traditional Law and Custom, where required by these Rules; and
- (b) otherwise by Consensus.

Where a culturally sensitive decision must be made in accordance with Traditional Law and Custom and requires that the decision (or part of any decision) be kept confidential and made by:

- (a) initiated Aboriginal men only; or
- (b) Aboriginal women only,

then the outcome of that culturally sensitive decision must be reported to the Corporation to the extent necessary for the purposes of:

- (c) taking instructions in relation to the final decision; and
- (d) maintaining and ensuring transparency within the Corporation.

## **7.12 Annual General meetings (AGMs)**

The Corporation must hold an AGM within 5 months after the end of its financial year.

An AGM is to be held in addition to any other meetings held by the Corporation in the year.

### **7.13    *Extension of time for holding AGMs***

The Corporation may lodge an application with the Registrar to extend the period within which the AGM must be held, provided the application is made within 5 months after the end of its financial year.

If the Registrar grants the extension, the Corporation must hold its AGM within the extended period and comply with any conditions imposed on the extension by the Registrar.

### **7.14    *Business of AGM***

The business of an AGM may include any of the following, even if not referred to in the notice of the meeting:

- (a) the consideration of the reports that under Chapter 7 of the Act are required to be presented at the AGM;
- (b) the election of Member-Directors;
- (c) the appointment and remuneration of the auditor (if any); and
- (d) questions:
  - i) about, or comments on, the management of the Corporation (see Rule 7.151)(a); and
  - ii) of the Corporation's auditor (if any) (see Rule 7.15(b)).

### **7.15    *Questions and comments by Members at AGM***

- (a) The chairperson of an AGM must allow a reasonable opportunity for the Members as a whole at the AGM to ask questions about or make comments on the management of the Corporation.
- (b) If the Corporation's auditor or the auditor's representative is at an AGM, the chairperson of the AGM must allow a reasonable opportunity for the Members as a whole at the AGM to ask the auditor or the auditor's representative questions relevant to the:
  - i) conduct of the audit; and
  - ii) preparation and content of the auditor's report; and
  - iii) accounting policies adopted by the Corporation in relation to the preparation of the financial statements; and
  - iv) independence of the auditor in relation to the conduct of the audit.

## **8. DIRECTORS**

### **8.1 *Classes of Directors***

There will be two classes of Directors:

- (a) Member-Directors; and
- (b) Independent-Directors.

### **8.2 *Composition of the Directors***

The Directors will comprise of:

- (a) Member-Directors who are broadly representative of the Common Law Holders and may include up to eleven Member-Directors so long as each Member-Director is descended from separate Tjiwarl Ancestors; and
- (b) at least one Independent-Director, who are eligible in accordance with sub-rule 8.6(e).

### **8.3 *Number of Directors***

The Corporation must have:

- (a) a minimum of 10 Member-Directors (so long as each Member-Director is descended from separate Tjiwarl Ancestors) and at least one Independent-Director; and
- (b) a maximum of 12 Directors including at least one Independent-Director.

### **8.4 *Eligibility to become a Member-Director***

An individual is eligible for appointment as a Member-Director if they are:

- (a) at least 18 years of age;
- (b) a Member;
- (c) is not an employee of the Corporation;
- (d) not disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the Act (unless the individual has obtained permission under s279-30 or leave under s279-35 of the CATSI Act); and
- (e) within three months of appointment obtains a Western Australian Police Record Check with the costs of obtaining the Police Record Check to be paid by the Corporation.

If the Police Record Check noted in sub-rule 8.4(e) is not provided to the Board within three months of appointment or if it records an indictable criminal offence within the last 10 years, the Member-Director's appointment is terminated immediately.

If a Member-Director's appointment is terminated as a result of this rule 8.4 and the result is that the Board is not able to meet because they do not have quorum then the remaining Directors may meet to call a General meeting for the purpose of appointing a replacement Member-Director.

## **8.5      *Appointment of Member-Directors***

The Members will appoint the Member-Directors at the AGM by Consensus.

Provided the Corporation does not exceed the maximum number of Member-Directors, the Members may appoint a Member-Director at a General meeting by Consensus.

Before being appointed, a Member-Director must give the Corporation a signed consent. The Corporation must keep the consent.

## **8.6      *Term of Appointment of Member-Directors***

- (a) Member-Directors will be appointed on rotation for a two-year term, so that the appointment of some of the Member-Directors expires each year.
- (b) In order to implement the rotational system, at the second AGM of the Corporation:
  - i) up to 5 Member-Directors will be appointed for a term of 2 years; and
  - ii) up to 6 Member-Directors will be appointed for a term of 1 year.
- (c) Subject to Rule 8.6(e), Member-Directors appointed at subsequent AGMs of the Corporation will hold office for 2 years.
- (d) A Member-Director is eligible for reappointment.
- (e) If the terms of appointment of all of the Directors of the Corporation expire so that there are no Directors at a particular time, the terms are extended until the next General meeting that occurs after the last Director's appointment has expired.

