

THE CONSTITUTION OF

BANJIMA NATIVE TITLE

ABORIGINAL CORPORATION RNTBC

(ICN: 7971)

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CONSTITUTION

1. PREAMBLE

- (a) The Corporation has been formed to hold the Native Title Rights and Interests for and on behalf of the Common Law Holders in respect of the area which is the subject of the Native Title Claim.
- (b) The Banjima People share a common identity and language called Banjima.
- (c) There are two dialects of Banjima which are each associated with particular parts of the area the subject of the Native Title Claim although the two parts may merge or overlap to some extent.
- (d) The Banjima People acknowledge and observe the same body of traditional law and custom including the tradition known as Wardiba.
- (e) There are two Wardiba, each associated with different parts of the area the subject of the Native Title Claim.
- (f) Those Banjima people who have gained the necessary knowledge and ritual qualification under Law and Custom hold the right to speak for country.
- (g) Acknowledging and respecting their differences, the Banjima People have decided to work together to manage and protect their Native Title Rights and Interests in accordance with the rules of this Constitution.

2. NAME AND NATURE OF THE CORPORATION

- (a) The name of the Corporation is **Banjima Native Title Aboriginal Corporation RTNBC (ICN: 7971)**.
- (b) The Corporation is an Aboriginal Corporation registered under the CATSI Act.

3. DEFINITIONS AND INTERPRETATION

3.1 Definitions

In this Constitution:

Aboriginal persons or Aboriginal people	means persons of the Aboriginal race of Australia.
Affect	has the meaning given in section 227 of the Native Title Act and Affected has a corresponding meaning.
Affected Area	means the Traditional Lands, or any part of it, that will be Affected by acceding to a proposal to make a Native Title Decision.
Affected Common Law Holders	means those Common Law Holders who hold Native Title Rights and Interests that may be Affected by a proposed Native Title Decision.
Agreement	means any agreement with: (a) the State of Western Australia; (b) the Commonwealth of Australia; (c) any local government; (d) any corporate or non-corporate entity; or (e) any legal or natural persons.
Annual General Meeting or AGM	means a General meeting held in accordance with rule 8.1.
Annual Plan	means a plan for the activities of the Corporation during a Financial Year in accordance with rule 20.1.
Annual Plan Report	has the meaning given in 20.3.
Applicant	means a person who is eligible to become a Member of the Corporation and has applied to become a Member in accordance with rule 6.2.
Approved Determination of Native Title	has the meaning given to that phrase in the Native Title Act.

Approved Process	a traditional decision making process, or if there is no such process, then an agreed and adopted decision making process, by which the Common Law Holders make a decision
Associate	means an Associate referred to in rule 6.8.
Auditor	means the person, company or firm that is appointed as the Auditor of the Corporation from time to time in accordance with rule 22.12.
Banjima Determination	means the Approved Determination of Native Title made on 11 March 2014 pursuant to the Banjima Judgment, including as varied pursuant to any appeal from the Banjima Judgment or pursuant to section 13 of the NTA.
Banjima Director	means a director appointed in accordance with rule 12.1.3 (a)
Banjima Judgment	means the judgment of the Federal Court of Australia in <i>Banjima People v State of Western Australia</i> (No 2) [2013] FCA 868 in relation to the Banjima Claim.
Banjima People	means those persons who are native title holders as described in the Banjima Determination from time to time.
Banjima Person	means one of the Banjima People.
Banjima Registrar	means the entity that maintains a Register of Banjima People for the purpose of native title agreements, indigenous land use agreements and other contractual arrangements.
Benefits Management Structure	has the meaning given to it in rule 12.1(a)
Board or Board of Directors	means the people elected or appointed in accordance with rule 12 to manage the affairs of the Corporation in accordance with the Native Title Act, PBC Regulations, the CATSI Act and this Constitution.
Board of Directors' minute book	means the books and records in which the minutes of all Directors' meetings are kept under rule 22.2 and copies of any written resolutions passed without a Directors' meeting under rule 15.7.2

Books	include a register, any record of information, financial reports, or records, or documents of a Corporation however compiled, recorded or stored.
Business Day	means a day which is not a Saturday, Sunday or bank or public holiday in Western Australia.
CATSI Act	means the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth) as amended from time to time and any regulations made under it.
CGA	means the consolidated gross assets of the Corporation and any entities that it controls.
CGOI	means the consolidated gross operating income of the Corporation and any entities it controls.
Chairperson	means the person elected as Chairperson of a General meeting in accordance with rule 8.8.
Circulating Resolution	means a resolution of the Board of Directors passed in accordance with rule 15.7.2.
Claimant Applications	has the meaning given to that phrase in the Native Title Act.
Common Law Holders	has the meaning given to that phrase in the Native Title Act.
Common Seal	means the common seal of the Corporation (if any) referred to in rule 19.
Constitution	means this constitution and any amendments or substitutions.
Consensus	means the general agreement among those present at a meeting held under this Constitution as to a particular matter whereby differing points of view, if any, have been considered and reconciled and any decision is generally agreed upon in accordance with Law and Custom, as determined by the chair of the meeting. For the avoidance of doubt, a decision made by Consensus in accordance with Law and Custom, does not necessarily require that the decision be agreed upon unanimously.
Corporation	means the Corporation referred to in rule 2.
Deductible Contribution	means: (a) a contribution of money or property as described in column 2 of item 7 of the table contained in section 30-15 of the ITAA97 in relation to a fundraising event; or

	(b) a contribution of money as described in column 2 of item 8 of the table contained in section 30-15 of the ITAA97 in relation to a successful bidder at an auction that was a fundraising event, held for the purpose of the Corporation.
Deductible Gift Recipient	means an institution, fund, authority or any other entity that is endorsed as a deductible gift recipient by the Commissioner of Taxation under Division 30 of the ITAA97 or is a specific listed deductible gift recipient under Division 30 of the ITAA97.
Determination	means any determination that arises out of a Native Title Claim.
Determination Area	means: (a) the area of Native Title determined in a Determination; and (b) any other area where it may be determined by a court of competent jurisdiction that the Banjima People hold Native Title Rights and Interests.
Director	means a person who holds office as a member of Board of Directors of the Corporation in accordance with rule 12.
Directors' Meeting	refers to meetings of the Board of Directors held in accordance with rule 15.
Dispute	means a dispute referred to in rule 25.
Dispute Resolution Process	means the process set out in rule 25.
Elders Council	means the Elders Council referred to in rule 9.
Encumbrance	includes, but is not limited to, any mortgage, charge, encumbrance, pledge, lien, hypothecation, security, option to purchase or acquire, lease, licence, caveat, preferential interest, title retention provision or other estate, interest, claim or arrangement or an agreement to grant, create, allow or register any of the foregoing, whether registered or unregistered and whether statutory, legal or equitable.
Financial Year	refers to each 12 month period from 1 July to 30 June.
General Meeting	refers to a General meeting of the Members of the Corporation called and held in accordance with rule 8 and includes any SGM and AGM.

General Meeting Minute Book	means the books and records in which the minutes of all General meetings are kept under rule 23.2 and copies of any written resolutions passed without a General meeting under rule 8.12.
IB Past Agreements	means the agreements referred to in item 1 of Schedule 3
IB Group	means those Banjima People who were formally, known by the name “Innawonga Bunjima Native Title Claimants” (or “IB Banjima Native Title Claimants”) and includes any Banjima People identified and accepted as such by the IB Group in the future in accordance with their own decision making processes.
Independent or Independent Person	means: (a) in the case of a natural person, that the person, and any person who is a relative of that first person, so far as the first person is, or ought to be, reasonably aware: i. is not and has not been a Member ii. is not and has not been a relative or a spouse of a Member; iii. does not have a membership interest (in accordance with section 960-135 of the Tax Law) in a Related Entity; iv. is not and has not, within the previous 3 years or within the period of 3 years prior to their appointment as a Director, as applicable, been: A. an employee of, officer of, consultant to, advisor to, auditor of or other service provider to the Corporation or to a Related Entity; or B. an employee or officer of a Related Entity, or a partner in a partnership, or a direct or indirect associate of a Related Entity or partnership; which is, or has been within that 3 year time period, consultant to, advisor to, auditor of or other service above provider to, the Corporation or a Related Entity;

- v. has no material contractual relationship with a Related Entity, the Banjima People, or the Corporation, other than (when considering the person's directorship eligibility only) as a director;
 - vi. has not served on the Board for a period which could, or could be perceived to, materially interfere with the person's ability to impartially and objectively discharge their duties as a Director;
 - vii. has no material interest in, business affiliation with or other relationship with any Members or a Related Entity which would hinder the person in the impartial and objective discharge of their duties;
- (b) in the case of an entity (within the meaning of section 960-100 of the Tax Law) that is not a natural person, that the entity:
- i. is not an entity in which the Banjima People (or any of them) have a material membership interest (in accordance with section 960-135 of the Tax Law);
 - ii. is not an entity which is controlled by the Banjima People (or any of them);
 - iii. is not a beneficiary under MIB past agreement;

- iv. is not purporting to and has not purported to, with the express or implied approval or acquiescence of the Banjima People, represent or act on behalf of the Banjima People;
- v. does not have a membership interest (in Accordance with section 960-135 of the Tax Law) in a Related Entity;
- vi. is not and has not, within the previous 3 years been:
 - A. a consultant to, advisor to, auditor of or other service provider to the Banjima People, the MIB Group or to a Related Entity; or
 - B. a partner in a partnership, or a direct or indirect associate of a Related Entity or partnership which is, or has been within that 3 year time period, consultant to, advisor to, auditor of or other service provider to, the MIB Group, the Banjima People or a Related Entity;
- vii. has no material contractual relationship with a Related Entity or with the Banjima People; and
- viii. has no material interest in, business affiliation with or other relationship with any members of the Banjima People or a Related Entity which would hinder the entity in the impartial and objective discharge of their duties.

Indigenous Corporation Number or ICN	means that number given by the Registrar to the Corporation on registration.
ITAA97	means <i>Income Tax Assessment Act 1997</i> (Cth).
Law and Custom	means the body of traditions, laws, customs and beliefs recognised and held in common by the Banjima People and includes those traditions, laws, customs and beliefs exercised in relation to a particular area of land and waters, traditionally accessed resources and persons.
Law and Custom Consultant	means a person with significant experience and knowledge in Law and Custom.
Law and Custom Report	means a written report provided by the Law and Custom Consultant which outlines the Law and Custom Consultant's opinion on a particular matter.
Material personal interest	has the meaning given to it in rule 14.3.
Member	means a person whose name appears on the Register of Members.
MIB Group	means those Banjima People who were formally known by the name "Martu Idja Banyjima People" and who were the claimants of native title under native title claim number WC98/62 and includes any Banjima People identified and accepted as such by the MIB Group in the future in accordance with their own decision making processes.
National Native Title Register	means the register established and maintained under part 8 of the Native Title Act.
Native Title Act	means the <i>Native Title Act 1993</i> (Cth) as amended from time to time.
Native Title Claim or Native Title Determination	means the Claimant Applications lodged in the Federal Court and allocated number/s WAD 6278 of 1998, WAD 371 of 2010, WAD 6096 of 1998 WAD 319 of 2010 and those claims that are the subject of a determination of native title by the Federal Court of Australia.

