

The rule book of
TARLKA MATUWA PIARKU
(ABORIGINAL CORPORATION)
RNTBC

(ICN: 8156)

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

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PREAMBLE

- (A) On 29 July 2013 Justice Neil McKerracher of the Federal Court of Australia recognised on behalf of the whole of Australia that native title rights and interests exist within the Wiluna Determination Area as recorded in *WF (Deceased) on behalf of the Wiluna People v State of Western Australia* [2013] FCA 755 and *BP v State of Western Australia* [2013] FCA 760.
- (B) This country is where the *tjukurr* [the law, Dreaming] went through and this is where the *tjukurr* is today. The old people showed the younger generation where the *tjukurr* is and the Native Title Holders have to remain with that and keep it for the next generation.
- (C) Tarlka Matuwa Piarku (Aboriginal Corporation) is founded on the principles of respect, fairness and dignity for all Wiluna people and the Corporation will be guided by the aspirations that the Native Title Holders have for their land, law and culture.
- (D) The current and future generations of Native Title Holders acknowledge and pay their respects to the old people who first lodged the native title claim applications in the courts, many of whom did not live to see their birth right recognised by the people of Australia.
- (E) The Native Title Holders intend to use Tarlka Matuwa Piarku (Aboriginal Corporation) to maintain their traditional laws and customs in the Wiluna Lands to keep country healthy and the *tjukurrpa* strong for the future generations.

1. NAME

1.1 The name of the Corporation is Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC

2. INTERPRETATION

2.1 See Schedule 1 – Dictionary and Interpretation for the meanings of terms and phrases used in this Constitution.

3. OBJECTIVES

3.1 Subject to Rule 3.2 the objectives of the Corporation are:

- (a) to hold the Native Title in trust for the common law Native Title Holders;
- (b) hold title to any Vested Land;
- (c) to be the Registered Native Title Body Corporate in relation to the Determination Area for the purposes of sections 56 and 57 of the Native Title Act;
- (d) to perform the functions of a Registered Native Title Body Corporate that holds Native Title Rights and Interests in trust for the Native Title Holders;
- (e) to maintain, protect, preserve, promote and support land, law and culture as practiced and observed in accordance with the traditions of the Native Title Holders;
- (f) to identify and support any Native Title Holder whose Native Title Rights and Interests have been or may be affected;
- (g) to relieve the poverty, misfortune, disadvantage and suffering of the Native Title Holders;
- (h) to advance the cultural, social, political, economic and legal interests of the Native Title Holders, including by establishing legal entities to achieve these objects; and
- (i) to support and enable Wiluna Entities to take advantage of joint venture and commercial opportunities that may arise in respect of the Wiluna Lands.

3.2 In carrying out its Objects, the Corporation shall ensure no portion of its funds or property are paid or applied directly or indirectly by way of dividends, bonus or otherwise howsoever by way of profit to any Member, except for the payment in good faith of reasonable and proper remuneration to any Member, Officer, servant, agent or employee of the Corporation, for, or in return for, services actually rendered to the Corporation.

3.3 The Object in Rule 3.1(i) is only to be exercised in accordance with the limitations in Rule 4.5.

4. POWERS AND FUNCTIONS OF THE CORPORATION

- 4.1 The Corporation shall, subject to this Constitution, 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.
- 4.2 Without limiting Rule 4.1, in order to perform its functions, the Corporation may, on behalf of the Native Title Holders:
- (a) consult other persons or bodies;
 - (b) enter into Agreements;
 - (c) exercise procedural rights under the Native Title Act or otherwise;
 - (d) accept notices required by any law of the Commonwealth, a State or a Territory to be given to the common law holders; and
 - (e) appoint and remove or suspend contractors, employees and agents and determine the powers, duties and payments of contractors, employees and agents.
- 4.3 In exercising any of its functions under Rules 4.1 and 4.2, the Corporation shall, before carrying out, or authorising, any proposal relating to the management, use or control of any portion of the Wiluna Land, have regard to the interests of and consult with the Affected Native Title Holders having a particular interest in that portion of the land or otherwise affected by the proposal, and shall not make a decision about or carry out the proposal, or authorise or permit it to be carried out, unless satisfied that those Affected Native Title Holders:
- (a) understand the nature and purpose of the proposal;
 - (b) have the opportunity to express their views to the Corporation; and
 - (c) have been consulted about and consent to the proposal (see Rules 14.4 – 14.8).
- 4.4 The Corporation shall only exercise its powers in relation to the management, use and control of the Wiluna Land in accordance with the Traditional Law and Custom of the Native Title Holders (see Rules 14.4 – 14.8).
- 4.5 The Corporation must not do anything seen by the Directors as necessary or desirable for carrying out any of its objects under Rule 3.1(i) unless it has first entered into an Agreement or memorandum of understanding with a Wiluna Entity for the purpose of carrying out any of those objects that do not relate to the management, use and control of the Wiluna Land.
- 4.6 Where there is no Wiluna Entity for the purposes of Rule 4.5, the Corporation may enter into an Agreement or memorandum of understanding with:
- (a) another corporation;
 - (b) a consultant; or
 - (c) another legal entity.

5. MEMBERSHIP OF THE CORPORATION

Membership on registration

- 5.1 A person only becomes a Member when the Corporation is registered, as long as the registration complies with the Act.
- 5.2 Members' names must be entered on the Register of Members.

Members by application

How to become a Member after registration

- 5.3 A person becomes a Member if:
- (a) the person applies in writing, by telephone or in person;
 - (b) the person is eligible for Membership;
 - (c) the Directors accept the application; and
 - (d) the person's name is entered on the Register of Members.

Who can apply to become a Member?

- 5.4 All Native Title Holders, or individuals eligible to become Native Title Holders before the determination takes effect, who are at least 18 years of age and are eligible to be Members of the Corporation.

Membership application

- 5.5 A person (the applicant) who wants to become a Member must apply to the Corporation.
- 5.6 The application may be in writing (in the form set out in Schedule 2), by telephone or in person.

Deciding Membership applications

- 5.7 The Directors will consider and decide Membership applications.
- 5.8 Applications will be considered and decided in the order in which they are received by the Corporation.
- 5.9 The Directors must not accept an application for Membership of the Corporation unless the applicant:
- (a) applies according to Rules 5.5 and 5.6; and
 - (b) meets all the eligibility requirements for Membership.
- 5.10 The Directors may refuse to accept the Membership application even if the applicant has applied according to Rules 5.5 and 5.6 and complies with all the eligibility requirements for Membership. However, they must notify the applicant in writing, by telephone or in person of the decision and the reasons for it.

Entry on the Register of Members

5.11 If the Directors accept a Membership application, the applicant's name must be entered on the Register of Members within 14 days.

However, if:

- (a) the applicant applies for Membership after a notice has been given for the holding of a General Meeting; and
- (b) the 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.

Membership fees

5.12 The Corporation must not impose fees for Membership of the Corporation.

Members rights and obligations

5.13 Each Member has rights under the Act and this Constitution, including the rights set out below.

A Member:

- (a) can attend, speak and, depending on the Member's level of rights under Traditional Law and Custom, participate in and be involved with decision-making at General Meetings of the Corporation;
- (b) can be appointed as a Director;
- (c) cannot be removed as a Member unless the Directors and the Corporation have complied with Rules 5.24 – 5.35;
- (d) can put forward resolutions to be considered at a General Meeting of the Corporation in accordance with Rules 7.26 – 7.28;
- (e) can ask the Directors to call a General Meeting of the Corporation in accordance with Rule 7.10;
- (f) can access the following books and records of the Corporation:
 - (i) the Register of Members, under Rules 6.7 – 6.9;
 - (ii) the minute books, under Rules 18.20 – 18.21;
 - (iii) the Corporation's Rule Book, under Rule 18.27;
 - (iv) certain reports prepared by or for the Directors and the Corporation, in accordance with the Act;
- (g) can ask the Directors to provide access to any other records or books of the Corporation in accordance with Rule 18.26; and
- (h) can have disputes with another Member or with the Directors dealt with under the dispute resolution process in Rule 21.

- 5.14 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.
- 5.15 If a Member believes their rights have been breached or ignored by the Directors, the Member can use the Dispute Resolution Process in Rule 21.