## **8.7 Eligibility to become an Independent-Director**

A person is eligible for appointment as an Independent-Director if he or she satisfies the following:

- (a) is at least 18 years of age;
- (b) is an Australian resident;
- (c) is not an employee of the Corporation;
- (d) is not a Member of the Corporation;
- (e) is not related to a Member of the Corporation;
- (f) has demonstrated skills and experience in financial management, corporate governance, accounting, business development, community development and/or law; and
- (g) within three months of appointment obtains a Western Australian Police Record Check with the costs of obtaining the Police Record Check to be paid by the proposed Independent-Director.

If the Police Record Check noted in sub-rule 8.7(g) is not provided to the Board within three months of appointment or if it records an indictable criminal offence within the last 10 years, the Independent-Director's appointment is terminated immediately.

A person must give the Corporation their signed written consent to act as an Independent-Director.

The Corporation must notify the Registrar of the Independent-Directors' details within 28 days of the appointment or removal of an Independent-Director.

## **8.8 Appointment and Term of Independent-Director**

The Member-Directors must appoint the Independent-Director.

Before such an appointment is made the Member-Directors must conduct a proper merit selection process including, but not limited to, seeking independent advice from a suitably qualified and experienced party. In making their selection the Member-Directors must give priority to persons with the skills and experience as set out in Rule 8.7(f).

Independent-Directors are appointed for the term specified in writing by the Member-Directors in their appointment. The terms of appointment cannot exceed two-years, but a person can be reappointed.

## **8.9     *Alternate Directors***

With the other Directors' approval, a Member-Director (appointing Member-Director) may appoint an alternate to exercise some or all of the appointing Member-Directors' powers for a specified period.

The appointment must be in writing and given to the Corporation.

If the appointing Member-Director requests, the Corporation must give the alternate Member-Director notice of Directors' Meetings.

When an alternate Member-Director exercises the appointing Member-Director's powers, the exercise of the powers is just as effective as if the appointing Member-Director exercised the power.

The appointing Member-Director may terminate the alternate Member-Director's appointment at any time, in writing and given to the Corporation.

## **8.10    *Resignation, retirement or removal of Directors***

A person ceases to be a Director if:

- (a) the person:
  - i) dies;
  - ii) resigns as a Director in accordance with Rule 8.10(c);
  - iii) is removed as a Director by the Members in accordance with Rules 8.10(d) to 8.10(i);
  - iv) is removed as a Director by the other Directors in accordance with Rules 8.10(k) to 8.10(r); or
  - v) becomes disqualified from managing corporations under Part 6-5 of the Act; or
- (b) the term of the person's appointment as Director expires in accordance with Rule **Error! Reference source not found.**

### **Director may resign**

- (c) A Director may resign as a Director by giving written notice of resignation to the Corporation.

### **Removal by Members**

- (d) The Corporation may, by resolution in General meeting, remove a Director from office despite anything in:
  - i) this Rule Book;
  - ii) an agreement between the Corporation and the Director; or
  - iii) an agreement between any or all of the Members and the Director.
- (e) Notice of intention to move the resolution must be given to the Corporation at least 21 days before the meeting is to be held.
- (f) The Corporation must give the Director a copy of the notice as soon as practicable after it is received.
- (g) The Director is entitled to put his or her case to the Members by:
  - i) giving the Corporation a written statement for circulation to the Members; and
  - ii) speaking to the motion at the meeting.
- (h) The written statement:
  - i) is to be circulated by the Corporation to the Members by:
    - (A) if there is time to do so, sending a copy to everyone to whom notice of the meeting is sent; and
    - (B) if there is not time to do so, having the statement distributed to Members attending the meeting and read out at the meeting before the resolution is decided;
  - ii) does not have to be circulated to Members if it is defamatory.
- (i) If an Independent-Director is removed by the Members under this Rule then the Directors must meet as soon as possible to appoint a replacement Independent-Director and must not transact any new business until the replacement Independent-Director has been appointed.
- (j) If a person is appointed to replace a Director removed under this Rule, the time at which the replacement Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed as a Director.



### **Removal by other Directors**

- (k) The other Directors must not remove a Director from office other than in accordance with Rule 8.10(l).
- (l) If a Director fails without reasonable excuse to attend three or more consecutive Directors' Meetings, the other Directors may remove the Director by resolution, despite anything in:
  - i) this Rule Book; or
  - ii) an agreement between the Corporation and the Director; or
  - iii) an agreement between any or all of the Members and the Director.
- (m) Before removing the Director, the Directors must give the Director concerned notice in writing, stating that:
  - i) the Directors intend to remove the Director concerned from office because he or she has failed without reasonable excuse to attend three or more consecutive Directors' meetings; and
  - ii) the Director concerned has 14 days to object to the removal; and
  - iii) the objection must be in writing and given to the corporation within the period of 14 days from the day the notice is given.
- (n) If the Director does not object within 14 days from the day the notice is given, the Directors must remove the Director from the office.
- (o) If the Director does object within 14 days from the day the notice is given:
  - i) the Directors cannot remove the Director from office; and
  - ii) the Directors may refer the matter to a General meeting, to be resolved in accordance with Rules 8.10(d) to 8.10(h).
- (p) If the Director concerned is removed from office, the Corporation must give him or her a copy of the resolution as soon as practicable after the applicable resolution has been passed.
- (q) If an Independent-Director is removed by the Directors under this Rule then the Member-Directors must appoint a replacement Independent-Director as soon as possible after the Independent-Director has been removed and must not transact any new business until the replacement Independent-Director has been appointed.
- (r) If a person is appointed to replace a Director removed under this Rule, the time at which the replacement Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed as a Director.