Native Title Decision	means a native title decision referred to in regulation 8(1) of the PBC Regulations and means a decision to: a) surrender the Native Title Rights and Interests in relation to land or waters; or b) do, or agree to do, any other act that would Affect Native Title Rights and Interests of the Common Law Holders.
Native Title Representative Body	means a representative Aboriginal and Torres Strait Islander body that is recognised under section 203AD of the Native Title Act.
Native Title or Native Title Rights and Interests	has the meaning given to that term in section 223 of the Native Title Act and includes those native title rights and interests which are or have been converted into or replaced by such statutory rights and interests.
Negotiable Instrument	has the meaning described in section 700 of the CATSI Act.
Objects	means the objects set out in rule 4.
Observer	means an observer as referred to in rule 6.9.
Officer	is a Director, Corporation secretary, administrator, special administrator, receiver, receiver and manager, liquidator or trustee of the Corporation or a person who makes decisions that affect a substantial part of the business of the Corporation, or could significantly affect the Corporation's financial standing.
Ordinary Resolution	has the meaning given in rule 8.11.2(a).
PBC Regulations	means the <i>Native Title (Prescribed Body Corporate) Regulations 1999</i> , as amended from time to time, and any other regulations concerning Prescribed Bodies Corporate made pursuant to the Native Title Act.
Poll	means a poll referred to in rule 8.11.6.
Prescribed Body Corporate or PBC	has the meaning described in the PBC Regulations.

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 of Banjima Members	has the meaning given in rule 7.5.2 (d)
Register of Former Members	means the Register of former Members and former Associates kept in accordance with Rule 7.4.
Register of Members	means the Register of Members and Associates kept in accordance with rule 7.
Registered Charity	means an entity registered as a charity by the Commissioner of the Australian Charities and Not-for-profits Commission under the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
Registered Office	means the registered office referred to in rule 22.11.2 and includes the document access address if the Corporation is registered as a small or medium Corporation.
Registers	means the Register of Members, the Register of former Members and the Register of Banjima People.
Registrar	means the Registrar of Aboriginal and Torres Strait Islander Corporations appointed in accordance with the CATSI Act.
Regulations	means the <i>Corporations (Aboriginal and Torres Strait Islander) Regulations 2007</i> (Cth) as amended from time to time.
Related Entity	means an entity (within the meaning of section 960-100 of the Tax Law) that does not satisfy the requirements of paragraph (b) of the definition of "Independent" in this rule 3.1.
Replaceable Rule	is a rule under the CATSI Act that can be either applied or be changed.
Secretary	means a person elected or appointed in accordance with rule 17, unless the Corporation is registered as a small or medium Corporation, where the Secretary would act as a Contact Person as defined in the CATSI Act, and all references in this Constitution to "Secretary" is a reference to the Contact Person.

Special General Meeting or SGM

means a General meeting other than an annual General meeting.

Special Resolution

has the meaning given in rule 8.11.2 (b).

Strategic Plan	means the strategic plan for the Corporation prepared in accordance with rule 21.
Sub-committee	has the meaning given in rule 18.
Traditional Lands	means: a) the area of land the subject of the Native Title Claim (or Native Title Determination) as may be amended by the Banjima People from time to time; and b) any other area where it may be determined by a court of competent jurisdiction that the Banjima People hold Native Title Rights and Interests.
Traditional Responsibility	means an Aboriginal person who: a. either has: i. a genealogical connection to the Aboriginal persons in occupation of the Traditional Lands at sovereignty; or ii. another form of connection to the Traditional Lands (including through adoption, incorporation, or historical circumstances); and b. the person asserts, and is recognised by a substantial portion of the Aboriginal people as having, rights and responsibilities under Aboriginal law and custom in respect of the Traditional Lands.
Vested Land	means any land: a) vested in; b) granted or given to; or c) purchased by; the Corporation.
Wardiba	means the 2 bodies of traditional law and custom known as Wardiba, each of which is associated with different parts of the area the subject of the Native Title Claim.

3.2 Interpretation

- (a) Unless otherwise inconsistent with this Constitution, a word or expression defined in the Native Title Act and used in this Constitution has the same meaning given to it in the Native Title Act.
- (b) A word or expression defined in the CATSI Act and used in this Constitution has the same meaning given to it in the CATSI Act.
- (c) Where time is to be calculated by reference to a day or event, that day or the day of the event is excluded.
- (d) The Replaceable Rules set out in the CATSI Act apply to the Corporation only to the extent that they are not inconsistent with this Constitution, the Native Title Act and the PBC Regulations.

3.3 Inconsistency with Legislation

If there is any inconsistency in this Constitution with the CATSI Act, the Native Title Act or the PBC Regulations, the CATSI Act, Native Title Act or PBC Regulations will apply to the extent of the inconsistency.

4. OBJECTS OF THE CORPORATION

- (a) The objects for which the Corporation is established are to:
 - i. provide direct relief from poverty, sickness, suffering, misfortune, disability, destitution, helplessness and disadvantage among Aboriginal people, especially the Banjima People;
 - ii. maintain, protect, promote and support the traditions, laws, languages, culture, native title traditions and customs, development, interests and social progress of Aboriginal people, especially the Banjima People;
 - iii. provide environmental, social, economic and cultural benefits to Aboriginal people, especially the Banjima People;
 - iv. support and provide education, training and employment for Aboriginal people, especially the Banjima People;
 - v. support and provide housing for the Banjima People;
 - vi. advance and promote the Banjima People and act in the best interests of the Banjima People as directed by the Banjima People from time to time; and
 - vii. hold title to any Vested Land;

- viii. to accept appointments made by the Banjima People in accordance with an Approved Process for the Corporation to act perform functions on behalf of or otherwise as agent of the Banjima People pursuant to and for the purposes of native title agreements, indigenous land use agreements and other contractual arrangements;
 - ix. to accept appointments made by the Banjima People in accordance with an Approved Process for the Corporation to be a Banjima Registrar and to maintain a Register of Banjima People;
 - x. to do all such things may be incidental or necessary to attain all of the above Objectives, including but not limited to, apply for funding from a Benefit Management Structure to fulfil these objectives.
- (b) If the Corporation is appointed by the Common Law Holders as a Prescribed Body Corporate, the Corporation has the following further objects:
- i. to be and perform the functions of a Prescribed Body Corporate, for the purpose of being the subject of a determination under section 56 and 57 of the Native Title Act;
 - ii. to be and perform the functions of a Registered Native Title Body Corporate for the purpose of being the subject of a determination under section 57 of the Native Title Act;
 - iii. to hold the Native Title Rights and Interests in trust for the Common Law Holders or act as agent or representative of the Common Law Holders in matters relating to the Native Title Rights and Interests; and
 - iv. to manage the Native Title Rights and Interests of the Common Law Holders;
 - v. to represent the interests of the Banjima People in matters relating to the Determination Area:
 - i. as a Registered Native Title Body Corporate under the Native Title Act where there is a Native Title Determination; or
 - ii. as otherwise authorised by the Banjima People in accordance with an Approved Process;
- (c) In carrying out its Objects, the Corporation shall not pay or apply any of its funds or property in dividends, bonus or otherwise to any Member, except for the payment in good faith of reasonable and proper remuneration to any Member, officer, servant, agent, consultant, contractor or employees of the Corporation for services actually provided to the Corporation.

5. FUNCTIONS AND POWERS OF THE CORPORATION

5.1 Functions and powers of the Corporation as a Prescribed Body Corporate and Registered Native Title Body Corporate

If the Corporation is appointed to be the Prescribed Body Corporate or Registered Native Title Body Corporate:

- (a) the Corporation has the functions and powers prescribed by the PBC Regulations from time to time for a PBC or a RNTBC that holds Native Title Rights and Interests in trust for the Common Law Holders of those Native Title Rights and Interests; and
- (b) the specific functions, powers and Native Title decision process outlined in Schedule 2 apply to this Corporation.

5.2 Further powers of the Corporation

To the extent necessary or convenient to carry out, or incidental to carrying out, the Objects and subject to the provisions of the CATSI Act, the Native Title Act, the PBC Regulations and rules 4(c) and 5.3, the Corporation has all the powers of a body corporate, including the following:

- (a) to raise funds by way of public appeal, grants, bequests gift or otherwise, in the terms and manner that the Corporation considers appropriate;
- (b) to manage and account for the funds of the Corporation and invest any funds not immediately required for the purpose of the Corporation;
- (c) to purchase, hire, lease or otherwise acquire, hold or deal with real or personal property;
- (d) to deal with any property not immediately required for the purpose of the Corporation;
- (e) to borrow money;
- (f) to appoint agents to advise it and to transact any business of the Corporation on its behalf;
- (g) to enter into any Agreements and contracts;
- (h) to take and defend any legal proceedings or other proceedings, including proceedings relating to Native Title, land or heritage issues and interests;
- (i) to receive and apply any grant or donated funds from Commonwealth, State or Local governments or from any other sources;
- (j) to enter into any arrangements with any government or authority;
- (k) to obtain from any government or authority any rights, privileges or concessions and carry out, exercise and comply with those arrangements, rights privileges, and concessions;

- (l) to hold an interest in, guarantee or be a member of other incorporated entities and commercial ventures;
- (m) to engage in economic enterprise or economic activity;
- (n) to appoint and remove or suspend contractors, employees and agents and determine the powers, duties and payment of contractors, employees and agents; and
- (o) to do all other things which are incidental or conducive to the Objects and the exercise of the powers of the Corporation.

5.3 Limitation of Powers

- (a) Notwithstanding rule 5.2(a), the Corporation shall not enter into any Agreements, arrangements or commitments which:
 - i. are inconsistent with the Objects; or
 - ii. create a legal or equitable interest in the Traditional Lands or otherwise create a liability exercisable against the Traditional Lands, except in accordance with the Native Title Act and the PBC Regulations.
- (b) The Corporation shall not exercise a power except to fulfil an Object and in exercising a power shall act:
 - i. to protect the interests of the Banjima People;
 - ii. in accordance with the Law and Custom of the Banjima People;
 - iii. to minimise, and to the maximum extent practicable, avoid exposing the Banjima People to claims, actions or debts for which they may be personally liable; and
 - iv. when making a Native Title Decision, in accordance with Schedule 2, and with the consent and direction of the affected Common Law Holders.

6. MEMBERSHIP OF THE CORPORATION

6.1 Members on registration

- (a) A person may only become a Member when the Corporation is registered in compliance with the CATSI Act and the person makes an application and is accepted as a Member in accordance with this rule 6.
- (b) Members' names must be entered on the Register of Members.

6.2 Members by application

6.2.1 How to become a Member after registration

A person becomes a Member if:

- (a) the person wants to become a Member and applies in writing;
- (b) the person is eligible for membership;
- (c) the Directors accept the application;
- (d) the person's name is entered on the Register of Members.

6.2.2 Eligibility for Membership

A person is eligible to apply for membership of the Corporation if the person:

- (a) is 18 years of age or over; and
- (b) is a Banjima Person.

6.2.3 Membership application

- (a) A person (the Applicant) who wants to become a Member must apply to the Corporation.
- (b) The application must be in writing in a form approved by the Corporation.

6.2.4 Deciding Membership applications

- (a) The Directors will consult with the Elders Council (if any) prior to deciding membership applications and will make decisions on membership applications only to determine:
 - i. if an Applicant is eligible for membership under rule 6.2.2; and
 - ii. if an Applicant has applied for membership under rule 6.2.3.
- (b) For the avoidance of doubt, the Directors must not refuse a membership application if the Directors determine that the Applicant is eligible for membership of the Corporation under rule 6.2.2 and has applied for membership under rule 6.2.3.