Members' responsibilities

- 5.16 Each Member has the following responsibilities:
- (a) to comply with the Act and this Constitution;
 - (b) to comply with any code of conduct adopted by the Corporation;
 - (c) to behave in a way that does not significantly interfere with the operation of the Corporation or of the meetings of the Corporation; and
 - (d) to consider, be guided by and, where possible, comply with Traditional Law and Custom.

Liability of Members

- 5.17 The Members are not liable to contribute to the property of the Corporation on winding up.
- 5.18 Members and former Members are not to be liable to contribute towards the payment of the debts and liabilities of the Corporation.

How a person stops being a Member

- 5.19 A person will stop being a Member if:
- (a) the person resigns as a Member (see Rules 5.21 –5.23);
 - (b) the person dies; or
 - (c) the person's Membership of the Corporation is cancelled (See Rules 5.24 – 5.35).
- 5.20 A person ceases to be a Member when the Member's name is removed from the Register of Members as a current Member of the Corporation.

Resignation of Members

- 5.21 A Member may resign by giving a resignation notice to the Corporation.
- 5.22 A resignation notice may be given in writing, by telephone or in person.
- 5.23 The Corporation must remove the Member's name from the Register of Members of the Corporation within 14 days after receiving the resignation notice.

Cancelling Membership

5.24 The Membership of a Member of the Corporation may only be cancelled on the grounds that the Member:

- (a) is not eligible for Membership;
- (b) is uncontactable;
- (c) is not an Aboriginal person; or
- (d) has misbehaved.

Membership may be cancelled if ineligible

5.25 The Directors may by resolution cancel the Membership of a Member of the Corporation if the Member is not eligible for Membership.

5.26 Before cancelling the Membership, the Directors must give the Member notice in writing stating that:

- (a) the Directors intend to cancel the Membership for the reasons specified in the notice;
- (b) the Member has 14 days to object to the cancellation of the Membership; and
- (c) the objection may be in writing, by telephone or in person.

5.27 If the Member does not object, the Directors must cancel the Membership.

5.28 If the Member does object:

- (a) the Directors must not cancel the Membership; and
- (b) only the Corporation by resolution in General Meeting may cancel the Membership.

5.29 If the Membership is cancelled, the Directors must give the Member a copy of the resolution (being either the resolution of the Directors or the resolution of the General Meeting) as soon as possible after it has been passed.

Membership may be cancelled if Member cannot be contacted

5.30 The Membership of a Member of the Corporation may be cancelled by Special Resolution in a General Meeting if the Corporation:

- (a) has not been able to contact the Member at their address entered on the Register of Members for a continuous period of two years before the meeting; and
- (b) has made two or more reasonable attempts to contact the Member in another way during that two year period but has been unable to.

5.31 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 possible after the resolution has been passed.

Membership may be cancelled if a Member is not an Aboriginal Person

- 5.32 The Membership of a Member of the Corporation may be cancelled by Special Resolution in a General Meeting if the General Meeting is satisfied that Member is not an Aboriginal Person.
- 5.33 If the Corporation cancels the Membership, the Directors must give the Member a copy of the resolution as soon as possible after it has been passed.

Membership may be cancelled if a Member misbehaves

- 5.34 The Membership of a Member of the Corporation may be cancelled by Special Resolution in a General Meeting if the General Meeting is satisfied that Member has behaved in a way that significantly interfered with the operation of the Corporation or of Corporation meetings.
- 5.35 If the Corporation cancels the Membership, the Directors must give the Member a copy of the resolution as soon as possible after it has been passed.

Amending Register of Members after a Membership is cancelled

- 5.36 Within 14 days of a Member's Membership being cancelled, the Corporation must remove their name from the Register of Members of the Corporation.

Different classes of Members

- 5.37 The Corporation does not have different classes of Members.

6. REGISTERS OF MEMBERS AND FORMER MEMBERS

Register of Members

- 6.1 The Corporation must set up and maintain a Register of Members.
- 6.2 The Register of Members must contain the following information about individual Members:
- (a) the Member's name (given and family name);
 - (b) the Member's address; and
 - (c) the date on which the Member's name was entered in the Register of Members.

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

Register of Former Members

- 6.3 The Corporation must set up and maintain a Register of Former Members.
- 6.4 The Corporation may maintain the Register of Former Members in one document with the Register of Members.
- 6.5 The Register of Former Members must contain the following information about each individual who stopped being a Member within the last 7 years:
- (a) the Member's name (given and family name);
 - (b) the Member's address; and
 - (c) the date on which the individual stopped being a Member.

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

Location and inspection of Registers

- 6.6 The Corporation must keep the Register of Members and the Register of Former Members at its:
- (a) registered office if it is registered as a large corporation; or
 - (b) document access address if it registered as a small or medium Corporation.

Right to inspect Registers

- 6.7 The Register of Members and the Register of Former Members must be open for inspection by any person, and any person has a right to inspect the Registers.
- 6.8 If the Register is kept on a computer, the Corporation must allow the person to inspect a hard copy of the information on the Register (unless the person and the Corporation agree that the person can access the information by computer).

Inspection fees

- 6.9 A Member may inspect the Registers without charge.
- 6.10 A person who is not a Member may inspect the Registers only on payment of any fee (up to the prescribed amount) required by the Corporation.

Right to get copies

- 6.11 The Corporation must give a person a copy of the Register (or a part of the Register) within 7 days (or such longer period as the Registrar may allow) if the person:
- (a) asks for a copy; and
 - (b) pays any fee (up to the prescribed amount) required by the Corporation.

Making Register of Members available at AGM

6.12 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 check and update their entry in the Register.

Provision of registers to Registrar

6.13 If the Registrar requests a copy of the Register of Members or the Register of Former Members, it must be provided within 14 days or such longer period as the Registrar specifies.

7. ANNUAL GENERAL MEETINGS (AGMs) AND GENERAL MEETINGS

Annual General Meetings

Holding AGMs

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

Extension of time for holding AGMs

7.2 The Corporation may apply to the Registrar to extend the period within which the Corporation must hold an AGM, provided the application is made before the end of that period.

7.3 If the Registrar grants an extension, the Corporation must hold its AGM within the extended period specified by the Registrar.

Business of AGM

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

- (a) the consideration of the reports that under Chapter 7 of the Act are required to be presented at the AGM;
- (b) the appointment of Directors;
- (c) the appointment and remuneration of the auditor (if any);
- (d) checking entries on the Register of Members (see Rule 6.12); and
- (e) asking questions about management of the Corporation and asking questions of the Corporation's auditor (if any) (see Rule 8.2).

General Meetings

First Meeting

7.5 The Corporation must hold its first General Meeting within 3 months after the Corporation is registered.

Purpose of General meeting

7.6 A General Meeting must be held for a proper purpose.

Time and place of General meeting

7.7 A General Meeting must be held at a reasonable time and place within the Determination Area.

Use of technology for General Meeting

7.8 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.

Business of a General meeting

7.9 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.

Calling General Meetings

Director may call meetings

7.10 A Director may call a General Meeting of the Corporation.

Members may ask Directors to call General Meetings

7.11 The Directors must call and arrange to hold a General Meeting on the request of at least the required number of Members of the Corporation, as follows:

- (a) where the Corporation has between 2 and 10 Members — 1;
- (b) where the Corporation has between 11 and 20 Members — 3; and
- (c) where the Corporation has more than 20 Members — the greater of 5 Members and 10% of the Members.

7.12 The request must:

- (a) be in writing (on one or more identical copies of the document);
- (b) state any resolution to be proposed at the meeting;
- (c) be signed by the Members making the request;
- (d) nominate a Member to be the contact Member on behalf of the Members making the request; and
- (e) be given to the Corporation.

Directors may apply for permission to deny the Members' request to call a General Meeting

7.13 If the Directors resolve:

- (a) that a request under Rule 7.11 is frivolous or unreasonable; or
- (b) 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.

7.14 The application to the Registrar must:

- (a) be in writing;
- (b) set out the ground on which the application is made; and
- (c) be made within 21 days after the request was made.

7.15 The Directors must, as soon as possible after making the application to the Registrar, give the contact Member (see Rule 7.12(d)) notice that an application has been made.

When must a requested General Meeting be held?

7.16 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 was given to the Corporation.