## **8.11 Powers of directors**

The business of the Corporation is to be managed by or under the direction of the Directors.

The Directors may exercise all powers of the Corporation except any powers that the Act or Rule Book requires the Corporation to exercise in General meeting.

The Corporation may sign, draw, accept, endorse or otherwise execute a Negotiable Instrument if the Negotiable Instrument is signed by:

- (a) two Directors; or
- (b) a Director and the Secretary

The Directors may determine that a Negotiable Instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

The Directors shall have the power to appoint and remove or suspend the Chief Executive Officer by resolution of the Board of Directors.

No person, including a Director, may make any public statement on behalf of the Corporation unless authorised by a resolution of the Directors.

### **Delegation**

The Directors may, by resolution, delegate any of their powers to:

- (a) a committee of Directors; or
- (b) a Director.

The Directors may delegate the day-to-day running of the Corporation to the Chief Executive Officer or to an entity performing the functions of the Chief Executive Officer.

A delegate must exercise the powers delegated in accordance with any directions of the Directors.

The exercise of the power by a delegate is as effective as if the Directors had exercised it.

## **8.12 Director's meetings**

- (a) The Directors will meet at least once a year.
- (b) A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.
- (c) A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable period before the meeting.

### **Role of Chairperson**

- (d) At the first Directors' Meeting after the AGM, the Directors may select a Director to chair the Directors' Meetings for the forthcoming year.
- (e) The Directors must elect a Director present at the Directors' meeting to chair the meeting, or part of it, if:
  - i) a Director has not already been elected to chair the meeting in accordance with Rule 8.12(d); or
  - ii) a previously elected chairperson is not available, or declines to act, for the meeting or part of the meeting.
- (f) The role of the Chairperson is to:
  - i) preside at Directors' meetings in accordance with the meeting rules;
  - ii) liaise with the Chief Executive Officer on matters affecting the organisation and performance of the Corporation; and
  - iii) provide leadership and guidance to the other Directors.

### **Quorum for Directors Meetings**

- (g) The quorum for a Directors' meeting is a majority of the Directors. The quorum must be present at all times during the meeting.
- (h) Provided the maximum number of Directors is not exceeded, the Directors may appoint a Member as a Member-Director to make up a quorum for a Directors' Meeting. The Directors may appoint a person as a Member-Director even if the total number of Directors is not enough to make up that quorum.
- (i) If a person is appointed under Rule 8.12(h), the Corporation may confirm the appointment by resolution at the next AGM. If the appointment is not confirmed, the person ceases to be a Director at the end of the AGM.

- (j) If there are not enough Directors to form quorum including because of Rule 12.41(a), one or more of the Directors (including those who have a material personal interest in that matter) may call a General meeting and the General meeting may pass a Resolution by Consensus to deal with the matter.
- (k) A resolution of the Directors must be passed by Consensus of those Directors entitled to participate in decision-making on the resolution.
- (l) If the Directors consider they cannot make a decision in accordance with Rule 8.12(k), they may call a General meeting and the General meeting may pass a Resolution by Consensus to deal with the matter.

### **8.13 Resolutions without meetings**

- (a) A resolution may be passed by the Directors without a Directors' Meeting being held if all the Directors entitled to participate in decision-making about the resolution sign a document containing a statement that they are in favour of the resolution set out in the document (**Circulating Resolution**) or have otherwise provided their written consent to the Circulating Resolution.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the Circulating Resolution and statement is identical in each copy.
- (c) Passage of a Circulating Resolution under Rule 8.13(a) must be recorded in the Corporation's Minute Books (see Rule 10).

## **9. DECISION-MAKING**

### **9.1 If the Corporation is required to make a decision that is:**

- (a) a Native Title Decision to:
  - i) enter into an Indigenous Land Use Agreement or a Right to Negotiate Agreement; or
  - ii) consent to one or more consultation processes in the Rule Book, it must make that decision in accordance with Rules 9.21(a) and 9.2(b);
- (b) any Native Title Decision not covered by Rule 9.1(a), it must make that decision in accordance with Rules 9.21(a) to 9.2(d);
- (c) a Land Based Decision that is not a Native Title Decision, it must make that decision in accordance with Rule 9.3
- (d) a decision to change the Rule Book, other than those covered by Rule 9.1(e), it must make that decision in accordance with Rules 9.3 to 9.4(c);

- (e) a decision to change Key Rules of the Rule Book, it must make that decision in accordance with Rules 9.3 to 9.5(b);
- (f) an Administrative Decision, it may make that decision in accordance with Rule 9.61)(a) to 9.6(b).