- (c) In considering if an Applicant is eligible for membership under rule 6.2.2, the Directors must consider the following:
 - i. the views of the Banjima People;
 - ii. Law and Custom;
 - iii. the findings of any bona fide genealogical studies, land ownership studies or land boundary studies;
 - iv. any relevant determination of any Court or tribunal.
- (d) Applications will be considered and decided in the order in which they are received by the Corporation.
- (e) A decision or resolution of the Directors to accept or reject a membership application must, where possible, be decided by Consensus and if a Consensus cannot be reached, then the decision is carried where two-thirds of the Directors present and entitled to vote, vote in favour of the decision or resolution at the meeting
- (f) If the Directors refuse to accept a membership application, they must notify the Applicant in writing of the decision and the reason(s) why the Applicant is not eligible for membership of the Corporation.
- (g) If the Directors accept a membership application they must notify the Applicant of the decision and enter the Applicant's name, together with the information required under rule 7.2, on the Register of Members.

6.2.5 Appeal if Director's do not accept application

- (a) If the Directors do not accept that an Applicant is eligible for membership and reject a membership application
 - i. the Applicant is entitled to appeal the decision as set out in this rule only; and
 - ii. the Dispute resolution processes in rules 15.7.3 and 25.1 shall not apply.
- (b) If the application is not accepted on the basis that the Directors determine that the Applicant is not a Banjima Person, the Applicant may write to the Directors setting out the basis on which the Applicant considers that he or she is a Banjima Person and the Directors must then, at the next General meeting, put a resolution before the Members to decide whether or not to accept the application in accordance with rule 8.11.2(c) or
- (c) For the purposes of considering a resolution required under rule 6.2.5, the Directors must ensure that a written report is provided to the General meeting that includes the following:

- (d) a copy of the Applicant's membership application referred to in rule 6.2.3:
 - i. a copy of the Directors decision and reasons for the decision under rule 6.2.4 (e);
 - ii. a copy of the Applicant's letter of appeal setting out the basis on which the Applicant considers that he or she is a Banjima Person; and
 - iii. any other information that the Directors consider relevant.
- (e) Rule 8.11.2(c) shall apply to voting in relation to a resolution under this rule.
- (f) If the membership application is not accepted at the General meeting:
 - i. in accordance with rule 6.2.5(b); or
 - ii. because the meeting does not proceed due to a lack of quorum, the Applicant may commence legal proceedings in a court of competent jurisdiction for the court to determine whether the Applicant is eligible for membership.
- (g) If the decision of the court is that the Applicant is eligible for membership in accordance with rule 6.2.2, the Directors must accept the Applicant's membership application and enter the Applicant's name on the Register of Members.

6.2.6 Entry on the register of Members

- (a) If a membership application is accepted, the Applicant's name must be entered on the Register of Members within 14 days, together with the information required by rule 7.2.
- (b) However, if:
 - i. the Applicant applies for membership after a notice has been given for the holding of a General meeting; and
 - ii. the meeting has not been held when the Directors consider the application,

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

6.3 Membership fees

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

6.4 Members rights and obligations

6.4.1 Members rights

- (a) In addition to other rights under the CATSI Act, a Member has the following rights:
 - i. to attend, speak and vote at a General meeting of the Corporation;
 - ii. subject to rule 12.4.1, to be nominated for election as a Director;
 - iii. to put forward resolutions to be voted on at a General meeting of the Corporation in accordance with rule 8.6;
 - iv. to ask the Directors to call a General meeting of the Corporation in accordance with rule 8.3.2;
 - v. to access the following books and records of the Corporation:
 - A. the Register of Members, under rule 7.6;
 - B. the minute books, under rule 23.9;
 - C. the Constitution, under rule 22.11; and
 - D. certain reports prepared by or for the Directors and the Corporation, in accordance with the CATSI Act;
 - vi. to ask the Directors to provide access to any other records or books of the Corporation in accordance with rule 22.10; and
 - vii. to have any Disputes regarding the Corporation with another Member or with the Directors dealt with under the process in rule 25.
- (b) 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.
- (c) A Member cannot be removed as a Member unless the Directors and the Corporation have complied with rule 6.7.
- (d) If a Member believes that his or her rights have been breached or ignored by the Directors, the Member can use the Dispute resolution process in rule 25.

6.4.2 Members' responsibilities

Each Member and Associate has the following responsibilities:

- (a) to comply with the CATSI Act and this Constitution;
- (b) to notify the Corporation of any change in their address within 28 days;
- (c) to comply with any code of conduct adopted by the Corporation;

- (d) to treat other Members, the Elders Council (if any) and the Directors with respect and dignity; and
- (e) to not behave in a way that significantly interferes with the operation of the Corporation or of Board meetings or General meetings.

6.4.3 Liability of Members

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

6.5 How a person stops being a Member

- (a) A person will stop being a Member or Associate if:
 - i. the person resigns as a Member or Associate under rule 6.6;
 - ii. the person dies; or
 - iii. the person's membership of the Corporation is cancelled under rule 6.7.1.
- (b) A person ceases to be a Member or Associate when the Member's or Associate's name is removed from the Register of Members or Register of Associates.

6.6 Resignation of a Member

- (a) A Member or Associate may resign by giving a resignation notice to the Corporation.
- (b) A resignation notice must be in writing.
- (c) The Corporation must move the Member's or Associate's name from the Register of Members or Register of Associates to the register of former members within 14 days after receiving the resignation notice.

6.7 Process for cancelling Membership

6.7.1 Cancelling membership if Member or Associate is not or cease to be eligible

- (a) The Directors must, by resolution, cancel the membership of a Member or Associate if the Elders Council, or the Directors if there is no Elders Council, have resolved that the Member or Associate:
 - (i) is not eligible for Membership or an Associate; or
 - (ii) has ceased to be eligible for Membership or to be an Associate;

- (b) Before cancelling the membership, the Directors must give the Member or Associate notice in writing stating that:
 - i. the Directors intend to cancel the membership or Associate for the reasons specified in the notice;
 - ii. the Member or Associate has 14 days to object to the cancellation of the membership; and
 - iii. the objection must be in writing and given to the corporation within 14 days from the date of notice.
- (c) If the Member or Associate does not object, the Directors must cancel the membership or Associate.
- (d) If the Member or Associate does object:
 - i. the Directors must not cancel the membership; and
 - ii. only the Corporation by Ordinary Resolution in a General meeting may resolve to cancel the membership.
- (e) If a membership is cancelled, the Directors must give the Member or Associate 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.

6.7.2 Cancelling Membership if Member cannot be contacted

- (a) The membership of a Member or an Associate may be cancelled by Special Resolution at a General meeting if the Corporation:
 - i. has not been able to contact that Member at their address entered on the register of Members for a continuous period of 2 years before the meeting; and
 - ii. has made 2 or more reasonable attempts to otherwise contact the Member during that 2 year period.
- (b) If the Corporation cancels the membership, the Directors must send that person a copy of the resolution at their last known address, as soon as possible after the resolution has been passed.

6.7.3 Cancelling Membership if a Member misbehaves

- (a) The Corporation may cancel the membership of a Member or Associate by Special Resolution in a General meeting if the General meeting is satisfied that the Member or Associate has behaved in a way that significantly interfered with the operation of the Corporation or of any General or Board meetings.
- (b) If the Corporation cancels a membership under this rule, the Directors must give that person a copy of the resolution as soon as possible after it has been passed.

6.8 Associates of the Corporation (Associate)

6.8.1 How to become an Associate after registration

A person becomes an Associate if:

- (a) the person wants to become an Associate and applies in writing;
- (b) the person is eligible to be an Associate;
- (c) the Directors, after consulting with the Elders Council (if any), approve the application; and
- (d) the person's name is entered on the Register of Associates.

6.8.2 Eligibility to be an Associate

A person who is eligible to apply as an Associate must be an individual who is:

- (a) over 18 years of age;
- (b) a child of a Banjima Person;
- (c) related to a Banjima Person by:
 - i. marriage;
 - ii. adoption; or
 - iii. Law and Custom;
- (d) a Banjima Person that is not otherwise accepted as a Member;
- (e) a person who has Traditional Responsibility; and/or
- (f) a person who is a descendant of Daisy (Yijiyangu).

6.8.3 Deciding Associate applications

- (a) The Directors, after consultation with the Elders Council (if any) will decide who may become an Associate.
- (b) The Directors must accept an application to become an Associate from a person who meets the criteria in 6.8.2 (e) and is not a member of any other Pilbara native title claim group or native title prescribed body corporate, in recognition of the customary rights of such a person to hunt, fish and camp within the Traditional Lands.
- (c) The decision of the Directors in deciding an Associate application is final and there is no right of appeal.

6.8.4 Rights of an Associate

Rules 6.3 to 6.7 and rule 27 apply to Associates as if they were Members, except where they are inconsistent with the following:

- (a) Associates may attend General meetings of the Corporation and are entitled to receive notice of the meetings and contribute to debate at meetings;
- (b) Associates are not entitled to hold any office in the Corporation;
- (c) Associates have no voting rights or any right, as set out in rule 8.6.3, to request that a statement be distributed;
- (d) Associates are not entitled to request the calling of a meeting in accordance with rule 8.3 or put forward resolutions to be voted on at General meeting of the Corporation
- (e) Associates are not entitled to access books and records of the Corporation; and
- (f) Associates are not entitled to access the Dispute resolution process in rule 25;
- (g) Associates otherwise do not have the powers or rights accorded to Members by these Rules, except where these Rules specifically accord those rights to them as Associates.

6.9 Observers

- (a) The Directors have the discretion to allow Observers to attend one or more meetings of the Corporation, either by application or by invitation of the Directors.
- (b) All applications to be an Observer must be in writing and addressed to the Board.
- (c) The Board has the discretion to decide whether or not to accept an application to be an Observer.

- (d) If the Board accepts an application from or invites an Observer to attend any meeting of the Corporation, the Board must determine:
 - i. the obligations imposed on the Observer;
 - ii. the rights that the Observer has with respect to the Corporation; and
 - iii. how an Observer ceases to be an Observer

7. REGISTERS OF MEMBERS AND BANJIMA PERSONS

7.1 Corporation to maintain Registers

The Board must set up and maintain Registers of Members, a Register of Associates, a Register of former members and a Register of Banjima Persons.

7.2 Information on the Register of Members

The Register of Members must contain the following information about individual Members :

- (a) the Member's full name, address and date of birth (where known). The Register of Members may also contain any other name by which the Member is or was known; and
- (b) the date on which the Member's name was entered on the Register of Members.

7.3 Information on the Register of Associates

The Register of Associates must contain the following information about individual Associates:

- (a) the Associate's full name, address and date of birth (where known). The Register of Associates may also contain any other name by which the Associate is or was known; and
- (b) the date on which the Associate's name was entered on the Register of Associates.

7.4 Information on the Register of former Members

The Register of former Members must contain the following information about each individual Member or Associate who stopped being a Member or Associate within the last 7 years:

- (a) the Member or Associate's name (given and family name where known), address and date of birth (where known). The Register of former Members may also contain any other name by which the individual is or was known; and
- (b) the date on which the individual stopped being a Member or Associate.

7.5 Information on the Register of Banjima Persons

7.5.1 When this rule applies

This rule applies if the Corporation has:

- (a) been nominated by the Banjima People according to an Approved Process to be the Registrar of Banjima People; and
- (b) has accepted the nomination.