7.17 If a Director has applied to the Registrar for permission to deny the request, and the Registrar refuses that application, the Directors must call the meeting within 21 days after being notified of the Registrar's decision.

How to call General Meetings

Notice for General Meeting

7.18 At least 21 days' notice must be given of a General Meeting.

Requirement to give notice of General Meeting to Members and Officers

7.19 The Corporation must give written notice of a General Meeting to the following people:

- (a) each Member entitled to participate and be involved in decision-making at the meeting;
- (b) each Director; and
- (c) the Secretary or Contact Person (if any).

7.20 The Corporation may give the notice of meeting to a Member:

- (a) personally; or
- (b) by sending it by post, fax, other electronic means; or
- (c) by placing the notice on community notice boards.

7.21 A notice of meeting:

- (a) sent by post is taken to be received 3 days after it is posted; and
- (b) sent by fax, or other electronic means, is taken to be received on the Business Day after it is sent.

Requirement to give notice of General Meeting and other communications to auditor

7.22 The Corporation must give its auditor (if any):

- (a) notice of a General Meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communications relating to the General Meeting that a Member is entitled to receive.

Failure to give notice

7.23 A General Meeting, or any proceeding at a General Meeting, will not be invalid just because:

- (a) notice of the General Meeting has accidentally not been sent; or
- (b) a person has not received notice of the meeting.

Contents of notice of General Meeting

7.24 A notice of a General Meeting must:

- (a) 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 do this);
- (b) state the general nature of the meeting's business; and
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose it and state what it is.

7.25 The information included in a notice of a General Meeting must be worded and presented clearly and concisely.

Members' resolutions

Notice of resolution

7.26 If a Member or Members wish to move a resolution at a General Meeting, a notice of that resolution must be given to the Corporation by at least the required number of Members of the Corporation, as follows:

- (a) where the Corporation has between 2 and 10 Members — 1;
- (b) where the Corporation has between 11 and 20 Members — 3; and
- (c) where the Corporation has more than 20 Members — the greater of 5 Members and 10% of the Members.

7.27 The Corporation must give notice of the proposed resolution to all its Members at the same time or as soon as possible afterwards, and in the same way as it gives notice of a general meeting, unless the resolution is defamatory.

Notice in writing

7.28 The notice must be in writing, setting out the wording of the proposed resolution, and must be signed by the Members proposing to move the resolution.

Consideration of resolution

7.29 The resolution must be considered at the next general meeting that occurs more than 28 days after the notice of the resolution is given.

Quorum for General Meeting

Quorum

7.30 The quorum necessary for the conduct of any business at a General Meeting is the lesser of:

- (a) 25% of the Corporation's Membership; or
- (b) 15 Members.

The quorum must include at least:

- (c) 5 Members who are eligible to be appointed as Law and Culture Directors; and
- (d) 5 Members who are eligible to be appointed as General Directors.

Quorum to be present

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

Adjourned meeting where there is no quorum

7.32 A meeting of the Corporation's Members that does not have a quorum present within four hours after the time for the meeting set out in the notice is to be adjourned to a time specified by the Directors.

Chairing General Meeting

7.33 The Directors may elect an individual to chair General Meetings.

7.34 The Members at a General Meeting must elect a Member present to chair the meeting (or part of it) if:

- (a) the Directors have not already elected a chair; or
- (b) a previously elected chair is not available, or does not wish to chair the meeting.

7.35 The chair must adjourn a General Meeting if the majority of Members present agree or direct the chair to do so.

Auditor's right to be heard at General Meetings

- 7.36 If the Corporation has an auditor, the auditor is entitled to attend any General Meeting of the Corporation.
- 7.37 The auditor is entitled to be heard at a General Meeting on any part of the business of that meeting that concerns the auditor in their capacity as an auditor.
- 7.38 The auditor is entitled to be heard even if:
- (a) the auditor retires at the meeting; or
 - (b) that meeting passes a resolution to remove the auditor from office.
- 7.39 The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any General Meeting.

Proxies

- 7.40 A Member of the Corporation may not appoint another person to act as their proxy at any General Meeting of the Corporation, as under Traditional Law and Custom there are no proxies.

8. QUESTIONS AT AGMs

Questions and comments by Members at AGMs

- 8.1 The chair of an AGM must give Members a reasonable opportunity to ask questions about or make comments on the management of the Corporation.

Questions by Members of auditors at AGM

- 8.2 If the Corporation's auditor (if any) or the auditor's representative is at an AGM, the chair of the meeting must allow a reasonable opportunity for the Members to ask the auditor or the auditor's representative questions relevant to:
- (a) the conduct of the audit;
 - (b) the preparation and content of the auditor's report;
 - (c) the accounting policies adopted by the Corporation in the preparation of the financial statements; and
 - (d) the independence of the auditor in relation to the conduct of the audit.

9. ADJOURNED MEETINGS

When resolution passed after adjournment of meeting

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

Business at adjourned meetings

- 9.2 In addition to the unfinished business from the adjourned meeting, new business can also be transacted at a General Meeting resumed after an adjournment.

Re-notification of adjourned meeting

- 9.3 If a General Meeting is adjourned for 30 days or more, at least 21 days' notice must be given to the Members and Directors of the day, time and place of when the General meeting will be resumed.

10. DIRECTORS OF THE CORPORATION

Number of Directors

Maximum and Minimum number of Directors

- 10.1 The Corporation must have at least 6 Directors.
- 10.2 The Corporation must not have more than 12 Directors.
- 10.3 The board of Directors shall be comprised of:
- (a) a maximum of 6, and a minimum of 3, people who shall be appointed in their capacity as *wati* (law man) or *wanti* (law woman) due to their knowledge of land, law and culture, including at least one man and one woman (**Law and Culture Directors**); and
 - (b) a maximum of 6, and a minimum of 3, people who may be appointed from the general Membership including, at least one man and one woman (**General Directors**).
- 10.4 For the avoidance of doubt, all Directors have the same powers, rights and responsibilities under these Rules.
- 10.5 Any dispute in relation to the classification of persons as either Law and Culture Directors or General Directors under Rule 10.3 must be determined by the General Meeting by Consensus.

Eligibility to be a Director

Eligibility for appointment as Director

- 10.6 An individual is eligible for appointment as a Director of the Corporation if they are:
- (a) at least 18 years of age; and
 - (b) a Member.
- 10.7 An individual who is disqualified from managing Aboriginal and Torres Strait Islander Corporations may only be appointed as a Director of the Corporation if the appointment is made:
- (a) with permission granted by the Registrar; or
 - (b) with leave granted by the court.

- 10.8 An individual's disqualification may have been because:
- (a) they have been convicted of an offence that:
 - (i) is a contravention of the Act and punishable by imprisonment for a period greater than 12 months; or
 - (ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or
 - (iii) is any other offence described in s 279-5 of the Act;
 - (b) they are an undischarged bankrupt;
 - (c) they have executed a personal insolvency agreement under a law dealing with bankruptcy and the terms of the agreement have not been fully complied with; or
 - (d) they are disqualified from managing corporations under the Corporations Act 2001.

Majority of Director requirements

10.9 A majority of the Directors must ordinarily reside in the Determination Area.

10.10 A majority of the Directors must not be employees of the Corporation.

10.11 The chief executive officer:

- (a) may be a Director but cannot chair the Director's Meetings; and
- (b) counts as an employee for the purposes of Rule 10.10.

Consent to act as Director

10.12 Before a person may be appointed as a Director, that person must give the Corporation a signed consent to act as a Director of the Corporation.

10.13 The Corporation must keep the consent.

Directors on registration

10.14 A person becomes a Director of the Corporation on registration of the Corporation if the person is specified in the application for registration with their consent as a proposed Director.

Becoming a Director on appointment

The Corporation may appoint a Director

10.15 The Corporation may appoint a person as a Director by consensus at an Annual General Meeting.

Directors may appoint other Directors

- 10.16 As long as the maximum number of Directors, including the maximum numbers of Law and Culture Directors and of General Directors, is not exceeded, the Directors of the Corporation may appoint a person as a Director.
- 10.17 A person can be appointed as a Director by the Directors of the Corporation in order to make up a quorum for a Directors' Meeting, even if the total number of Directors of the Corporation is not enough to make up that quorum, as long as that person is from the same side as any Director being replaced (either Law and Culture or General).
- 10.18 If a person is appointed under Rule 10.16, the Corporation must confirm the appointment by resolution at the Corporation's next AGM.