## **9.2 Native Title Decisions**

- (a) Subject to the alternate consultation process in Rule 9.2(d), a resolution of the Corporation about a Native Title Decision must be passed by the Members in accordance with Traditional Law and Custom, and where appropriate under Traditional Law and Custom, by Consensus.
- (b) Before a resolution of the Members about a Native Title Decision is made the Corporation must consult with, and obtain the consent of, the Common Law Holders in accordance with Rule 9.2(c).
- (c) The Corporation must ensure that:
  - i) the Common Law Holders understand the purpose and nature of a proposed Native Title Decision by:
  - ii) consulting, and considering the views of, a representative body for the area that the native title rights and interests relate; and
  - iii) if the Corporation considers it to be appropriate and practicable, giving notice of those views to the Common Law Holders, and
  - iv) the consent of the Common Law Holders is given in accordance with Traditional Law and Custom.
- (d) Where:
  - i) an exploration licence(s) pursuant to section 57 of the Mining Act; or
  - ii) a prospecting licence(s) pursuant to section 40 of the Mining Act; or
  - iii) a retention licence(s) pursuant to section 70B of the Mining Act; or
  - iv) a miscellaneous licence(s) pursuant to section 91 of the Mining Act (collectively, the licences),has been applied for within Tjiwarl Land, then the Directors may:
  - i) make a decision involving the grant of the licences;
  - ii) enter into an agreement relating to the grant of the licences, including an agreement of the kind referred to under Part 2, Division 3, Subdivision P of the NTA; and
  - iii) do all other things reasonably necessary to facilitate the grant of the licences.

(Note: This Rule 9.2(d) is contemplated for use pursuant to regulation 8A of the PBC Regulations).

### **9.3 Land Based Decisions that are not Native Title Decisions**

A resolution of the Corporation about a Land Based Decision, provided that it is not a Native Title Decision, may be passed by the Directors by Consensus.

If the Directors cannot pass the resolution by Consensus, one or more of the Directors may call a General meeting and the General meeting may pass a Resolution by Consensus to deal with the matter.

### **9.4 Decisions about changing the Rule Book**

- (a) A decision to change this Rule Book must be made by a Special Resolution.
- (b) The Corporation must lodge with the Registrar, within 28 days after the Special Resolution is passed:
  - i) a copy of the Special Resolution; and
  - ii) a copy of those parts of the minutes of the meeting at which the Special Resolution was passed that relate to the passing of the Special Resolution; and
  - iii) a directors' statement, signed by two Directors, to the effect that the Special Resolution was passed in accordance with the Rule Book, and the Act; and
  - iv) a copy of the change to the Rule Book.
- (c) The change to the Rule Book takes effect on the day the change is registered.

### **9.5 Additional requirements for decisions about changing Key Rules**

- (a) Before a resolution of the Members is made to change a Key Rule of this Rule Book, the Corporation must consult with, and obtain the consent of, the Common Law Holders in accordance with Rule 9.5(b).
- (b) The Corporation must ensure that:
  - i) the Common Law Holders understand the purpose and nature of the proposed decision by:
    - consulting, and considering the views of, a representative body for the Determination Area; and
    - if the Corporation considers it to be appropriate and practicable, giving notice of those views to the Common Law Holders, and
  - ii) the consent of the Common Law Holders is given in accordance with Traditional Law and Custom.

## **9.6     *Administrative decisions***

- (a) A resolution of the Corporation about an Administrative Decision may be passed by the Directors by Consensus.
- (b) If the Directors cannot pass the resolution by Consensus, one or more of the Directors may call a General meeting and the General meeting may pass a Resolution by Consensus to deal with the matter.

## **10.     MINUTES**

- (a) The Corporation must keep minute books in which it records within one month:
  - i) proceedings and resolutions of General meetings; and
  - ii) proceedings and resolution of Directors' meetings (including meetings of a committee of Directors); and
  - iii) resolutions passed by Members without a meeting; and
  - iv) Circulating Resolutions passed by Directors without a meeting.
- (b) The minutes of the whole, or a part, of the meeting may be kept:
  - i) in writing; or
  - ii) by means of an audio, or audio-visual, recording.
- (c) If the minutes of the whole, or a part, of the meeting are kept by means of an audio, or audio-visual, recording of the meeting, the Corporation must ensure that, on the recording, each person attending the meeting states his or her name.
- (d) If the minutes of the whole, or a part, of the meeting are kept in writing, the Corporation must ensure that either:
  - i) the chairperson of the meeting; or
  - ii) the chairperson of the next meeting;signs those minutes within a reasonable time after the meeting.
- (e) If the minutes of the whole, or a part, of the meeting are kept by means of an audio, or audio-visual, recording, the Corporation must ensure that either:
  - i) the chairperson of the meeting; or
  - ii) the chairperson of the next meeting;signs, within a reasonable time after the meeting, a declaration that:
  - iii) identifies the audio, or audio-visual, recording; and

- iv) if the recording is not a recording of the whole of the meeting – identifies the part of the meeting that is recorded; and
  - v) declares that the recording constitutes the minutes of the meeting or that part of the meeting.
- (f) The Corporation must ensure that the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable amount of time after the resolution is passed.
- (g) The Corporation must keep its minute books at its:
- i) registered office if it is registered as a large corporation; or
  - ii) document access address if it is registered as a small or medium corporation.
- (h) The Corporation must make available for inspection by Members, free of charge, the minutes for the meetings of the Members and for resolutions of Members passed without meetings:
- i) if it is registered as a large corporation, at its registered office each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm; and
  - ii) if it is registered as a small or medium corporation, at its document access address within seven days of a Member’s written request for inspection.
- (i) A Member may ask the Corporation in writing for a copy of:
- i) any minutes of a meeting of the Members or an extract of the minutes; or
  - ii) any minutes of a resolution passed by Members without a meeting.
- (j) The Corporation must send the copy within 14 days after the Member asks for it.