7.5.2 Corporation to maintain Register

- (a) The Corporation must establish, maintain and regularly update a register of all Aboriginal persons who are:
 - i. 18 years of age or over; and
 - ii. members of the Banjima People.
- (b) The register is to be known as the **Register of Banjima Persons**
- (c) The Corporation must maintain the Register of Banjima Persons in electronic form, and may also maintain the Register of Banjima Persons in hard copy.
- (d) The Register of Banjima Persons is to include the following details in respect of each person on the Register:
 - i. the person's full name (given and family name where known), address and date of birth (where known) and any other name by which the individual is or was known;
 - ii. the person's date of birth (or if it is not known, a reasonable estimation of the person's year of birth);
 - iii. the person's address (if any) for receiving mail, which may be or include an email address;
 - iv. the Apical ancestor named in the definition of Banjima People in these rules from whom the person is descended; and
- (e) To avoid doubt, the Register of Banjima Persons is to be separate from the Register of Members of the Corporation.

7.5.3 Process for updating the Register of Banjima Persons

- (a) Subject to that person not already being included on the Register of Banjima Persons, should the Corporation become aware that a person claims to be a member of the Banjima People then the Corporation must as soon as reasonably practicable consider the claim and decide whether to include the person on the Register of Banjima Persons (whether or not the person applies directly to the Corporation to be recognised as a member of the Banjima People).
- (b) If a person ceases to be a Banjima Person (including because they are deceased) then the Corporation must as soon as reasonably practicable remove the person from the Register of Banjima Persons.
- (c) For the purposes of rules 7.5.2(a), 7.5.3(a), 7.5.3(b), whether a person is or continues to be included on the Register of Banjima People will be determined by the Directors applying the following criteria. If there is any inconsistency, a criterion higher in the list prevails over one that is lower in the list. The Corporation:
 - i. must include a person on or remove a person from the current Register of Banjima People if a court of competent jurisdiction determines that the person is or is not (as the case may be) a Banjima Person;
 - ii. must include a person on or remove a person from the current Register of Banjima People if the Common Law Holders make a decision in accordance with an Approved Process that the person is or is not (as the case may be) a Banjima Person; and
 - iii. may request and act upon the advice of the Native Title Representative Body.

7.5.4 Corporation to keep record

The Corporation must keep a written record of:

- (a) all decisions made under rules 7.5.3(a) and 7.5.3(c)(ii), including the date of the decision;
- (b) the date a person is added to the Register of Banjima People and a succinct statement of the reason they were added (including, where applicable, by reference to the matters in rule 7.5.3(c); and
- (c) all persons removed from the Register of Banjima People under rules 7.5.3(b) and 7.5.3(c), including the date they were removed and a succinct statement of the reason they were removed.

7.6 Location and inspection of Registers of Members and former Members

7.6.1 Location of Registers

The Corporation must keep the Registers of Members, Associates, former Members and Banjima Persons at:

- (a) the Corporation's Registered Office if it is registered as a large corporation; and
- (b) the Corporation's document access address if it is registered as a small or medium corporation.

7.6.2 Right to inspect Registers

- (a) The Registers of Members, Associates, former Members and Banjima Persons must be open for inspection by any person, and any person has a right to inspect the Registers.
- (b) If any Registers of Members, Associates, former Members or Banjima Persons 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).

7.6.3 Inspection fees

- (a) A Member may inspect the Registers without charge.
- (b) A person who is not a Member may inspect the Registers only on payment of any fee required by the Corporation.

7.6.4 Right to get copies

The Corporation must give a person a copy of the Registers (or part of either Register) within 7 days (or such longer period as the Registrar may allow) if the person:

- (a) asks for the copy; and
- (b) pays any fee (up to the prescribed amount) required by the Corporation.

7.7 Making Registers available

7.7.1 The Corporation must:

- (a) make the Registers available for inspection (without charge) by Members and Associates at the AGM; and
- (b) ask each Member and Associate attending the AGM to check and update their entry if their details have changed.

7.7.2 The Corporation must, in respect of the Register of Banjima People:

- (a) as soon as reasonably practicable following receipt of a request to do so, allow any of the following persons to inspect the Register of Banjima People or provide them with a copy of the Register of Banjima People (as the request may be) without charge:
 - (i) the trustee of the BMS; or
 - (ii) any person who is on the Register of Banjima People or who has requested to be included on the Register of Banjima People.
- (b) Notwithstanding rule 7.7.2(a)(ii), the Corporation may withhold the information referred to in rule 7.5.2(d)(iii) from a person referred to in rule 7.7.2(a)(ii), other than from a person on the Register of Banjima People who requests access to information on the Register about him or herself.
- (c) The Corporation may allow any other person to inspect, or provide any other conditions as the Directors consider appropriate

7.8 Provision of Registers to Registrar

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

8. ANNUAL GENERAL MEETINGS (AGMS) AND GENERAL MEETINGS

8.1 AGMS

8.1.1 Holdings AGMS

- (a) The Corporation must hold an AGM within 5 months after the end of its financial year.
- (b) If the Corporation has only 1 Member, it is not required to hold an AGM.

8.1.2 Extension of time for holding AGMS

- (a) 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.
- (b) If the Registrar grants an extension, the Corporation must hold its AGM within the extended period specified by the Registrar.

8.1.3 Business of AGM

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 under Chapter 7 of the CATSI Act are required to be presented at the AGM;
- (b) the election of Directors;
- (c) the appointment and remuneration of the Auditor;
- (d) checking of details on the Register of Members (see rule 7.77.7); and
- (e) asking questions about management of the Corporation and asking questions of the Corporation's Auditor (see rule 8.13).

8.2 General meetings

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

8.2.1 Purpose of General meeting

A General meeting must be held for a proper purpose.

8.2.2 Time and place of General meeting

- (a) A General meeting must be held at a reasonable time and place.
- (b) If the Directors change the place of a General meeting, notice of the change must be given to each person who is entitled to receive it.

8.2.3 Business of General meeting

The business at each General meeting must include:

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

8.3 Calling General meetings

8.3.1 Director may call meetings

A Director may call a General meeting of the Corporation.

8.3.2 Members may ask Directors to call General meetings

- (a) The Directors must call and arrange to hold a General meeting on the request of at least the required number of Members under rule 8.3.2(b).
- (b) For the purposes of rule 8.3.2(a), the required number of Members is the greater of:
 - i. the number of Members prescribed by the Regulations and applicable to the Corporation, or if none is prescribed, then 5 Members; or
 - ii. the percentage of members prescribed by the Regulations and applicable to the Corporation, or if none is prescribed, then 10% of the Members.
- (c) A request under sub-rule 8.3.2(a) must:
 - i. be in writing;
 - ii. state any resolution to be proposed at the meeting;
 - iii. be signed by the Members making the request;
 - iv. nominate a 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 a request under sub-rule 8.3.2(a) may be used for signing by Members if the wording of the request is identical in each copy.

8.3.3 Directors may apply to deny a Member's request to call a General meeting

- (a) If the Directors resolve:
 - i. that a request under rule 8.3.2 is frivolous or unreasonable; or
 - ii. that complying with a request under rule 8.3.2 would be contrary to the interests of the Members as a whole,

a Director, on behalf of all of the Directors, may apply to the Registrar for permission to deny the request.
- (b) An application 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 was made.

- (c) The Directors must, as soon as possible after making an application, give the contact Member (see rule 8.3.2(c)(iv)) notice that an application has been made.

8.3.4 Timing for a requested General meeting

- (a) Subject to rule 8.3.4(b), the Directors must call the meeting within 21 days after the request was sent to them.

- (b) If:
 - i. a Director has applied to deny a request; and
 - ii. the Registrar refuses that request,

the Directors must call the meeting within 21 days after being notified of the Registrar's decision.

8.4 Requirement for notice of General meeting

8.4.1 Notice for General meeting

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

Note: Shorter notice cannot be given for these kinds of meetings.

8.4.2 Requirement to give notice of General meeting to Members, Officers and Observers

- (a) The Corporation must give written notice of a General meeting to the following people:
 - i. each Member entitled to vote at the meeting;
 - ii. each Director;
 - iii. the Secretary;
 - iv. the Auditor;
 - v. each Associate; and
 - vi. any Observer entitled to attend the meeting.
- (b) The Corporation may give the notice of meeting to a Member personally or by sending it by post, fax or other electronic means nominated by the Member.
- (c) A notice of meeting:
 - i. sent by post is taken to be received 3 days after it is posted; and
 - ii. sent by fax, or other electronic means, is taken to be received on the business day after it is sent.

8.4.3 Requirement to give notice of General meeting and other communications to Auditor

The Corporation must give its Auditor:

- (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.

8.4.4 Contents of notice of General meeting

- (a) A notice of a General meeting must:
 - i. set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to do this);
 - ii. state the general nature of the meeting's business; and
 - iii. if a special resolution is to be proposed at the meeting, set out an intention to propose it and state what it is.
- (b) The information included in a notice of a General meeting must be worded and presented clearly and concisely.

8.5 Failure to give notice

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

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

8.6 Members' resolutions

8.6.1 Notice of Members' resolutions

- (a) 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 of at least the required number of Members under rule 8.6.1(d).
- (b) A notice of Members' resolution must:
 - i. be in writing;
 - ii. set out the wording of a proposed resolution; and
 - iii. be signed by the Members proposing to move the resolution.
- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.
- (d) For the purposes of rule 8.6.1(a), the required number of Members is the greater of:
 - i. the number of Members prescribed by the Regulations and applicable to the Corporation for the purposes of the giving of such a notice or, if none is prescribed, 5 Members; or
 - ii. the percentage of Members prescribed by the Regulations and applicable to the Corporation for the purposes of the giving of such a notice or, if none is prescribed, 10% of the Members.

8.6.2 Consideration of Members' resolutions

- (a) If the Corporation has been given notice of a Member's resolution it must be considered at the next General meeting that occurs more than 28 days after the notice is given.
- (b) The Corporation must give all its Members notice of that resolution at the same time, or as soon as possible afterwards, and in the same way as it gives notice of a General meeting.
- (c) The Corporation does not have to give notice of a resolution or consider the resolution at a General meeting if the Directors consider the resolution is defamatory.

8.6.3 Members' statements to be distributed

- (a) Members may ask the Corporation to give all its Members a statement about:
 - i. a resolution that is proposed to be moved at the General meeting; or
 - ii. any other matter that may be considered at that General meeting.
- (b) This request must be:
 - i. made by at least the required number of Members under rule 8.6.3(f);
 - ii. in writing;
 - iii. signed by the Members making the request; and
 - iv. given to the Corporation.
- (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) After receiving a request, the Corporation must distribute a copy of the statement to all its Members at the same time, or as soon as possible afterwards, and in the same way, as it gives notice of the relevant General meeting.
- (e) The Corporation does not have to comply with a request to distribute a statement if it is defamatory.
- (f) For the purposes of rule 8.6.3(b), the required number of Members for the Corporation is the greater of:
 - i. the number of Members prescribed by the Regulations and applicable to the Corporation for the purposes of making such a request or, if none is prescribed, 5 Members; or
 - ii. the percentage of Members prescribed by the Regulations and applicable to the Corporation for the purposes of making such a request or, if none is prescribed, 10% of the Members.

8.7 Quorum for General meeting

8.7.1 Quorum

The quorum for a meeting of the Corporation's Members is **15%** of the Members who are entitled to vote at General meetings.

8.7.2 Quorum to be present

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

8.7.3 Adjourned meeting where no quorum

- (a) A meeting of the Corporation's Members that does not have a quorum present within 3 hours after the time for the meeting set out in the notice is adjourned to the same time of the same day in the next week, and to the same place, unless the Directors specify otherwise.
- (b) If no quorum is present at the resumed meeting within 1 hour after the time for the meeting, the meeting is dissolved.