If the appointment is not confirmed, the person ceases to be a Director of the Corporation at the end of the AGM.

Term of appointment

- 10.19 The appointment of Directors identified in the application for registration of the Corporation ends at the first AGM that occurs after the date of the Corporation's registration.
- 10.20 Directors will be appointed on rotation for a two-year term, so that the appointment of some of the Directors expires each year.
- 10.21 In order to implement the rotational system, at the first AGM of the Corporation:
- (a) up to 3 Law and Culture Directors and up to 3 General Directors will be appointed for a term of 2 years; and
 - (b) up to 3 Law and Culture Directors and up to 3 General Directors will be appointed for a term of 1 year.
- 10.22 Subject to Rule 10.24, Directors appointed at subsequent AGMs of the Corporation will hold office for 2 years.
- 10.23 A Director is eligible for reappointment.
- 10.24 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.

Alternate Directors

- 10.25 The Directors may not appoint alternate Directors.

Ceasing to be a Director

10.26 A person ceases to be a Director if:

- (a) the person dies;
- (b) the person resigns as a Director as provided for in Rules 10.27 and 10.28;
- (c) the term of the person's appointment as a Director expires;
- (d) the person is removed as a Director by the Members as provided for in Rules 10.29 – 10.35;
- (e) the person is removed as a Director by the other Directors as provided for in Rules 10.36 – 10.42; or
- (f) the person becomes disqualified from managing Aboriginal Corporations under Part 6-5 of the Act.

Resignation of Director

10.27 A Director may resign as a Director by giving notice of resignation to the Corporation.

10.28 A notice of resignation can be in writing, by telephone or in person.

Process for removing a Director

Removal by Members

10.29 The Corporation may, by resolution in General Meeting, remove a Director from office despite anything in:

- (a) an agreement between the Corporation and the Director; or
- (b) an agreement between any or all Members of the Corporation and the Director.

10.30 A notice of intention to move a resolution to remove a Director must be given to the Corporation at least 21 days before the meeting is to be held.

However, if the Corporation calls a meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than 21 days after the notice is given.

10.31 The Corporation must give the Director concerned a copy of the notice as soon as possible after it is received.

10.32 The Director concerned is entitled to put his or her case to Members by:

- (a) giving the Corporation a written statement for circulation to Members;
and
- (b) speaking to the motion at the meeting.

- 10.33 The Corporation is to circulate the written statement given to Members by:
- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (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 voted on.

10.34 The written statement does not have to be circulated to Members if it is defamatory.

10.35 If a person is appointed to replace a Director removed under this Rule, the time at which:

- (a) the replacement Director; or
- (b) any other Director,

is to retire is to be worked out as if the replacement Director had become a Director on the day on which the replaced Director was last appointed a Director.

Removal by other Directors

10.36 The only ground on which the Directors may remove a Director from office is that they fail without reasonable excuse to attend 3 or more consecutive Directors' Meetings.

The Directors may remove the Director by resolution.

10.37 Rule 10.36 operates despite anything in:

- (a) an agreement between the Corporation and the Director concerned; or
- (b) any agreement between any or all Members and the Directors concerned.

10.38 Before removing the Director, the Directors must give the Director concerned notice in writing:

- (a) stating that the Directors intend to remove the Director concerned from office because they have failed without reasonable excuse to attend 3 or more consecutive Directors' meetings; and
- (b) stating that the Director concerned has 14 days to object in writing to the removal.

10.39 If the Director concerned does not object, the Directors must remove the Director concerned.

10.40 If the Director does object:

- (a) the Directors cannot remove the Director concerned; and
- (b) the Corporation, by resolution in General Meeting, may remove the Director in accordance with Rules 10.29 – 10.35.

10.41 If the Director concerned is removed, the Corporation must give them a copy of the resolution as soon as possible after the resolution has been passed.

10.42 If a person is appointed to replace a Director removed under this Rule, the time at which:

- (a) the replacement Director; or
- (b) any other Director,

is to retire is to be worked out as if the replacement Director had become Director on the day when the replaced Director was last appointed a Director.

11. GENERAL DUTIES

11.1 The Directors, Secretary, other Officers and employees must comply with the duties imposed on them by the Act and the general law. These include, for example:

- (a) a duty to exercise their powers and discharge their duties with due care and diligence;
- (b) a duty to exercise their powers and discharge their duties in good faith in the best interests of the Corporation and for a proper purpose;
- (c) a duty of disclosure of Material Personal Interests (see Rule 12.3);
- (d) a duty not to improperly use position or information; and
- (e) a duty to prevent insolvent trading.

11.2 A Director, Secretary, other Officer or employee is not in breach of their general duties if they do (or refrain from doing) a particular act in good faith and with the belief that doing (or refraining from doing) the act is necessary to ensure that the Corporation complies with a Native Title legislation obligation.

11.3 In the event of a conflict between:

- (a) the duty of a Director to ensure that the Corporation complies with its Native Title legislation obligations; and
 - (b) the duty of the Director to prevent insolvent trading by the Corporation,
- the duty of the Director to prevent insolvent trading prevails and the Director is released from the duty to ensure that the Corporation complies with its Native Title legislation obligations, to the extent of the conflict.

12. FUNCTIONS, POWERS AND DUTIES OF DIRECTORS

Powers of Directors

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

12.2 The Directors may exercise all the powers of the Corporation except any that the Act or this Constitution require the Corporation to exercise in the General Meeting (see Rule 14).

Duty of Director to disclose Material Personal Interests

12.3 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 Rules 12.5 – 12.7 say otherwise.

Notice to be given

12.4 The notice must:

- (a) give details of the nature and extent of the interest;
- (b) give details of the relation of the interest to the affairs of the Corporation; and
- (c) be given at a Directors' Meeting as soon as possible after the Director becomes aware of their interest in the matter.

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

Exceptions to Rule 12.3

12.5 A Director does not need to give notice of an interest under Rule 12.3 if the interest:

- (a) arises because the Director is a Member and is held in common with the other Members, including a Native Title Right and Interest; or
- (b) arises in relation to the Director's remuneration as a Director; or
- (c) 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.

12.6 A Director does not need to give notice of an interest under Rule 12.3 if:

- (a) 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 12.3;
- (b) if a person who was not a Director when the notice was given is appointed as a Director, the notice is given to that person; and
- (c) the nature or extent of the interest has not materially increased above that disclosed in the notice.

12.7 A Director does not need to give notice of an interest under Rule 12.3 if the Director has given a standing notice of the nature and extent of the interest that is:

- (a) given at a Director's Meeting (either orally or in writing) or to the other Directors in writing and tabled at the next Directors' Meeting;
- (b) recorded in the minutes of the Meeting at which the standing notice is given or tabled; and
- (c) still effective in relation to the interest.

Restrictions on voting

12.8 Unless Rule 12.9 or Rule 12.10 applies, a Director of the Corporation who has a Material Personal Interest, apart from a Native Title Right and Interest, in a matter that is being considered at a Directors' Meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

12.9 The Director may be present and vote if Directors who do not have a Material Personal Interest in the matter have passed a resolution that:

- (a) identifies:
 - (i) the Director;
 - (ii) the nature and extent of the Director's interest in the matter; and
 - (iii) its relation to the affairs of the Corporation; and
- (b) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.

12.10 The Director may be present and vote if they are entitled to do so under a declaration or order made by the Registrar.

Remuneration

12.11 (a) the members may decide that the directors may be paid remuneration for their attendance in their capacity as a director at directors' meetings and negotiation meetings, subject to the availability of funds

(b) the directors of the corporation may be paid remuneration for their attendance in their capacity as a directors at directors' meetings and negotiation meetings or workshops, subject to the availability of funds

(c) the remuneration is to be determined by the corporation by resolution in a general meeting

12.12 Rule 12.13 does not prevent:

- (a) a Director who is an employee of the Corporation from receiving remuneration as an employee of the Corporation; or
- (b) reasonable payments (having regard to the market costs of obtaining similar goods and services) to the Director for a contract for goods or services, provided that Rule 12.3 has been complied with.