## **11. RECORD-KEEPING**

- (a) The Corporation must keep:
- i) an up-to-date copy of its Rule Book (incorporating changes to the Rule Book); and
  - ii) written records relating to:
    - the names and addresses of the Corporation’s current officers and secretary or contact person (as the case may be); and
    - the Corporation’s registered office (if any); and
    - the Corporation’s document access address (if any); and



- such other matters about the Corporation as are set out in the Regulations.
- (b) The Corporation must:
- i) make the Rule Book available for inspection by Members, free of charge:
    - if it is registered as a large corporation, at its registered office each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm; and
    - if it is registered as a small or medium corporation, at its document access address within seven days of a Member's written request for inspection; and
  - ii) provide a copy of the Rule Book to any Member who requests it, within seven days and free of charge.
- (c) The Corporation must keep written financial records that:
- i) correctly record and explain its transactions and financial position and performance; and
  - ii) would enable true and fair financial reports to be prepared and audited.
- The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (d) The financial records must be retained for seven years after the transactions covered by the records are completed.
- (e) If the records that the Corporation is required to keep under Rule 11(a) or 11(b) are kept in electronic form, the records must be convertible into hard copy. Hard copy must be made available, within a reasonable time, to a person who is entitled to inspect the records.
- (f) The records that the Corporation is required to keep under Rule 11(a) or 11(b) must be kept at the:
- i) registered office if the Corporation is registered as a large corporation; or
  - ii) document access address if the Corporation is registered as a small or medium corporation.
- (g) A Director has a right of access to the records that the Corporation is required to keep under Rule 11(a) or 11(b).

## **12. Directors Duties**

### **12.1 *General duties of Directors***

Each Director must exercise his or her powers and discharge his or her duties in accordance with Division 265 of the Act.

### **12.2 *Notice of material personal interest by Director***

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the Corporation must give the other Directors notice of the interest unless Rule 12.2(c) says otherwise.

The notice must give details of:

- i) the nature and extent of the interest; and
  - ii) the relation of the interest to the affairs of the Corporation; and
- (b) be given at a Directors' meeting as soon as practicable after the Director becomes aware of the Directors' interest in the matter.

The details must be recorded in the minutes of the meeting.

- (c) A Director does not need to give notice of an interest under Rule 12.2(a) if: the interest:

- i) arises because the Director is a Member and is held in common with the other Members; or
- ii) arises in relation to the Director's remuneration as a Director;
- iii) relates to a contract the Corporation is proposing to enter into that is subject to approval by the Members and will not impose any obligation on the Corporation if it is not approved by the Members; or
- iv) arises merely because the Director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Corporation; or
- v) arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity;
- vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Corporation (but only if the contract does not make the Corporation or related body corporate the insurer); or
- vii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the Director is a director of the related body corporate; or

- (d) all the following conditions are satisfied:
  - i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the corporation under Rule 12.2(a); and
  - ii) if a person who was not a Director at the time when the notice under Rule 12.2(a) was given is appointed as a Director – the notice is given to that person; and
  - iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (e) the Director has given a standing notice of the nature and extent of the interest under Rule 12.3 and the notice is still effective in relation to that interest; or
- (f) the Director’s interest is a particular interest as one of the Common Law Holders of the native title which the corporation holds in trust.

### **12.3 *Standing notice***

- (a) A Director may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Corporation at the time the notice is given.
- (b) The notice must:
  - i) give details of the nature and extent of the interest; and
  - ii) be given:
    - (A) at a Directors’ meeting (either orally or in writing); or
    - (B) to the other Directors individually in writing.
- (c) The standing notice is given under Rule 12.3(b)ii) when it has been given to every Director and takes effect as soon as it is given.
- (d) The standing notice must be tabled at the next Directors’ meeting after it is given, and the Director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- (e) The standing notice ceases to have effect if a person who was not a Director at the time when the notice was given is appointed as a Director, and commences to have effect again if it is given to that person, including by someone other than the Director to whose interests it relates.
- (f) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

#### **12.4 *Restrictions on decision-making and being present***

- (a) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - i) be present while the matter is being considered at the meeting; or
  - ii) participate in decision-making on the matter.
- (b) The Director may be present and / or participate in decision-making if Directors who do not have a material personal interest in the matter have passed a resolution that:
  - i) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Corporation;
  - ii) states that those Directors are satisfied that the interest should not disqualify the Director from being present and / or participating in decision-making.