8.8 Chairing General meeting

- (a) The Directors shall appoint an Independent Person to chair General meetings ("**Chairperson**").
- (b) If a Chairperson has not been elected or the Chairperson is not available or does not want to chair the meeting, the Directors must elect an individual present to chair it.
- (c) The Members at a General meeting must elect a Member present to chair the meeting (or part of it) if:
 - i. the Directors have not already elected a Chairperson; or
 - ii. a previously elected Chairperson is not available or does not want to chair the meeting.
- (d) The Chairperson must adjourn a General meeting if the majority of Members present agree or direct that the Chairperson do so.

8.9 Use of technology for General meeting

The Corporation may hold a General meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate

8.10 Auditor's right to be heard at General meeting

- (a) The Auditor is entitled to attend any General meeting of the Corporation.
- (b) 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 professional capacity.
- (c) The Auditor is entitled to be heard even if:
 - i. the Auditor retires at that meeting; or
 - ii. that meeting passes a resolution to remove the Auditor from office.
- (d) The Auditor may authorise a person in writing as the Auditor's representative for the purpose of attending and speaking at any General meeting.

8.11 Voting at General meetings

8.11.1 Consensus before vote

Where possible, the decisions or resolutions of the Members at a General meeting will be by Consensus and failing that will be put to a vote in accordance with this rule.

8.11.2 Requirements for passing resolutions

- (a) a resolution to be passed by Ordinary Resolution at a General meeting means a resolution that must be passed by more than 50% of the votes cast by Members where those Members are present and entitled to vote on the resolution;
- (b) a resolution to be passed by Special Resolution at a General meeting means a resolution that must be passed by at least 75% of the votes cast by Members where those Members are present and entitled to vote on the resolution;
- (c) a resolution to be passed at a General meeting that decides the outcome of an Applicant's appeal for membership under rule 6.2.5 on the grounds that the Applicant is a Banjima Person means a resolution that must be passed by two-thirds majority of Members where those Members are present and entitled to vote on the resolution.

8.11.3 Entitlement to vote

- (a) At a General meeting, each Member has one vote, both on a show of hands and a Poll.

When any matter is to be considered at a General meeting, all Members are entitled to vote on any resolution relating to that matter.

8.11.4 Objections to right to vote

A challenge to a right to vote at a General meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the Chairperson, whose decision is final.

8.11.5 How voting is carried out by show of hands

- (a) Other than as specified in this Constitution, a resolution put to the vote at a General meeting must be decided by Ordinary Resolution on a show of hands unless the Chairperson decides that the vote shall be conducted by a Poll or a Poll is demanded in accordance with rule 8.11.6.
- (b) On a show of hands, a declaration by the Chairperson is conclusive evidence of the result. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded for or against.

8.11.6 How voting is carried out by a Poll

- (a) A Poll is a secret ballot as opposed to a show of hands and is conducted by Members signing a paper headed “for” or “against” a motion or resolution as the case may be.
- (b) A Poll is decided on a simple majority.

8.11.7 When Members can demand a Poll

- (a) At a General meeting, a Poll may be demanded by:
 - i. at least 5 Members entitled to vote on the resolution;
 - ii. Members with at least 5% of the votes that may be cast on the resolution on a Poll; or
 - iii. the Chairperson.
- (b) The Poll may be demanded:
 - i. before a vote is taken;
 - ii. before the voting results on a show of hands are declared; or
 - iii. immediately after the voting results on a show of hands are declared.

8.12 Resolutions without a General meeting

- (a) The Corporation may pass a resolution without a General meeting being held if all the Members entitled to vote on the resolution sign a document stating that they are in favour of it.
- (b) Auditors cannot be removed by a resolution without a General meeting.
- (c) Separate copies of a document under rule 8.12(a) may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) A resolution under rule 8.12(a) is passed when the last Member signs.
- (e) The Corporation in passing a resolution under this rule without holding a meeting satisfies any requirement in the CATSI Act:
 - i. to give Members information or a document relating to the resolution - by giving Members that information or document with the document to be signed;
 - ii. to lodge with the Registrar a copy of a notice of meeting to consider the resolution – by lodging a copy of the document to be signed by Members; and
 - iii. to lodge a copy of a document that accompanies a notice of meeting to consider the resolution – by lodging a copy of the information or documents referred to in rule 8.12(e)(i).

- (f) The passage of the resolution satisfies any requirement in the CATSI Act, or the Corporation's rules, that the resolution be passed at a General meeting.
- (g) This rule does not affect any rule of law relating to the assent of Members not given at a General meeting.

8.13 Questions at AGMS

8.13.1 Questions and comments by Members on Corporation management at AGM

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

8.13.2 Questions by Members of Auditors at AGM

If the Corporation's Auditor or the Auditor's representative is at an AGM, the Chairperson of the meeting must give Members a reasonable opportunity 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.

8.14 Disruptions to General meetings

- (a) If the Chairperson or Directors in their opinion consider that a person in attendance at a General meeting is disrupting the General meeting, the Chairperson, or one of the Directors if no Chairperson has been elected, may give verbal notice to that person that he or she is disrupting the General meeting.
- (b) If the person continues to disrupt the General meeting, the Chairperson, or a Director if no Chairperson has been elected, may give a second verbal notice to that person that he or she is disrupting the General meeting.
- (c) If, after 2 verbal notices, the person continues to disrupt the General meeting, the Chairperson, or a Director if no Chairperson has been elected, can direct that person to be removed from the General meeting.
- (d) If a person is removed in accordance with rule 8.14(c) more than once, then that person's membership may be cancelled in accordance with rule 6.7.3.

8.15 Adjourned meetings

8.15.1 When resolution passed after adjournment of meeting

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

8.15.2 Business at adjourned meetings

Only unfinished business is to be transacted at a General meeting resumed after an adjournment.

8.15.3 Re-notification of adjourned meeting

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

9. ELDERS COUNCIL

The Corporation may establish an Elders Council that:

- (a) comprises senior Banjima People who will make recommendations and provide guidance to the Corporation on matters including, but not limited to:
 - i. Law and Custom;
 - ii. Native Title;
 - iii. Country;
 - iv. Heritage;
 - v. Environmental issues;
 - vi. Language; and
 - vii. Identification of the Banjima People;
- (b) has a composition, role and functions outlined in Schedule 1 and
- (c) conducts meetings in accordance with Schedule 1.

10. NATIVE TITLE DECISIONS

To obtain a Native Title decision from the Banjima People, the certification procedure in S4.3 must be followed.

11. FINANCIAL BENEFITS

11.1 Benefits Management Structure

The Corporation recognises that following registration of the Corporation, it is the intention of the Members:

- (a) to establish financial benefits management structures which are capable of receiving and administering any future financial benefits received by the Banjima People under native title or other agreements ("**Benefits Management Structure**");
- (b) that a decision of the Directors regarding any matters relating to the establishment, structure and terms of the Benefits Management Structure shall be carried where two-thirds of the Directors present and entitled to vote, vote in favour of the decision or resolution at a meeting;
- (c) the Benefits Management Structures will provide for financial and governance support to the Corporation;
- (d) the Corporation may have ongoing financial and other reporting obligations to the trustee of the Benefits Management Structure; and
- (e) to ensure that as far as reasonably practicable all benefits and decision making under MIB and IB Past Agreements are directed to the MIB Group and IB Group respectively.

11.2 Decisions in relation to past and future agreements

- (a) The Directors may, in addition to their positions in the Corporation, hold decision making positions pursuant to any one or more of the IB Past Agreements or the MIB Past Agreements provided that they disclose the nature of those positions for the purpose of rule 14.3.
- (b) Where the Corporation is authorised or empowered to remove, amend or replace an IB Past Agreement or an MIB Past Agreement, then a decision to do so must be treated as a Native Title Decision and the procedures under the Native Title Act and the PBC Regulations in relation to the making of a Native Title Decision apply.

12. DIRECTORS OF THE CORPORATION

12.1 Number of Directors

12.1.1 Minimum number of directors

If the Corporation has:

- (a) 1 Member, the Corporation must
- (b) have at least 1 Director;
- (c) 2 Members, the Corporation must have at least 2 Directors; or
- (d) more than 2 Members, the Corporation must have at least 3 Directors.

12.1.2 Independent Directors

To the extent permitted under the CATSI Act, the Corporation may have not more than 2 Directors that are Independent persons ("**Independent Directors**").

12.1.3 Maximum number of Directors

The Corporation must not have more than 9 Directors comprising of:

- (a) up to 7 Banjima Directors;
- (b) up to 2 Independent Directors.

12.2 Eligibility to be a Director

12.2.1 Eligibility for appointment as a Director

- (a) An individual is eligible for appointment as a Banjima Director or an Independent Director if that person is an individual who is:
 - i. a Member (unless that individual is an Independent Director);
 - ii. subject to rule 12.2.1(b), able to demonstrate the following qualifications:
 - A. financial literacy;
 - B. leadership experience;
 - C. experience with directorships and boards;
 - D. commitment to uphold all the legal duties, responsibilities and obligations of a Director;
 - E. absence of conflicting commitments;

- F. is of high repute and recognised integrity and has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences). Such person shall not have been found in a civil proceeding to have violated any federal or state securities or commodities law, and shall not be subject to any Court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity; and
 - G. standing and respect within the Banjima People.
- (b) If a nominee for Director is not able to demonstrate every qualification but expresses a willingness to learn and attain that qualification, the Members in their discretion may accept the person's nomination for Director subject to the following conditions:
 - i. the person must undertake appropriate training to attain that qualification and the Corporation will meet the expense of the training and otherwise provide full support and encouragement of the person and his or her efforts to achieve the requisite qualifications;
 - ii. the person may act as Director for 12 months while undertaking the training; and
 - iii. the Members may in accordance with rule 12.10.1 terminate the appointment after 12 months if the Members determine that satisfactory progress was not made by the person towards achieving the requisite qualifications.
 - (c) If a nominee for Director is not willing or able to learn or attain the qualifications in accordance with rule 12.2.1(b), the Members in their discretion may accept the person's nomination for Director if there remains, at all times, at least 2 Directors on the Board that satisfy rules 12.2.1(a)(ii) and 12.2.1(b).
 - (d) Regardless of rules 12.2.1(a)(ii) to 12.2.1(c), all Directors must undertake ongoing and appropriate governance training in accordance with rule 13.2.
 - (e) An individual who is disqualified from managing Aboriginal and Torres Strait Islander Corporations under Part 6-5 of the CATSI Act may only be appointed as a Director of the Corporation if the appointment is made:
 - i. with permission granted by the Registrar; or
 - ii. with leave granted by the court.

12.2.2 Majority of Director requirements

A majority of the Directors must ordinarily reside in Australia.

12.2.3 Consent to act as Director

- (a) 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.
- (b) The Corporation must keep the consent.

12.3 Directors on registration

A person becomes a Director, Secretary or contact person of the Corporation on registration of the Corporation if the person is specified in the application for registration and they have given their consent.

12.4 Becoming a Director by appointment

12.4.1 Nomination of Directors

- (a) The Board is to provide the Members with sufficient notice of the call for nominations for Directors so that the Members may recommend persons for nomination to the Board at least 30 days prior to the date of a General meeting.
- (b) Notice of nominations for an Independent Director may be given by any Director, Member, Elders Council member (if any) and must be provided to the Board at least 30 days prior to the date of a General meeting.
- (c) Potential candidates for nomination as Directors must provide written information about themselves as requested by the Board and participate in interviews conducted by the Board.