12.13 The Corporation may pay the Directors' travelling and other expenses that the Directors properly incur:

- (a) in attending Directors' Meetings or any meetings of committees of Directors;
- (b) in attending any General Meetings of the Corporation; and
- (c) in connection with the Corporation's business.

Delegation

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

- (a) a committee of Directors;
- (b) a Director;
- (c) an employee of the Corporation;
- (d) a Sub-Committee of Members; or
- (e) any other person.

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

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

Member approval needed for related party benefit

Related Party Benefit

12.17 For the Corporation, or an entity that the Corporation controls, to give a financial benefit to a related party of the Corporation (including a Director or their spouse, parents or children):

- (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, 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 in performing duties as an officer or employee; and
 - (iii) financial benefits given to comply with a Native Title legislation obligation.

Contractual Party Benefit

12.18 If:

- (a) the giving of the benefit is required by a contract;
- (b) the making of the contract was approved by the Corporation's Members;
and
- (c) the contract was made:
 - (i) within 15 months after that approval; or
 - (ii) before that approval, if the contract was conditional on the approval being obtained,

Member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.

13. DIRECTORS' MEETINGS

Frequency of Directors Meetings

13.1 The Directors will meet within the Determination Area as often as the Directors consider necessary for the good functioning of the Corporation.

Calling and giving notice of Directors' Meetings

13.2 A Directors' Meeting may be called by a Director giving reasonable notice individually to every other Director.

Quorum at Directors' Meetings

13.3 The quorum for a Directors' Meeting is a majority of the Directors, including at least 2 Law and Culture Directors and at least 2 General Directors. The quorum must be present at all times during the meeting.

Chairing Directors' Meetings

13.4 The Directors may elect a Director to chair their meetings. The Directors may determine the period for which that Director is to be the chair.

13.5 The Directors must elect a Director present to chair a meeting, or part of it, if:

- (a) a Director has not already been elected to chair the meeting; or
- (b) a previously elected chair is not available, or declines to act, for the meeting or the part of the meeting.

Use of technology

13.6 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.

Decisions at Directors' Meetings

Decision making

- 13.7 Decisions at Directors' Meetings are to be made by Consensus or, if Consensus cannot be reached after a reasonable effort has been made, by referring the matter to a special General Meeting (see Rule 14.2).

Circulating resolutions if the Corporation has more than 1 Director

- 13.8 The Directors may pass a resolution without a Directors' Meeting being held if all the Directors sign a statement that they are in favour of the resolution set out in the document.
- 13.9 Separate copies of a document under Rule 13.8 may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 13.10 A resolution under Rule 13.8 is passed when the last Director signs.

14. DECISION MAKING PROCESSES

Administrative decisions

- 14.1 Where a matter before the Directors concerns the business of the Corporation, rather than a Native Title Decision or an Other Land Use Decision, the matter must be decided by the Directors by Consensus.
- 14.2 If the Directors cannot make such a decision by Consensus, the matter must be referred to a Special General Meeting.
- 14.3 A decision referred to a Special General Meeting pursuant to rule 14.2 must be made by Consensus.

Native Title Decisions

- 14.4 If the Corporation needs to make a Native Title Decision, the Directors must consult with the Native Title Holders and obtain their consent before making:
- (a) a native title decision other than a decision mentioned in paragraphs (b) or (c);
 - (b) a decision to enter an Indigenous Land Use Agreement or Right to Negotiate Agreement; or
 - (c) a decision to consent to one or more consultation processes in the Constitution of the Corporation.

- 14.5 The Directors must make sure that the Native Title Holders understand the purpose and nature of a proposed Native Title Decision by:
- (a) identifying, consulting with and considering the views of the Affected Native Title Holders; and
 - (b) consulting with and considering the views of the Native Title Representative Body; and
 - (c) if the Directors consider it is appropriate and practicable, letting the Affected Native Title Holders know about those views; and
 - (d) calling a Special General Meeting and making sure that the Affected Native Title Holders have the chance to:
 - (i) be present at the meeting;
 - (ii) understand the purpose and nature of the proposed decision; and
 - (iii) decide whether to consent to the proposed decision in accordance with the process of decision making that must be followed under Traditional Law and Custom.
- 14.6 If the Affected Native Title Holders are not present at that Special General Meeting, the Directors must call another Special General Meeting and make sure that the Affected Native Title Holders have the chance to:
- (a) be present at the meeting;
 - (b) understand the purpose and nature of the proposed decision; and
 - (c) decide whether to consent to the proposed decision in accordance with the process of decision making that must be followed under Traditional Law and Custom.
- 14.7 If a decision cannot be reached at either of these 2 Special General Meetings, the Directors must call a third Special General Meeting, at which the Members must make the decision in accordance with the process of decision making that must be followed under Traditional Law and Custom, even if the Affected Native Title Holders are not present.
- 14.8 The consent of the Affected Native Title Holders referred to in Rule 14.4 must be given, or not given, under the process of decision making that must be followed under Traditional Law and Custom.
- 14.9 The Corporation must follow Rule 14.4 or an Agreement that gives effect to a Native Title Decision will be invalid.
- 14.10 Rule 14.9 does not apply to an Indigenous Land Use Agreement of a kind described in section 24EB or 24EBA of the Native Title Act.

Evidence of consultation and consent

14.11 The Native Title Holders are taken to have been consulted on and to have consented to a proposed Native Title Decision, if a document, signed in accordance with Rules 14.14 and 14.15, states:

- (a) if the proposed decision is of the kind mentioned in Rule 14.4(a), that:
 - (i) the Native Title Holders have been consulted about and have consented to the proposed decision, in accordance with Rule 14.3; or
 - (ii) the proposed decision is of a kind about which the Native Title Holders have been consulted in accordance with Rule 14.3 and the Native Title Holders have decided that decisions of that kind can be made by the Corporation; or
- (b) if the proposed decision is of the kind mentioned in Rules 14.4(b) or (c), that the Native Title Holders have been consulted about, and have consented to, the proposed decision, in accordance with Rule 14.4.

14.12 Rule 14.11(a)(ii) applies only if the proposed Native Title Decision is of the kind about which the Native Title Holders have been consulted.

14.13 A document under Rule 14.11:

- (a) must, if Rule 14.11(a)(ii) applies, include evidence of the consultation with and consent given by the Native Title Holders about the Native Title Decision; and
- (b) may include conditions or circumstances in which a decision is taken to be covered by the document.

14.14 A document mentioned in Rule 14.11 is signed in accordance with this Rule if:

- (a) the document is signed by at least 5 members of the Corporation; and
- (b) all people who sign the document are Affected Native Title Holders.

14.15 However, if there are fewer than 5 Members of the Corporation who are Affected Native Title Holders, a document mentioned in Rule 14.11 is signed in accordance with this Rule, if:

- (a) the document is signed by at least 5 Members of the Corporation; and
- (b) each Affected Native Title Holder who is a Member of the Corporation signs the document.

14.16 Rule 14.5(b) is taken to have been complied with if:

- (a) a document signed by at least 5 Members of the Corporation, states that:
 - (i) the Native Title Representative Body has been consulted about the proposed decision; and
 - (ii) the views of the Native Title Representative Body have been considered; and
- (b) an authorised member of the Native Title Representative Body signs a document stating that the Corporation has consulted the Native Title Representative Body about the proposed Native Title Decision.

Access to certain documents

14.17 In Rules 14.18 – 14.21:

document includes part of a document.

14.18 The Corporation must, in accordance with Rule 14.19, make a copy of a document available to a person if:

- (a) the Corporation has made a decision to which Rule 14.4 applies; and
- (b) the document was created to provide evidence of consultation and consent as described in Rules 14.11 – 14.16.

14.19 The person is entitled to a copy of the document if the person:

- (a) has a substantial interest in the decision to which the document relates; and
- (b) makes a request in writing to the Corporation for a copy of the document.

Other Land Based Decisions

14.20 Before the Corporation can make an Other Land Based Decision:

- (a) the Members must make Rules at a General Meeting about how Other Land Based Decisions are to be made;
- (b) these Rules must provide for the Directors to make Other Land Based Decisions by consensus, but otherwise can set up any decision making process; and
- (c) the Directors must follow these Rules before making an Other Land Based Decision.