#### **12.5 *Remuneration***

- (a) The Members will decide that the Member-Directors may be paid remuneration for their attendance at Directors' Meetings or attendance at meetings or events which are necessary for the furtherance of the bona fide business of the Corporation, subject to the availability of funds.
- (b) The Members will determine the amount of remuneration of the Member-Directors at a General meeting.
- (c) The Member-Directors will determine the amount of remuneration of the Independent-Director.
- (d) Rule 12.5(a) does not prevent:
  - i) reasonable payments (having regard to market costs of obtaining similar goods or services) to the Director for goods or services, provided that Rule 12.2(a) has been complied with.
- (e) The Corporation may pay the Directors' travelling and other expenses that the Directors incur:
  - i) in attending Directors' meetings;
  - ii) in attending any General meetings of the Corporation; or
  - iii) in connection with the Corporation's business.

#### **12.6 *Contact person or secretary***

The Corporation's contact person or secretary must:

- (a) be at least 18 years of age; and

- (b) not be disqualified from managing an Aboriginal and Torres Strait Islander corporation under Part 6-5 of the Act.

Before being appointed, the contact person or secretary must give the Corporation a signed consent. The Corporation must keep the consent.

The Corporation's secretary or contact person is to be appointed by the Directors.

The secretary or contact person holds office on the terms and conditions (if any), and remuneration (if any), that the Directors determine.

### **Duties of Secretary or Contact Person**

Where entered on the Register of Torres Strait Islander Corporations as the Secretary or Contact Person, a person:

- (a) appointed with his or her consent as the Secretary or Contact Person; or
  - (b) determined to be the Secretary or Contact Person,
- must pass any communications they receive for the Corporation on to at least one of the Directors within 14 days after receiving the communication.

The Secretary may also be required to:

- (a) maintain the Register of Members;
- (b) maintain a record of the names of the Directors of the Corporation and the terms of their appointment;
- (c) act as the returning officer for all voting at meetings of the Corporation;
- (d) notify the Registrar of any alterations to these Rules pursuant to Rule **Error! Reference source not found.**; and
- (e) perform any other duties that may be required by the Act, the Board of Directors, or these Rules, from time to time.

### **Effectiveness of acts by Secretaries**

An act done by the Secretary is effective even if their appointment is invalid because the Corporation or Secretary did not comply with the Corporation's Rules or the Act.

This Rule does not deal with the question of whether an effective act by a Secretary:

- (a) binds the Corporation in its dealings with other people; or
- (b) makes the Corporation liable to another person.

## **12.7 Notification to Registrar**

The Corporation must lodge with the Registrar a notice of the personal details of a Director, Secretary or Contact Person within 28 days after he or she is appointed.

The Corporation must lodge with the Registrar notice of any change in the personal details of a Director, Secretary or Contact Person within 28 days after the change.

If a person stops being a Director, Secretary or Contact Person, the Corporation must lodge with the Registrar notice of the fact within 28 days.

## **13. Chief Executive Officer or an entity performing the duties of the Chief Executive Officer**

The Directors may appoint a Chief Executive Officer, or an entity performing the duties of the Chief Executive Officer, who shall have the responsibility for the day-to-day running of the Corporation including, but not limited, to:

- (a) staff recruitment and management;
- (b) financial administration; and
- (c) internal practices, policies and procedures.

The Chief Executive Officer or the entity performing the duties of the Chief Executive Officer will, from time-to-time:

- (a) advise the Directors in relation to the functions of the Corporation under the Act and/or other written laws;
- (b) ensure that advice and information is available to the Directors so that informed decisions can be made;
- (c) cause Directors' decisions to be implemented;
- (d) liaise with the Chairperson on the Corporation's affairs and the performance of the Corporation's functions; and
- (e) perform any other functions specified or delegated by or imposed by the Act or any other written law as a function to be performed by the Chief Executive Officer or entity performing the duties of the Chief Executive Officer.

At all times when performing the above responsibilities and functions, the Chief Executive Officer or entity performing the duties of the Chief Executive Officer shall comply with these Rules and the provisions of the Act.

Except as otherwise provided in the Act, these Rules or by law, the Directors will have the power to appoint and remove or suspend the Chief Executive Officer or entity performing the duties of the Chief Executive Officer.

### ***Reporting for Directors' Meetings***

The Chief Executive Officer or an entity performing the functions of the Chief Executive Officer must provide the following reports to each Director at least one week before each Directors' meeting:

- (a) up-to-date financial reports that include, but need not be limited to a balance sheet, a profit and loss statement (by cost centre and consolidated), lists of creditors and debtors and confirmation that the bank accounts have been reconciled to the general ledger;
- (b) an operations report that includes details on all relevant native title matters and other program activities;
- (c) an administration report, including details of staff movements; and
- (d) a report on governance matters, including any breaches of these Rules or the Act, and recommended remedial action.