12.4.2 Appointment of Directors

- (a) The Directors shall evaluate candidates nominated for appointment using criteria adopted by the Board to determine their suitability based on the information supplied by the candidates and information obtained from other sources. Following the evaluation, the Directors shall appoint the nominee or nominees subject to an Ordinary Resolution of the Members at a General meeting.
- (b) In adopting and applying criteria to determine the suitability of candidates the Directors must have regard to the following objectives:
 - i. The need for the Banjima Directors to be broadly representative of the Banjima People;
 - ii. The need for the majority of the Banjima Directors to be senior Banjima People with extensive knowledge, experience and understanding of Law and Custom;
 - iii. The need to have representation for female Banjima Persons;
 - iv. The need to have representation for younger Banjima Persons.

12.4.3 Directors may appoint other Directors to make up a quorum

- (a) The Directors may fill any casual vacancy by appointing a Banjima Director to replace a vacating Banjima Director.

Any Director appointed to fill a casual vacancy must satisfy the Directors that they meet the eligibility requirements as set out in rule 12.2.1.

- (b) If a person is appointed under rule 12.4.3(a), the Corporation must confirm the appointment by resolution at the Corporation's next General meeting in accordance with the voting requirements of Members set out in rule 12.4.2. If the appointment is not confirmed, the person ceases to be a Director of the Corporation at the end of the General meeting.

12.5 Term of appointment

- (a) Subject to this Constitution, each Director may hold office until the earlier of:
 - i. the expiry of a period of 2 years or such longer period that the Registrar may grant an exemption for;
 - ii. the expiry of such earlier term of appointment determined by the Board in the resolution appointing that Director in order to give effect to the rotational system implemented in accordance with rule 12.7; and
 - iii. the date on which the Director retires or is removed or the office becomes vacant by virtue of such other rule of this Constitution.
- (b) A Director is eligible for reappointment.
- (c) If the terms of appointment of all of the Directors expire so that there are no Directors at a particular time, the terms of each Director are extended until the next General meeting that occurs after the last Director's appointment has expired.
- (d) A Director must not be appointed for more than 3 consecutive terms.

12.6 Alternate Directors

- (a) With the other Directors' approval, a Director may appoint an alternate Director to exercise some or all of the Director's powers for a specified period.
- (b) The alternate Director must satisfy the Directors that they meet the eligibility requirements as set out in rule 12.2.1.
- (c) When an alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- (d) The appointing Director may terminate the alternate's appointment at any time.
- (e) The appointment or termination of an alternate Director must be in writing and a copy must be given to the Corporation.
- (f) The Corporation shall give the Registrar notice of any appointment and termination of an alternate Director.

12.7 Rotation of Directors

- (a) Directors will be elected on a rotation basis so that the appointment of no more than 4 Banjima Director terms expire each year.
- (b) To implement the rotational system:
 - i. 3 of the Directors appointed at the first AGM will be appointed for a term of 2 years;
 - ii. 4 of the Directors appointed at the first AGM will be appointed for a term of 3 years; and
 - iii. further appointments of Directors will be for the period specified in rule 12.5(a).

12.8 How a person ceases to be a Director

A person ceases to be a Director if:

- (a) the person dies;
- (b) the person resigns as a Director as provided for in rule 12.9;
- (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 rule 12.10.1;
- (e) the person is removed as a Director by the other Directors as provided for in rule 12.10.2; or
- (f) the person becomes disqualified from managing Aboriginal and Torres Strait Islander Corporations under Part 6-5 of the CATSI Act.

12.9 Resignation of Director

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

12.10 Process for removing a Director

12.10.1 Removal by Members

- (a) The Corporation may, by resolution in a General meeting, remove a Director from office despite anything in:
 - i. this Constitution;

- ii. an agreement between the Corporation and the Director concerned; or
 - iii. an agreement between any or all Members of the Corporation and the Director concerned.
- (b) 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.
- (c) The Corporation must give the Director concerned a copy of the notice as soon as possible after it is received.
- (d) The Director concerned is entitled to put his or her case to the Members entitled to vote on the resolution by:
 - i. giving the Corporation a written statement for circulation to Members (see rules 12.10.1(e) and 12.10.1(f);
 - ii. speaking to the motion at the meeting (whether or not the Director concerned is a Member).
- (e) The Corporation is to circulate the written statement given under rule 12.10.1(d)(i) to Members entitled to vote on the resolution by:
 - i. sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - ii. if there is not time to comply with rule 12.10.1(e)(i), having the statement distributed to Members entitled to vote on the resolution attending the meeting and read out at the meeting before the resolution is voted on.
- (f) The written statement given under rule 12.10.1(d)(i) does not have to be circulated to Members if it is defamatory.
- (g) If a person is appointed to replace a Director removed under this rule, the time at which:
 - i. the replacement Director; or
 - ii. 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.

12.10.2 Removal by other Directors

- (a) 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. In that instance, the Directors may remove a Director by resolution in accordance with this rule 12.10.2.
- (b) Rule 12.10.2(a) operates despite anything in:
 - i. this Constitution;
 - ii. an agreement between the Corporation and the Director concerned; or
 - iii. an agreement between any or all Members and the Director concerned.
- (c) Before removing the Director concerned, the Directors must give the Director concerned notice in writing:
 - i. stating that the Directors intend to remove the Director concerned from office because they failed without reasonable excuse to attend 3 or more consecutive Directors' meetings; and
 - ii. stating that the Director concerned has 14 days to object in writing to the removal.
- (d) If the Director concerned does not object, the Directors must remove the Director concerned.
- (e) If the Director concerned does object:
 - i. the Directors cannot remove the Director concerned; and
 - ii. the Corporation, by resolution in a General meeting, may remove the Director in accordance with rule 12.10.1 and 8.11.2.
- (f) 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.
- (g) If a person is appointed to replace a Director removed under this rule, the time at which:
 - i. the replacement Director; or
 - ii. 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.

13. GENERAL DUTIES AND CORPORATE GOVERNANCE TRAINING

13.1 General duties

- i. The Directors, Secretary, other officers and employees must comply with the duties imposed on them by the CATSI Act and the general law. These may include, for example: a duty of care and diligence;
 - ii. a duty of good faith;
 - iii. a duty of disclosure of Material personal interests (see rule 14.3);
 - iv. a duty not to improperly use position or information; and
 - v. a duty to prevent insolvent trading.
- (b) The Directors will be liable for debts and other obligations incurred by the Corporation while acting, or purporting to act, as trustee.
- (c) A Director is not in breach of his or her general duties if he or she does (or refrains 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 Act or PBC Regulations obligation.
- (d) In the event of a conflict between:
 - i. the duty of a Director to ensure that the Corporation complies with its obligations under the Native Title Act or PBC Regulations; and
 - ii. the duty of a Director to prevent insolvent trading by the Corporation,it is the duty of the Director to prevent insolvent trading that prevails and the Director is released from the duty to ensure that the Corporation complies with its obligations under the Native Title Act or PBC Regulations, to the extent of the conflict.
- (e) A Director is not liable for debts and other obligations incurred by the Corporation as trustee merely because of doing (or refraining from doing) a particular act if the Director acts 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 Act or PBC Regulations obligation.

13.2 Governance Training

The Board must ensure that all Directors undertake ongoing corporate governance and Director duties and responsibilities training and the Corporation will meet the expense of the training and otherwise provide full support and encouragement of the Director and his or her efforts in completing the training.

14. FUNCTIONS, POWERS AND DUTIES OF DIRECTORS

14.1 Powers of Directors

- (a) The business of the Corporation is to be managed by or under the direction of the Directors.

- (b) The Directors may exercise all of the powers of the Corporation except any that the CATSI Act or this Constitution requires the Corporation to exercise in a General meeting.

14.2 Functions of Directors

The functions of the Directors shall include, but not be limited to:

- (a) managing the Corporation for the benefit of the Banjima People, in the protection and management of Native Title Rights and Interests;
- (b) overseeing and taking responsibility for the management, administration and staffing of the Corporation; and
- (c) managing and controlling the affairs of the Corporation in the interests of all Common Law Holders and in accordance with this Constitution, the Native Title Act, the PBC Regulations and the CATSI Act.

14.3 Duty of Director to disclose Material personal interests

- (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 14.3(b) says otherwise.
- (b) A Director does not need to give notice of an interest under rule 14.3(a) if:
 - i. the interest:
 - A. arises because the Director is a Member and is held in common with the other Members;
 - 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; and
 - ii. all the following conditions are satisfied:
 - 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 14.3(a);
 - B. if a person who was not a Director when the notice under rule 14.3(a) 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; or
 - iii. the Director has given a standing notice of the nature and extent of the interest and that notice is still effective.

- (c) The notice required by rule 14.3(a) must:
 - i. give details of:
 - A. the nature and extent of the interest; and
 - B. the relation of the interest to the affairs of the Corporation;
 - ii. be given at a Directors' meeting as soon as possible after the Director becomes aware of their interest in the matter, and

the details must be recorded in the minutes of the meeting.
- (d) A contravention of this rule 14.3 by a Director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
- (e) A Director who has a particular interest in a matter as one of the Common Law Holders of Native Title, being Native Title:
 - i. which the Corporation holds in trust for the Common Law Holders of the Native Title; or
 - ii. for which the Corporation acts as agent or representative for the Common Law Holders,

does not need to give the other Directors notice of the interest, and a failure to give the other Directors notice of the interest does not breach any general law rule about conflicts of interest.

14.4 Remuneration

- (a) The Directors may be paid such reasonable remuneration as the Members by resolution in a General meeting decide.
- (b) Rule 14.4(a) does not prevent reasonable payments (having regard to the market costs of obtaining similar goods or services) to the Director for a contract for goods or services, provided that rule 14.3 has been complied with.
- (c) The Corporation may pay the Directors' travelling and other expenses that the Directors incur:
 - i. in attending Directors' meetings or any meetings of committees of Directors;
 - ii. in attending any General meetings of the Corporation; and
 - iii. in connection with the Corporation's business.

14.5 Negotiable Instruments

- (a) Any 2 Directors may sign, draw, accept, endorse or otherwise execute a Negotiable Instrument.
- (b) The Directors may determine that a Negotiable Instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

14.6 Delegation

- (a) The Board may, by power of attorney, appoint any person to be the attorney of the Corporation for such purpose and with such powers, authority, discretions, time and conditions, as it considers appropriate.
- (b) The Directors may by resolution delegate any of their powers to:
 - i. a committee of Directors;
 - ii. a Director;
 - iii. an employee of the Corporation; or
 - iv. any other person.
- (c) A delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (d) The exercise of a power by a delegate is as effective as if the Directors had exercised it.
- (e) A delegate must always exercise powers in accordance with this Constitution, the CATSI Act, the Native Title Act and the PBC Regulations.

14.7 Member approval needed for related party benefit

- (a) For the Corporation, or an entity that the Corporation controls, to give a financial benefit to a related party of the Corporation:
 - i. the Corporation or entity must:
 - A. obtain the approval of the Members in the way set out in Division 290 of the CATSI Act; and
 - B. give the benefit within 15 months after the approval; or
 - ii. the giving of the benefit must fall within an exception to the requirement for Member approval set out in Division 287 of the CATSI Act.
- (b) If:
 - i. the giving of the benefit is required by a contract;
 - ii. the making of the contract was approved in accordance with rule 14.7(a)(i)(A); and
 - iii. the contract was made:

- A. within 15 months after that approval; or
- B. 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.

15. DIRECTORS MEETINGS

15.1 Frequency of Directors meetings

The Directors will meet as often as the Directors consider necessary for the good functioning of the Corporation, but must meet at least once every 3 months.