14.21 If the Directors cannot make an Other Land Based Decision in accordance with the Rules made under Rule 14.20, the following process must be followed:

- (a) the matter must be referred by the Directors for consideration by the Members at a Special General Meeting; and
- (b) the matter must be decided by the Members by Consensus and in accordance with Traditional Law and Custom.

15. SECRETARY OR CONTACT PERSON

Requirements for Secretary or Contact Person

Who may be a Secretary or Contact Person

- 15.1 Only an individual who is at least 18 years of age may be appointed as a Secretary or Contact Person of the Corporation.
- 15.2 A person who is disqualified from managing Aboriginal and Torres Strait Islander Corporations may only be appointed as a Secretary or Contact Person if the appointment is made with:
- (a) permission granted by the Registrar; or
 - (b) leave granted by the court.
- 15.3 An individual's disqualification may have been because:
- (a) they have been convicted of an offence that:
 - (i) is a contravention of the Act and punishable by imprisonment for a period greater than 12 months; or
 - (ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or
 - (iii) is any other offence described in s 279-5 of the Act;
 - (b) they are an undischarged bankrupt;
 - (c) they have executed a personal insolvency agreement under a law dealing with bankruptcy and the terms of the agreement have not been fully complied with; or
 - (d) they are disqualified from managing corporations under the Corporations Act 2001.

Consent to act as Secretary or Contact Person

- 15.4 The Corporation must receive a signed consent from a person to act as Secretary or Contact Person of the Corporation, before that person is appointed as Secretary or Contact Person of the Corporation.
- 15.5 The Corporation must keep the consent.

Becoming a Secretary or a Contact Person on registration

- 15.6 A person becomes a Secretary or a Contact Person of the Corporation on registration of the Corporation, if the person is specified in the application with their consent as a proposed Secretary or Contact Person of the Corporation.

How a Secretary or Contact Person is appointed

- 15.7 The Directors must appoint a Secretary or Contact Person.

Terms and conditions of office or appointment

15.8 A Secretary holds office or a Contact Person is appointed on the terms and conditions (including as to remuneration) that the Directors determine.

Duties of Secretary and Contact Person

Secretary or Contact Person must pass on communications received

15.9 While entered on the Register of Aboriginal and Torres Strait Islander Corporations as the Secretary or Contact Person, a person must pass on to at least one of the Directors each communication received for the Corporation within 14 days after receiving it.

16. EXECUTION OF DOCUMENTS AND THE COMMON SEAL OF THE CORPORATION

Corporation may have Common Seal

16.1 The Corporation may have a Common Seal.

16.2 If the Corporation does have a Common Seal the Corporation must set out on it the Corporation's name and ICN.

16.3 The Corporation may have a duplicate Common Seal. The duplicate must be a copy of the Common Seal with the words 'duplicate seal' added.

Execution of documents

Agent exercising Corporation's power to make contracts etc

16.4 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.

Execution of documents (including deeds) by the Corporation

16.5 The Corporation may execute a document without using a Common Seal if the document is signed by:

- (a) 2 Directors; or
- (b) a Director and a Secretary (if any).

16.6 The Corporation may execute a document using a Common Seal if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) 2 Directors; or
- (b) a Director and a Secretary (if any).

16.7 The Corporation may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Rule 16.5.

16.8 This Rule 16 does not limit the ways in which the Corporation may execute a document (including a deed).

17. FUNDS AND PROPERTY

Separate trust

- 17.1 All funds or property of the Corporation (other than Vested Land) that is obtained as a result of Native Title Decisions in relation to Wiluna Land must be made the subject of a separate trust (see *Wiluna PBC Trust*).
- 17.2 Vested Land that is obtained by the Corporation as a result of Native Title Decisions in relation to Wiluna Land may be made the subject of a separate trust (see *Wiluna PBC Trust*).
- 17.3 The Directors may apply to the Trustee to request that sufficient funds or property be released to allow the Corporation to operate for the coming financial year.
- 17.4 The Directors may apply to the Trustee at any time to request that sufficient funds or property be released to allow the Corporation to pay any reasonable debts or liabilities that it may incur in fulfilling its Objects.

Application of funds and property

- 17.5 Subject to the Act and this Constitution, all funds or property of the Corporation up to the value of \$60,000, and not subject to any special trust, can be used at the discretion of the Directors, in a single transaction, to carry out the Corporation's objectives.
- 17.6 All funds and property of the Corporation over the value of \$60,000 shall be applied only on the approval of the Members in a General Meeting.
- 17.7 Subject to the Act and this Constitution, no portion of the funds and property of the Corporation may be paid or distributed to any Member of the Corporation.
- 17.8 In accordance with subsections 56(5) and (6) of the Native Title Act, Native Title Rights and Interests held by the Corporation are not able to be:
- (a) assigned, restrained, garnished, seized or sold;
 - (b) made subject to any charge or interest; or
 - (c) otherwise affected,
- as a result of:
- (d) the incurring, creating or enforcement of any debt or other liability of the Corporation (including a debt or liability owed to the Crown in any capacity or to any statutory authority); or
 - (e) any act done by the Corporation.
- 17.9 Rule 17.7 does not apply if the incurring of the debt, creation of the liability or doing of the act was in connection with a dealing with the Native Title Rights and Interests authorised by a Native Title Decision made in accordance with Rule 14.4.

Banking

17.10 All money of the Corporation shall be deposited into the Corporation's bank account as soon as possible following its receipt.

17.11 All cheques and withdrawal forms or electronic transfers shall be authorised by at least 2 Directors or by at least 2 other persons to whom the Directors have delegated this responsibility.

18. RECORD KEEPING

Minutes of meetings

Obligation to keep minutes

18.1 The Corporation must keep minute books in which it records within 1 month:

- (a) proceedings and resolutions of General Meetings;
- (b) proceedings and resolutions of Directors' Meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

18.2 The minutes of the meeting may be kept:

- (a) in writing; or
- (b) by means of an audio, or audio-visual recording.

18.3 If the minutes 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 their name.

18.4 If the minutes of the meeting are kept in writing, the Corporation must ensure that either:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting,

signs those minutes within a reasonable time after the first meeting.

18.5 If the minutes of the meeting are kept by means of an audio, or audio visual, recording, the Corporation must ensure that either:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting,

signs a declaration under Rule 18.6 within a reasonable time after the first meeting.

- 18.6 The declaration under this Rule 18.6 must:
- (a) identify the audio, or audio-visual, recording;
 - (b) if the recording is not a recording of the whole of the meeting, identify the part of the meeting that is recorded; and
 - (c) declare that the recording constitutes the minutes of the meeting or that part of the meeting.
- 18.7 The Corporation must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- 18.8 The Corporation must keep its minute books at:
- (a) its registered office if it is registered as a large corporation; or
 - (b) its document access address if it is registered as a small or medium corporation.

Constitution and records about Officers, Contact Persons, etc

- 18.9 The Corporation must keep:
- (a) an up-to-date copy of this Constitution (incorporating any changes to the Constitution); and
 - (b) written records relating to:
 - (i) the names and addresses of the Corporation's current Officers and Secretary or Contact Person (as the case may be);
 - (ii) the Corporation's registered office (if any); and
 - (iii) the Corporation's document access address (if any).

Financial Records

Obligation to keep Financial Records

- 18.10 The Corporation must keep written Financial Records that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial reports to be prepared and audited.

The obligation to keep Financial Records extends to transactions undertaken as trustee.

Period for which Financial Records must be retained

- 18.11 The Financial Records must be retained for 7 years after the transactions covered by the records are completed.

Physical format

18.12 If the records that the Corporation is required to keep under Rules 18.9 and 18.10 are kept in electronic form, the records must be convertible into hard copy.

That hard copy must be made available, within a reasonable time, to a person who is entitled to inspect the records.

Place where records are kept

18.13 If the Corporation is registered as:

- (a) a large corporation, the records that the Corporation is required to keep under Rules 18.9 and 18.10 must be kept at the Corporation's registered office; or
- (b) a small or medium corporation, the records that the Corporation is required to keep under Rules 18.9 and 18.10 must be kept at the Corporation's document access address.