## **14. RELATED PARTY BENEFIT**

For the Corporation, or an entity that the Corporation controls, to give a financial benefit to a related party of the Corporation:

- (a) the Corporation or entity must:
  - i) obtain the approval of the Members in the way set out in Division 290 of the Act; and
  - ii) give the benefit within 15 months after the approval is given; or
- (b) the giving of the benefit must fall within one of the exceptions to the requirement for Member approval set out in Division 287 of the Act, which include:
  - i) reasonable remuneration to an employee;
  - ii) payment of expenses incurred or to be incurred, or reimbursement for expenses incurred, as an officer or employee of the Corporation;
  - iii) benefits given to a Member that do not unfairly discriminate;
  - iv) benefits given to comply with a Native Title legislation obligation; or
- (c) the giving of the benefit must be required by a contract; and
  - i) the making of the contract must have been approved by the Members in the way set out in Division 290 of the Act; and

- ii) the contract made within 15 months of that approval, or before that approval if the contract was conditional on that approval.

If Rule 14(c) applies, the benefit need not be given within 15 months of the approval.

## **15. EXECUTION OF DOCUMENTS**

- (a) The Corporation's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the Corporation's express or implied authority and on behalf of the corporation. The power may be exercised without using a common seal.
- (b) The Corporation may execute a document without using a common seal if the document is signed by:
  - i) two Directors; or
  - ii) a Director and a corporation secretary of the Corporation.
- (c) If the Corporation has a common seal, the Corporation may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
  - i) two Directors; or
  - ii) a Director and a corporation secretary of the Corporation.
- (d) The Corporation may execute a document as a deed if the document is expressed to be a deed and is executed in accordance with Rules 15(b) or 15(c).
- (e) Rules 15(b) to 15(d) do not limit the ways in which the Corporation may execute a document (including a deed).

## **16. DISPUTE RESOLUTION**

- (a) If a disagreement or dispute about the affairs of the Corporation, its internal operation, or how the Act or this Rule Book apply arises between any of the:
  - i) Members; or
  - ii) Directors; or
  - iii) Corporation; or
  - iv) Common Law Holders,it must be resolved as far as is possible in accordance with Traditional Law and Custom, and in accordance with Rules 16(b) to 16(c).
- (b) The parties to a dispute must attempt to resolve it themselves on an informal basis.



- (c) If the parties cannot resolve the dispute between themselves, it must be referred to a Directors' meeting and the Directors must make a reasonable effort to resolve the dispute by Consensus, taking into account Traditional Law and Custom. The Directors must provide the parties to a dispute with an opportunity to present on the matter at a Directors meeting, either verbally or in writing.
- (d) If the Directors cannot resolve the dispute, it must be referred to a General Meeting and the Members must resolve the dispute in accordance with Traditional Law and Custom and, where appropriate under Traditional Law and Custom, by Consensus. The General meeting must provide the parties to a dispute with an opportunity to present on the matter to the General Meeting either verbally or in writing.

## **17. WINDING UP**

In the event of the Corporation being dissolved, all assets that remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes, which is charitable at law and which has rules prohibiting the distribution of its assets and income to its members.

If the Corporation is wound up or its endorsements as a Deductible Gift Recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:

- (a) gifts of money or property for the principal purpose of the organisation;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation; or
- (c) money received by the organisation because of such gifts and contributions.

## Schedule 1 – Dictionary and Interpretation

### DICTIONARY

In this Rule Book, the following words have the following meaning:

**Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Administrative Decision** means decisions that are not:

- Native Title Decisions;
- Land Based Decisions;
- decisions about changes to the Rule Book, including changes to Key Rules; or
- decisions otherwise required by the Act or the Rule Book to be made by the Members.

**Affect** means, in respect of Native Title Rights and Interests, extinguish Native Title Rights and Interests or otherwise be wholly or partially inconsistent with the continued existence, enjoyment or exercise of Native Title Rights and Interests.

**Board of Directors** means the people elected or appointed according to Rule 8 to manage the affairs of the Corporation in accordance with the Act and these Rules.

**Books** has the meaning given to it in the Act;

**Chairperson** is the person referred to in Rule 8.12 elected by the Directors to chair Directors' Meetings and General Meetings.

**Chief Executive Officer** means the person from time to time employed in the position of chief executive officer of the Corporation or similar position.

**Code of Conduct** means the rules, principles, values or standards of behaviour that guide the decisions and procedures of the Corporation and is applicable to all employees, Members and Directors of the Corporation.

**Common Law Holder** means the common law holders of native title rights and interests for the Determination Area, as described in Schedule 2 of the Determination.

**Consensus** means a general agreement among the Members present as to a particular matter whereby differing points of view, if any, have been considered and reconciled, and any decision is generally agreed upon. For the avoidance of doubt, a decision made by consensus does not necessarily require that the decision be agreed upon unanimously.

**Contact Person** means a person elected or appointed according to Rule 12.6.

**Corporation** means Tjiwarl (Aboriginal Corporation) RNTBC (ICN: 8628)

**Director** means a person appointed as a director of the Corporation in accordance with the Rule Book and includes both Member-Directors and Independent Directors.

**Deductible Gift Recipient** has the same meaning as in the *Income Tax Assessment Act 1997* (Cth)

**Determination** means the orders and determination of native title made by Justice Mortimer of the Federal Court of Australia on 27 April 2017 for the Tjiwarl Native Title Claims as varied by the Full Court of the Federal Court on 1 February 2018 in WAD 217 of 2017 and WAD 218 of 2017 and by the High Court of Australia on 17 April 2019 in P38 of 2018, or as varied at any time in the future under section 13 of the NTA.