15.2 Calling and giving notice of Directors' meetings

- (a) The Directors will normally determine the date, time and place of each Directors' meeting at the previous meeting.
- (b) 2 or more Directors may convene a meeting of the Board whenever they think fit.
- (c) A Secretary must, on the request of 2 or more Directors, convene a meeting of the Board.
- (d) The date, time and place for a Directors' meeting must not unreasonably prevent a Director attending.
- (e) Reasonable notice of each Directors' meeting must be given to each Director. The notice must state:
 - i. the date, time and place of the meeting;
 - ii. the general nature of the business to be conducted at the meeting; and
 - iii. any proposed resolutions.
- (f) A resolution passed at a Directors' meeting will not be invalid only because of an unintentional omission or mistake in giving notice of the Directors' meeting under rule 15.2(e) or in giving notice of any changes to the item, date or place of the Directors' meeting.

15.3 Quorum at Directors meetings

The quorum for a Directors' meeting is the majority of directors and the quorum must be present at all times during the meeting.

15.4 Chairing Directors meetings

- (a) 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.

- (b) If the Directors decide to elect a chair pursuant to rule 15.4(a), the Directors must elect a Director present to chair a meeting, or part of it, if:
 - i. a Director has not already been elected to chair the meeting; or
 - ii. a previously elected chair is not available, or declines to act, for the meeting or the part of the meeting.
- (c) The chair shall not have a casting vote.

15.5 Observers

The Board may invite persons, including employees, Members, or the Elders Council (if any) to the Directors' meetings as Observers only.

15.6 Use of technology

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.

15.7 Resolutions at Directors meetings

15.7.1 Passing of Directors resolutions

- (a) A meeting of the Board, at which a quorum is present, may exercise all the powers and discretions vested in or exercisable by the Directors under this Constitution.
- (b) Decisions or resolutions of the Board shall, where possible, be decided by Consensus.
- (c) Subject to rules 6.2.4(e), 11.2(b) and 15.7.3, if a Consensus cannot be reached the matter the subject of the relevant decision or resolution shall be voted on at the same meeting on the same day and the decision shall be carried where a majority of the Banjima Directors present and entitled to vote, vote in favour of the decision at the meeting.

15.7.2 Circulating resolutions of Directors

- (a) The Directors may pass a resolution without a Directors' meeting being held if all Directors entitled to vote on the resolution sign a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document under rule 15.7.2(a) may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- (c) A resolution under rule 15.7.2(a) is passed when the last Director signs.

15.7.3 Disputes relating to Law and Custom

- (a) Subject to rule 6.2.4, if a Consensus cannot be reached on a matter relating to Law and Custom then the decision shall be carried where two-thirds of Banjima Directors present and entitled to vote, vote in favour of the decision or resolution at the meeting.

- (b) If a decision cannot be made under rule 15.7.3(a), the matter must be referred to a Law and Custom Consultant in accordance with rule 6.7.4.

15.7.4 Law and Custom Consultant

- (a) If a matter is required to be referred to a Law and Custom Consultant under rule 16.7.3, the Board must within 10 days agree by simple majority to the appointment of a Law and Custom Consultant to provide a Law and Custom Report to the Board. Failing agreement, any Director may request the President of the Institute of Arbitrators and Mediators Australia, WA Chapter, to appoint a Law and Custom Consultant to provide a Law and Custom Report.
- (b) If the appointed Law and Custom Consultant is unable to carry out a Law and Custom Report, another Law and Custom Consultant must be appointed in accordance with rule 16.7.4(a) to provide a Law and Custom Report.
- (c) The Law and Custom Consultant appointed under rule 15.7.4(a) must:
 - i. have no interest or duty which conflicts with his or her function as the Law and Custom Consultant;
 - ii. not be a Banjima Person or a former or current employee or representative of the Corporation; and
 - iii. disclose fully to the Corporation, before entering into an agreement to act as the Law and Custom Consultant, any interest or duty which may conflict with his or her position.

15.7.5 Law and Custom Report

- (a) The Law and Custom Consultant must provide the Law and Custom Report to the Board within 30 days of being appointed or such other time as is agreed between the Law and Custom Consultant and the Board.
- (b) The Board must carefully consider the Law and Custom Report and reconsider the matter having regard to the findings of the Law and Custom Report and shall if possible, decide the matter by Consensus.
- (c) If a Consensus cannot be reached the matter the subject of the relevant decision or resolution shall be voted on at the same meeting on the same day and the decision shall be carried where two-thirds of Banjima Directors present and entitled to vote, vote in favour of the decision or resolution at the meeting.
- (d) If a decision cannot be reached in accordance with rule 15.7.5(c), the matter must be referred to Expert Determination in accordance with rules 25.4 to 25.6.

16. SECRETARY AND CONTACT PERSON

16.1 Requirements for Secretary or contact person

16.1.1 Who may be a Secretary or contact person

- (a) Only an individual who is at least 18 years of age may be appointed as a Secretary or contact person of the Corporation.
- (b) A person who is disqualified from managing an Aboriginal and Torres Strait Islander Corporation under Part 6-5 of the CATSI Act may only be appointed as a Secretary if the appointment is made with:
 - i. the Registrar's permission under section 279-30(7) of the CATSI Act; or
 - ii. the leave of the court under section 279-35 of the CATSI Act.

16.1.2 Consent to act as Secretary or contact person

- (a) 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.
- (b) The Corporation must keep each consent received under rule 16.1.2(a).

16.2 Becoming a Secretary or contact person on Registration

- (a) 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 his or her consent as a proposed Secretary or contact person of the Corporation.
- (b) If:
 - i. the Corporation is registered as a small or medium corporation; and
 - ii. the application for registration does not specify a person to be the contact person for the corporation,the applicant becomes the contact person for the Corporation on registration.
- (c) If:
 - i. a person is specified in the application for registration of the Corporation as the contact person for the corporation;
 - ii. that person is specified without his or her consent;

- iii. before registration, the Registrar becomes aware of that fact; and
- iv. the Registrar determines, by notice in writing given to the applicant, that the applicant for registration is the contact person for the Corporation on registration,

the applicant becomes the contact person for the Corporation on registration.

16.3 How a Secretary or contact person is appointed

A Secretary or contact person shall be appointed by the Board.

16.4 Terms and conditions of office

A Secretary or contact person holds office on the terms and conditions (including remuneration) that the Directors determine.

16.5 Duties of Secretary and contact person

16.5.1 Contact person must pass on communications received

While entered on the Register of Aboriginal and Torres Strait Islander Corporations as the contact person, a person:

- (a) appointed with his or her consent as the contact person; or
- (b) determined to be the contact person,

must pass on to at least 1 of the Directors each communication received by that person for the Corporation within 14 days after receiving it.

16.5.2 Secretary must pass on communications received

While entered on the Register of Aboriginal and Torres Strait Islander Corporations as the Secretary, a person appointed with his or her consent to be the Secretary must pass on to at least 1 of the Directors each communication received by that person for the Corporation within 14 days after receiving it.

16.5.3 Effectiveness of acts by Secretaries

- (a) An act done by the Secretary is effective even if their appointment is invalid because the Corporation or Secretary did not comply with this Constitution or the CATSI Act.
- (b) Rule 16.5.3(a) does not deal with the question whether an effective act by a Secretary:
 - i. binds the Corporation in its dealings with other people; or
 - ii. makes the Corporation liable to another person.

17. CHIEF EXECUTIVE OFFICER

17.1 Appointment

- (a) The Board may appoint and remove a CEO of the Corporation on such terms and conditions as the Board determines.
- (b) The CEO shall be an employee of the Company.
- (c) The CEO shall not be eligible to be a Director of the Company during the term of his or her appointment as CEO.
- (d) Eligibility for appointment as the CEO will be based on merit and not on any affiliations.
- (e) The CEO must have expertise and experience in 2 or more of the following areas:
 - i. financial management;
 - ii. Indigenous culture;
 - iii. legal practice;
 - iv. accounting;
 - v. business development; or
 - vi. any other area of expertise or experience desirable for the advancement of the Corporation's Objects.

17.2 Functions

- (a) The CEO will be responsible for the day to day management, administration and legal compliance of the Corporation in accordance with the Strategic Plan, the Annual Plan and otherwise at the specific direction of the Board.
- (b) The CEO must keep the Board of Directors informed at a level of detail as specified by the Board and provide all information to the Board as is requested from time to time.
- (c) The CEO must deliver a written report to the Board and the Elders Council (if any) on a quarterly basis regarding the following matters:
 - i. the activities of the CEO and Corporation;
 - ii. specific projects that have been undertaken by the Corporation in the previous quarter;
 - iii. the financial position of the Corporation; and
 - iv. any other matters as determined by the Board from time to time.

18. SUB – COMMITTEES

- (a) The Directors or the Members at a General meeting may form subcommittees for the purpose of carrying out any of the Objectives of the Corporation.
- (b) Sub-committees must:
 - i. be fully accountable and report to the Directors and must have no powers beyond those of the Directors;
 - ii. be subject to the rules of this Constitution, conduct meetings and otherwise deal with business in a manner and form determined by the sub-committee and as directed by the Directors; and
 - iii. unless otherwise directed by the Directors, appoint one of its members to be responsible for calling meetings of sub-committees and inform the Secretary of the name of the responsible person.

19. EXECUTION OF DOCUMENTS AND THE COMMON SEAL

19.1 Corporation may have Common seal

- (a) The Corporation may have a Common seal.
- (b) If the Corporation does have a Common seal:
 - i. the Corporation must set out on it the Corporation's name and ICN;
 - ii. the Common seal must be kept by a person nominated by the Directors; and
 - iii. the Corporation may have a duplicate Common seal. The duplicate must be a copy of the common seal with the words 'duplicate seal' added.

19.2 Execution of documents

19.2.1 Agent exercising Corporation's power to make contracts etc.

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.

19.2.2 Execution of documents (including deeds) by the Corporation

- (a) The Corporation may execute a document without using a Common seal if the document is signed by at least 2 Banjima Directors.
- (b) 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 at least 2 Banjima Directors.

- (c) 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 rules 19.2.2(a) or 19.2.2(b).
- (d) This rule 19.2.2, does not limit the ways in which the Corporation may execute a document (including a deed).

20. ANNUAL PLAN

20.1 Requirement for Annual Plan

- (a) The Board and the CEO (if any) will carry out the Corporation's activities during the Financial Year in accordance with the Annual Plan.
- (b) The Annual Plan for the Corporation will be prepared in a form determined by the Board using plain English and prepared in a manner that is culturally appropriate for the Members and will outline the proposed activities of the Corporation for each Financial Year having regard to:
 - i. the anticipated budgets of the Corporation;
 - ii. the anticipated Corporation income and expenditure;
 - iii. any proposed priorities and programs of the Corporation;
 - iv. the Annual Plan Report, accounts and financial position of the Corporation from the previous Financial Year;
 - v. the composition of the Board, proposed governance training and meeting schedule;
 - vi. the proposed meeting and consultation schedule for the Members and Elders Council (if any); and
 - vii. the Objects of the Corporation.

20.2 Formulating the Annual Plan

- (a) The Board will consider and formulate an Annual Plan for each Financial Year using such procedure as the Board considers appropriate, provided that the procedure incorporates appropriate consultation and collaboration with the Elders Council (if any).
- (b) To the extent that the Board does not develop a procedure for formulating an Annual Plan, the following procedure will be applied:
 - i. at least 3 months before the end of the Financial Year, the Board, for the purpose of reviewing the current Annual Plan and formulating the new Annual Plan will:
 - (A) consult with the Elders Council (if any);
 - (B) have regard to previous Annual Reports; and

- (C) consider the administration, overheads and operating expenses of the Corporation including any Directors' remuneration and the salary and expenses of the employees of the Corporation; and
- ii. the Board will endeavour to finalise and make available the Annual Plan for each Financial Year prior to 30 June of each Financial Year.
- (c) The Board may amend the Annual Plan during the Financial Year to which the Annual Plan relates provided the Board follows a similar procedure to the procedure outlined above.
- (d) The Board must make the Annual Plan available for viewing by the following:
 - i. Members; and
 - ii. Elders Council (if any).