Right of access to Corporation Books by Director or past Director

18.14 A Director may inspect the Books of the Corporation (other than its Financial Records) for the purposes of a legal proceeding:

- (a) to which that person is a party;
- (b) which that person proposes in good faith to bring; or
- (c) which that person has reason to believe will be brought against him or her.

18.15 A person who has ceased to be a Director may inspect the Books of the Corporation (other than its Financial Records) for the purposes of a legal proceeding:

- (a) to which that person is a party;
- (b) which that person proposes in good faith to bring; or
- (c) which that person has reason to believe will be brought against him or her.

This right continues for 7 years after the person ceased to be a Director.

18.16 A person authorised to inspect Books for the purposes of a legal proceeding may make copies of the Books for the purposes of those proceedings.

18.17 The Corporation must allow a person to exercise the person's rights to inspect or take copies of the Books.

18.18 Rules 18.14 and 18.15 do not limit any other right of access to the Corporation Books that a person has.

Access to Financial Records by Directors

18.19 A Director has a right of access to the records that the Corporation is required to keep under Rules 18.9 and 18.10.

Members' access to minutes

- 18.20 If the Corporation is registered as a large corporation, the Corporation must make available for inspection by Members, at its registered office, the minute books for the meetings of its Members and for resolutions of Members passed without meetings. The books must be made available for inspection each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm.
- 18.21 If the Corporation is registered as a small or medium corporation, the Corporation must make available for inspection by Members, at its document access address, the minute books for the meetings of its Members and for resolutions of Members passed without meetings. The books must be made available within 7 days of a Member's written request for inspection.
- 18.22 The Corporation must make minutes available to Members for inspection free of charge.
- 18.23 A Member may ask the Corporation in writing for a copy of:
- (a) any minutes of a meeting of the Corporation's Members or an extract of the minutes; or
 - (b) any minutes of a resolution passed by Members without a meeting.
- (Note): The Member may ask the Corporation for an English translation under ss 376-5(3) of the Act if the minutes are not in the English language.)*
- 18.24 If the Corporation does not require the Member to pay for the copy, the Corporation must send it:
- (a) within 14 days after the Member asks for it; or
 - (b) within any longer period that the Registrar approves.
- 18.25 If the Corporation requires payment for the copy, the Corporation must send it:
- (a) within 14 days after the Corporation receives the payment; or
 - (b) within any longer period that the Registrar approves.
- The amount of any payment the Corporation requires cannot exceed 50 cents per page.

Inspection of Books by Members

- 18.26 A Member may inspect the Books of the Corporation if a decision to approve the inspection is made by:
- (a) the Directors by Consensus at a Directors' Meeting; or
 - (b) the Members by Consensus at a General Meeting.

Access to governance material

Corporation to provide Member with Rule Book, if requested

18.27 If a Member asks for a copy of the Corporation's Rule Book, the Corporation must provide it:

- (a) free of charge; and
- (b) within 7 days.

Registered office

18.28 If the Corporation is registered as a large corporation, the Corporation must make its Rule Book available for inspection by Members and Officers at its registered office.

The Rule Book must be available for inspection each Business Day from at least 10 am to 12 noon and from at least 2 pm to 4 pm.

Document access address

18.29 If the Corporation is registered as a small or medium corporation, the Corporation must make its Rule Book available for inspection by Members and Officers at its document address.

The Rule Book must be made available for inspection within 7 days of a Member's or Officer's written request for inspection.

General provisions regarding access to Rules

18.30 The Rule Book of the Corporation includes:

- (a) the Corporation's Constitution;
- (b) any Replaceable Rules that apply to the Corporation; and
- (c) any other material concerning the internal governance of the Corporation that is prescribed.

19. AUDITOR

19.1 The Corporation must comply with any requirements set out in the Act relating to the examination or auditing of its Financial Records.

20. ANNUAL REPORTING

20.1 The Corporation must comply with the annual reporting requirements set out in the Act.

21. DISPUTE RESOLUTION PROCESS

General principles

21.1 This Rule sets out the steps which must be taken to try to resolve any disagreement or dispute about the affairs of the Corporation, its internal operation, or how the Act or this Constitution apply, which arises between:

- (a) Members;
- (b) Members and Directors;
- (c) Directors; or
- (d) the Corporation and Native Title Holders.

21.2 Disputes between the Corporation and a Member or between the Corporation and a Native Title Holder must be resolved, as far as is possible in accordance with Traditional Law and Custom.

Informal negotiations

21.3 If a dispute arises, the parties to the dispute must try to resolve it themselves on an informal basis.

Referring disputes to Directors

21.4 The Directors must make a reasonable effort to resolve any dispute that arises between the Corporation, Members, Native Title Holders, or Directors by Consensus.

Referring a dispute to a General Meeting

21.5 If the Directors cannot resolve a dispute under Rule 21.4 by Consensus, it must be referred to a General Meeting for resolution by the Members by Consensus.

22. WINDING UP

Resolution to distribute surplus assets

22.1 Subject to Rule 22.2, where:

- (a) the Corporation is wound up; and
- (b) after all debts and liabilities have been taken care of, surplus assets of the Corporation exist,

surplus assets of the Corporation shall be given or transferred to a prescribed body corporate that is

- (c) eligible for endorsement by the Commissioner of Taxation as a public benevolent institution; and
- (d) appointed by the Native Title Holders to replace this Corporation as the holder on trust of the Native Title Holder's Native Title Rights and Interests.

No distribution of surplus asset to Members

- 22.2 Surplus assets of the Corporation must not be distributed to any Member or to any person to be held on trust for any Member.
- 22.3 The Deputy Commissioner of Taxation and the Registrar of the National Native Title Tribunal must be notified in the event of the winding up of the Corporation in accordance with the Act.

23. SUB COMMITTEE

- 23.1 The Directors may form a Sub-Committee for the purpose of carrying out any of the functions or objectives of the Corporation.
- 23.2 The Sub-Committee:
- (a) must be directed by and be fully accountable to the Directors; and
 - (b) has no power beyond those of, or given to it by, the Directors.
- 23.3 A Sub-Committee Member shall be a Member and may also be a Director.
- 23.4 The Sub-Committee must meet and otherwise perform its functions at such times and in a manner as directed by the Directors.

24. AMENDMENT OF THE CONSTITUTION

Corporation wants to change the Constitution

- 24.1 For the Corporation to change its Constitution, the following steps must be complied with:
- (a) the Corporation must pass a Special Resolution effecting the change;
 - (b) the further steps that are required in respect of certain changes to the Constitution under Rule 24, must be complied with;
 - (c) the Corporation must lodge the documents required under Rules 24.4 – 24.6; and
 - (d) the Registrar must make certain decisions in respect of the change and, if appropriate, must register the change.

Consistency with the Native Title Act and PBC Regulations

- 24.2 The Objects of the Corporation and the Rules must not be changed unless the change is consistent with the Native Title Act, the Corporation's status as a Registered Native Title Body Corporate under the Native Title Act and the PBC Regulations.

(Note: The Native Title Act and the PBC Regulations require that certain provisions be included in the rules of a registered native title body corporate.)

- 24.3 Consistently with Rule 24.2 a change:
- (a) to the Objects of the Corporation;
 - (b) to the definition of 'Native Title Holders'; or
 - (c) inserting one or more consultation processes that the Corporation must follow before making certain Native Title Decisions,

does not have any effect unless it is:

- (d) required by law; or
- (e) the Corporation has consulted the Native Title Holders and obtained their consent given and evidenced in accordance with Rule 14, as if the change was a Native Title Decision in relation to which all Native Title Holders were Affected Native Title Holders.

Corporation to lodge copy of changes

24.4 Subject to Rule 24.3, within 28 days after the Special Resolution is passed, the Corporation must lodge with the Registrar:

- (a) a copy of the Special Resolution;
- (b) 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;
- (c) a Director's statement signed by 2 Directors to the effect that the Special Resolution was passed in accordance with the Act and this Constitution; and
- (d) a copy of the constitutional change.

24.5 If the change is a change referred to in Rule 24.3, the Corporation must lodge:

- (a) the documents referred to in Rule 24.4; and
- (b) proof that the Corporation has consulted the Native Title Holders and obtained their consent in accordance with Rule 14,

within 28 days after the later of the passing of the Special Resolution and the giving of that consent .