**Determination Area** means the determination area described in Schedule 1 of the Determination.

**General meeting** means a meeting of the Members of the Corporation, and includes an AGM.

**Independent-Director** means an independent non-Member specialist Director appointed by the Member-Directors in accordance with rule 8.15.

**Indigenous Land Use Agreement** means the same as in Subdivision B, C and D of Division 3 of Part 2 of the NTA.

**Key Rules** means the internal governance rules that relate to the objects of the Corporation, the definition of Common Law Holders and the process of consultation with the Common Law Holders.

**Land Based Decision** means a decision about land and waters, including Tjiwarl Land, that is not a Native Title Decision.

**Members** means a person whose name appears on the Register of Members.

**Member-Directors** means a Director who is appointed by the Members in accordance with rule 8.2.

**Mining Act** means Mining Act 1978 (WA).

**Native Title** has the meaning given to it by the NTA.

**Native Title Benefits** has the meaning given to it by the *Income Tax Assessment Act 1997* (Cth).

**Native Title Decision** means a decision to:

- surrender native title rights and interests in relation to land or waters; or
- do, or agree to do, any other act that would Affect the native title rights and interests of the Common Law Holders,
- and includes a decision refusing to make a proposed native title decision.

**Native Title Rights and Interests** has the meaning given to it by the NTA.

**Negotiable Instrument** has the meaning given to it in the Act.

**NTA** means the *Native Title Act 1993 (Cth)*.

**Officer** has the meaning given to it in the Act.

**PBC Regulations** means the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth).

**Registers** means the Register of Members and the Register of Former Members.

**Register of Former Members** means the register of former members set up in accordance with Rule 6.2.

**Register of Members** means the register of members set up in accordance with Rule 6.1.

**Registered Native Title Body Corporate** has the meaning given to it by the NTA.

**Registrar** has the meaning given to it in the Act.

**Regulations** means the regulations relevant to the Act.

**Right to Negotiate Agreement** means an agreement made under Subdivision P of Division 3 of Part 2 of the NTA.

**Rule Book** means this document as amended from time to time.

**Secretary** means a person elected or appointed according to Rule 12.6.

**Special Resolution** means a resolution:

- of which notice as set out in Rule 7.2(h)(iii) has been given; and
- that has been passed by at least 75% of the Members who are entitled to participate in decision-making on the resolution.

**Tjiwarl Ancestors** means those people described in paragraph 2 of Schedule 2 of the Determination, being:

- Alfie Ashwin;

- Piman/Charlie Beaman;
- Tjampula/Jumbo Harris;
- Nampu/Scotty Lewis;
- Nimpurru/Spider Narrier;
- Tjulyitjutu/Rosie Jones;
- Kathleen Bingham;
- Kurril/Scotty/Ted/Packhorse Rennie Tullock;
- Pukungka/Dolly Walker;
- Manyila/Trilby; and
- Dempsey James.

**Tjiwarl Land** means land the subject of the Determination and any Vested Land.

**Tjiwarl Native Title Claim** means WAD 228 of 2011 and WAD 302 of 2015 together or separately as the case may be.

**Traditional Law and Custom** means the traditional laws acknowledged and the traditional customs observed by the Common Law Holders as members of the Western Desert cultural bloc.

**Vested Land** means any land vested in, granted or given to, or purchased by the Corporation.

## **INTERPRETATION**

In this Rule Book:

words in the singular include the plural and vice versa;

‘including’ means ‘including but not limited to’;

a reference to legislation is to be read as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;

headings and notes are used for convenience only and are not intended to affect the interpretation of this Rule Book;

a word or expression defined in the Act and used, but not defined, in these Rules has the same meaning given to it in the Act when used in this Rule Book; and any inconsistency the Act is to be resolved in favour of the Act.

## Schedule 2 — Consent to become a director form

### Tjiwarl (Aboriginal Corporation) RNTBC (ICN 8628)

#### Consent to become a director

I, \_\_\_\_\_ (first and last name of person)

of \_\_\_\_\_ (residential address, a postal address is not sufficient)

give consent to become a director of Tjiwarl (Aboriginal Corporation) RNTBC.

I confirm my date of birth was \_\_\_\_\_ (date of birth)

and my place of birth was \_\_\_\_\_ (place of birth)

I also acknowledge I am automatically disqualified from managing corporations if I:

- have been convicted of an offence under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) that is punishable by imprisonment for more than 12 months
  - have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
  - have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
  - are an undischarged bankrupt
  - have signed a personal insolvency agreement and have not kept to the agreement
  - have been disqualified under the *Corporations Act 2001* from managing corporations
- and I will notify the corporation if any of the above events occur after my appointment.

I declare that I have not been convicted of a serious criminal offence and will supply a Police clearance within 3 months from the date of this signed consent form.

Signature of person

Date

NOTE: This form should be completed and given to the corporation **before** the person is appointed as a director—section 246-10(1) of the CATSI Act.  
The period of automatic disqualification is set out in sections 279-5 and 279-10 of the CATSI Act