24.6 If the Registrar directs the Corporation to lodge a consolidated copy of the Constitution as it would be if the Registrar registered the change, it must do so.

Date of effect of change

24.7 A constitutional change under this Rule 24 takes effect on the day the change is registered.

SCHEDULE 1 – DICTIONARY AND INTERPRETATION

1. DICTIONARY

Aboriginal Person means a person of the Aboriginal race of Australia.

Act means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* as amended from time to time and any regulations made under it.

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

Affected Native Title Holders means those Native Title Holders who hold Native Title Rights and Interests that may be affected by a proposed Native Title Decision. For the avoidance of doubt, an Affected Native Title Holder may or may not also be a Member of the Corporation.

Agreement means any agreement with:

- (a) any state of Australia;
- (b) the Commonwealth of Australia;
- (c) any local government;
- (d) any corporate or non corporate entity; or
- (e) any legal or natural person.

Annual General Meeting or **AGM** means an annual general meeting held in accordance with Rule 7.

Books include a register, any record of information, financial reports or records, and documents however compiled, recorded or stored.

Business Day means a day which is not a Saturday, Sunday or public holiday in the place concerned.

Common Seal means the common seal of the Corporation referred to in Rule 16.

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, the requirements of traditional law and custom have been taken into account 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 appointed under Rule 15.

Corporation means the Corporation referred to in Rule 1.

Determination means the determinations of native title recorded in:

- (a) *WF (Deceased) on behalf of the Wiluna People v State of Western Australia* [2013] FCA 755 in proceedings WAD 6164 of 1998, WAD 248 of 2007 and WAD 181 of 2012; and
- (b) the orders made on 3 September 2013 reflecting the reasons published by Jagot J in *BP v State of Western Australia* [2013] FCA 760 in proceeding WAD 241 of 2004.

Determination Area means:

- (a) the determination areas described in Schedule 1 of the Determination; and
- (b) any area where it may be determined by a court of competent jurisdiction that the Native Title Holders hold native title rights and interests.

Director means a person appointed under Rule 10 to manage the affairs of the Corporation in accordance with the Act and this Constitution.

Directors' Meeting refers to the meetings of the Directors held in accordance with Rule 13.

Dispute has the meaning given in Rule 21.1.

Dispute Resolution Process means the process set out in Rule 21.

Financial Records (money books) includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers, documents of prime entry, and working papers and other documents needed to explain the financial reports.

General Meeting (big meeting) refers to both special General Meetings and Annual General Meetings of the Members of the Corporation called and held according to Rule 7.

Indigenous Corporation Number or **ICN** means that number given by the Registrar to the Corporation on registration.

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

Material Personal Interest has the meaning given to it in Rule 12.3.

Member means:

- (a) a person who is a member of the Corporation on its registration; or
- (b) a person whose name appears on the Register of Members.

Membership has the same meaning.

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

Native Title Decision has the same meaning as in regulation 8 of the PBC Regulations and means a decision:

- (a) to surrender native title rights and interests in relation to land or waters; or
- (b) to do, or agree to do, any other act that would affect the native title rights and interests of the Native Title Holders,

and includes a decision refusing to make a proposed native title decision.

Native Title legislation obligations means the following obligations imposed by the Native Title Act or the PBC Regulations on a registered native title body corporate:

- (a) an obligation to consult with the common law holders of native title;
- (b) an obligation to act in accordance with the directions of the common law holders of native title;
- (c) an obligation to act only with the consent of the common law holders of native title; and

(d) an obligation to take any other action in relation to the common law holders of native title.

Native Title Representative Body means a representative Aboriginal and Torres Strait Islander Body for the Determination Area, recognised under s 203AD of the Native Title Act.

Native Title and **Native Title Rights and Interests** have the same meaning as in the Native Title Act, and in relation to the Determination Area means those rights and interests of the Native Title Holders recognised in the Determination.

Native Title Holders means the common law holders of native title rights and interests who:

- (a) have rights in part or all of the Determination Area through descent (whether from a parent or grandparent from the area or who died and is buried in the area), conception and/or birth within the area, long-term residence within the area, high ritual knowledge within the area or responsibility for sites within the area; and
- (b) who are recognised under the traditional laws and customs by the other Native Title Holders as having rights in the Determination Area,

and includes the persons referred to in item 2 of Schedule 2 of the Determination.

Objects means the objects of the Corporation set out in Rule 3.

Officer is a Director, secretary, administrator, special administrator, receiver, receiver and manager, liquidator or trustee of the Corporation or a person who makes, or participates in making, decisions that affect a substantial part of the business of the Corporation; or could significantly affect the Corporation's financial standing.

Other Land Based Decisions means decisions that involve access on or to Wiluna Land by third parties which do not invoke the future act processes of the Native Title Act.

PBC Regulations means the *Native Title (Prescribed Body Corporate) Regulations 1999* (Cth) made pursuant to the Native Title Act.

Prescribed Body Corporate has the same meaning as in the Native Title Act.

Registered Native Title Body Corporate or **RNTBC** means a prescribed body corporate whose name and address are registered on the National Native Title Register under the Native Title Act.

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

Register of Members means the register of Members kept in accordance with Rule 6.1.

Register of Former Members means the register of former Members kept pursuant to Rule 6.3.

Registrar means the Registrar of Aboriginal and Torres Strait Islander Corporations appointed under the Act.

Right to Negotiate Agreement means an agreement made under Subdivision P of Division 3 of Part 2 of the Native Title Act.

Rule Book has the meaning given by Rule 18.30.

Replaceable Rule is a rule in the Act that can be either modified or replaced in this Constitution.

Secretary means a person appointed under Rule 15.

Special General Meeting or **SGM** means a General Meeting other than an Annual General Meeting.

Special Resolution means a resolution:

- (a) of which notice has been given in the notice of the general meeting at which the resolution is to be proposed; and
- (b) that has at least 75% support for it by those Members entitled to participate and be involved in decision-making.

Sub-Committee means the committee referred to in Rule 23.

Sub-Committee Member means each of the persons appointed in accordance with Rule 23.

Surplus Assets has the meaning given in Rule 22.

Traditional Law and Custom means the traditional laws acknowledged and the traditional customs observed by the Native Title Holders.

Trustee means the trustee of the Wiluna PBC Trust established under Rule 17.1.

Vested Land means any land:

- (a) vested in;
- (b) granted or given to; or
- (c) purchased by,

the Corporation.

Wiluna Entity means a body corporate other than the Corporation that has been endorsed by the Corporation to take advantage of business and employment opportunities that arise as a result of Native Title Decisions or Other Land Based Decisions.

Wiluna Land means:

- (a) all the land and waters vested from time to time in the Corporation; and
- (b) any land and waters in respect of which the Corporation has been or becomes determined as, the Prescribed Body Corporate under s 56 or s 57 of the Native Title Act.

Wiluna PBC Trust means the trust established from time to time under Rule 17.1 to hold funds and property obtained as a result of Native Title Decisions. For the avoidance of doubt, the Wiluna PBC Trust does not act as trustee for the Native Title Rights and Interests.

2. INTERPRETATION

In this Constitution:

- (a) words in the singular include the plural and vice versa;
- (b) 'including' means 'including, but not limited to';
- (c) 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;

- (d) headings and notes are used for convenience only and are not intended to affect the interpretation of this Constitution;
- (e) 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 Constitution; and
- (f) any inconsistency with the Act is to be resolved in favour of the Act.

SCHEDULE 2 – APPLICATION FORM FOR MEMBERSHIP

APPLICATION FOR MEMBERSHIP

Corporations (Aboriginal and Torres Strait Islander Act) 2006

TARLKA MATUWA PIARKU (ABORIGINAL CORPORATION) RNTBC (

I,

(First name) (Surname)

(and/or)

(Aboriginal name)

of.....

.....

(home address)

hereby apply for membership of Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC

I declare that I am a Native Title Holder and that I am eligible for membership and will act in the best interests of the Corporation and comply with its Constitution.

Signature:

Date:

(Note: Your membership application will not be approved if no home address is provided.)

OPTIONAL INFORMATION

Date of birth:

Place of birth:

Mother's name: Father's name:

Grandparent's names: (1)

(2)

(3)

(4)

(Note: The optional information may assist in your application but you do not need to provide it for your membership application to be approved.)