20.3 Reviewing the Annual Plan

- (a) The Board will be responsible for reviewing the Annual Plan and determining whether the Annual Plan was carried out in accordance with the terms of the Annual Plan and this Constitution.
- (b) Within 2 months after the end of a Financial Year, the Board will conduct a review of the Corporation's activities for that Financial Year ("**Annual Plan Report**") which includes a review of the matters covered in rule 20.3(a) above and;
 - i. a review of any quarterly reports prepared by the CEO (if any) in accordance with rule 17.2(c);
 - ii. a summary of the Corporation's activities for the previous Financial Year;
 - iii. the financial position of the Corporation;
 - iv. details of the expenses for the previous Financial Year and the projects and programs to which the expenses relate; and
 - v. how the Objects were advanced.
- (c) The Annual Plan Report will evaluate the performance of the Corporation on an outcomes basis in accordance with the aims set out in the Annual Plan and the outcomes actually achieved.
- (d) A copy of the Annual Plan Report must be provided to the Elders Council (if any) and the Members prior to the AGM of the Corporation.

21. STRATEGIC PLAN

21.1 Purpose of the Strategic Plan

The purpose of the Strategic Plan is to:

- (a) set out the long term objectives to facilitate advancement of the Corporation and the Objects;
- (b) provide context having regard to the social, political, economic, government and environmental climate of the time;
- (c) provide recommendations for the better administration of the Corporation having regard to the review of the previous Strategic Plan; and
- (d) where appropriate, provide recommendations regarding amendments to this Constitution which the Board may consider appropriate having regard to the review of the Strategic Plan.

21.2 Formulating Strategic Plans

Every 3 years at the beginning of the relevant Financial Year, the Board will consider and formulate a Strategic Plan for the next 3 years using such procedure as the Board considers appropriate, provided that the procedure incorporates appropriate consultation and collaboration with the Elders Council (if any).

21.3 Amending the Strategic Plan

The Board may amend the Strategic Plan during the Financial Years to which the Strategic Plan relates provided the Board follows a similar procedure to the procedure outlined in rule 21.2.

21.4 Implementation of the Strategic Plan

The Board will operate the Corporation in accordance with the Strategic Plan as far as reasonably practicable and implement any recommendations contained in the Strategic Plan.

21.5 Publication of the Strategic Plan

The Board must make the Annual Plan available for viewing by the following:

- (a) Members; and
- (b) Elders Council (if any).

22. FINANCES AND RECORD KEEPING

22.1 Application of funds and property

- (a) Subject to the CATSI 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.
- (b) Nothing in rule 22.1(b) is intended to prevent:
 - i. the payment in good faith of reasonable wages to a Member who is an employee of the Corporation (having regard to the circumstances of the Corporation and the qualifications, role and responsibilities of the Member as an employee); or
 - ii. reasonable payment in good faith to a Member for a contract for goods or services provided by that Member (having regard to the market costs for obtaining similar goods or services in the area where the goods or services are to be provided).
- (c) In accordance with sub-sections 56(5) and (6) of the Native Title Act, subject to rule 22.1(e), Native Title Rights and Interests held by the Corporation are not able to be:
 - i. assigned, restrained, garnisheed, seized or sold;
 - ii. made subject to any charge or interests; or
 - iii. otherwise effected;as a result of:
 - iv. the incurring, creation 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
 - v. any act done by the Corporation.
- (d) Rule 20.3(d) 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 pursuant to a Native Title Decision made in accordance with rule 5.1.

22.2 Minutes of meetings

- (a) The Corporation must keep minute books in which it records within 1 month:
 - i. proceedings and resolutions of General meetings;
 - ii. proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
 - iii. resolutions passed by Members without a meeting;
 - iv. resolutions passed by Directors without a meeting; and
 - v. if the Corporation has only 1 Director, the making of declarations by the Director.
- (b) The minutes 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 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.
- (d) If the minutes of the meeting are kept in writing, the Corporation must ensure that either:
 - i. the chair of the meeting; or
 - ii. the chair of the next meeting,signs those minutes within a reasonable time after the first meeting.
- (e) If the minutes of the meeting are kept by means of an audio, or audio visual recording, the Corporation must ensure that either:
 - i. the chair of the meeting; or
 - ii. the chair of the next meeting,signs a declaration under rule 22.2(f) within a reasonable time after the first meeting.
- (f) The declaration under this rule 22.2(f) must:
 - i. identify the audio, or audio-visual recording;
 - ii. if the recording is not a recording of the whole of the meeting, identify the part of the meeting that is recorded; and
 - iii. declare that the recording constitutes the minutes of the meeting or that part of the meeting.
- (g) 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.

- (h) If the Corporation has only 1 Director, that Director must sign the minutes of the making of a declaration by that Director within a reasonable time after the declaration is made.
- (i) The Corporation must keep its minute books at:
 - i. its registered office if it is registered as a large Corporation; or
 - ii. its document access address if it is registered as a small or medium Corporation.
- (j) A minute that is recorded and signed in accordance with this rule 22.2 is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

22.3 Constitution and records about officers etc.

The Corporation must keep:

- (a) an up-to-date copy of its Constitution (incorporating any changes to the Constitution made in accordance with the CATSI Act and the terms of the Constitution);
- (b) written records relating to:
 - i. the names and addresses to the Corporation's current officers and Secretary;
 - ii. the Corporation's Registered Office (if any); and
 - iii. the Corporation's document access address (if any).

22.4 Financial records

22.4.1 Obligation to keep financial records

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.

Note: This obligation extends to transactions undertaken as trustee.

22.4.2 Period for which financial records must be retained

The financial records must be retained for 7 years after the transactions covered by the records are completed.

22.5 Physical format

If the records that the Corporation is required to keep under rules 22.3 and 22.4 are kept in electronic form:

- (a) the records must be convertible into hard copy; and
- (b) that hard copy must be made available, within a reasonable time, to a person who is entitled to inspect the records.

22.6 Place where records are kept

If the Corporation is registered as:

- (a) a large Corporation, the records that the Corporation is required to keep under rules 22.3 and 22.4 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 22.3 and 22.4 must be kept at the Corporation's document access address.

22.7 Right of access to Corporation books by Director or past Director

- (a) A Director may inspect the books of the Corporation (other than its financial records) for the purposes of a legal proceeding:
 - i. to which that person is a party;
 - ii. which that person proposes in good faith to bring; or
 - iii. which that person has reason to believe will be brought against him or her.
- (b) A person who has ceased to be a Director may inspect the books of the Corporation (including its financial records) for the purposes of a legal proceeding:
 - i. to which that person is a party;
 - ii. which that person proposes in good faith to bring; or
 - iii. which that person has reason to believe will be brought against him or her.
- (c) This right continues for 7 years after a person ceases to be a Director.

- (d) A person authorised to inspect books under this rule 22.7 for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.
- (e) The Corporation must allow a person to exercise the person's rights to inspect or take copies of the books under this rule 22.7.
- (f) This rule 22.7 does not limit any right of access to Corporation books that a person has apart from this rule 22.7.

22.8 Access to financial records by Directors

- (a) A Director has a right of access to the records that the Corporation is required to keep under rules 22.3 and 22.4.
- (b) On application by a Director, the court may authorise a person to inspect on the Director's behalf the records that the Corporation is required to keep under rules 22.3 and 22.4 subject to any other orders the court considers appropriate.
- (c) A person authorised to inspect records under rule 22.8(b) may make copies of the records unless the court orders otherwise.

22.9 Members' access to minutes

- (a) 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.
- (b) 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.
- (c) The Corporation must make minutes available free of charge.
- (d) A Member may ask the Corporation in writing for a copy of:
 - i. any minutes of a meeting of the Corporation's Members or an extract of the minutes; or
 - ii. any minutes of a resolution passed by Members without a meeting.

Note: The Member may ask the Corporation for an English translation under section 3765(3) of the CATSI Act if the minutes are not in the English language.

- (e) If the Corporation does not require the Member to pay for the copy, the Corporation must send it:
 - i. within 14 days after the Member asks for it; or
 - ii. within any longer period that the Registrar approves.
- (f) If the Corporation requires payment for the copy, the Corporation must send it:
 - i. within 14 days after the Corporation receives the payment; or
 - ii. within any longer period that the Registrar approves.
- (g) The amount of any payment the Corporation requires cannot exceed 50 cents per page.

22.10 Inspection of books by Members

The Directors, or the Corporation by a resolution passed at a General meeting, may authorise a Member to inspect the books of the Corporation.

22.11 Access to governance material

22.11.1 Corporation to provide Member with rules, if requested.

If a Member asks for a copy of this Constitution, the Corporation must provide it:

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

22.11.2 Registered Office

The Corporation must make available for inspection by Members and officers at its Registered Office, its Constitution. This Constitution 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.

22.11.3 Document access address

If the Corporation is registered as a small or medium corporation, the Corporation must make available for inspection by Members and Officers at its document access address, its Constitution. This Constitution must be made available for inspection within 7 days of a Member's or Officer's written request for inspection.

22.11.4 General provisions regarding access to rules

The Constitution includes:

- (a) this 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.

22.12 AUDITOR

- (a) In order to comply with Division 333 of the CATSI Act, the Board of Directors shall appoint an Auditor who is:
 - i. Independent;
 - ii. a Certified Practising Accountant; and
 - iii. a registered company auditor who is registered under Part 9.2 of the Corporations Act 2001 (Cth),to ensure that any requirements set out in the CATSI Act relating to the examination or auditing of the Corporation's financial records are complied with.
- (b) The Board of Directors must make enquiries with at least three candidates before deciding on who shall be appointed as the Auditor of the Corporation.

23. ANNUAL CATSI ACT REPORTING

23.1 General reporting to Registrar

- (a) The Corporation must prepare a general report in respect of each Financial Year and must be presented to the Members at the AGM.
- (b) The general report must include, but is not limited to:
 - i. the names and addresses of each of the Corporation's Members;
 - ii. the names and addresses of each of the Corporation's Directors;
 - iii. the names and addresses of the Corporation's Secretary;
 - iv. the address of the Corporation's Registered Office;
 - v. the Corporation's total CGOI for the Financial Year;
 - vi. the value of the Corporation's total CGA at the Financial Year; and
 - vii. any other information required by the Regulations.
- (c) The Corporation must lodge the general report with the Registrar within 3 months after the end of the Financial Year.

23.2 Financial Report

- (a) The Corporation must prepare a financial report for each Financial Year in accordance with Division 330 of the CATSI Act and the Regulations.
- (b) If required by section 333-20 of the CATSI Act, the Corporation must have its financial report audited by its Auditor and must obtain an Auditor's report from the Auditor.

23.3 Directors' Report

The Corporation must prepare a Directors' report for each Financial Year in accordance with Division 330 of the CATSI Act and of the Regulations.

24. DISPUTE RESOLUTION PROCESS

24.1 General

- (a) This rule sets out the steps which must be taken to try to resolve any Dispute about the affairs of the Corporation or how the CATSI Act or this Constitution applies which arises between any of the following persons ("**Dispute**"):
 - i. Members and Directors;
 - ii. Directors;
 - iii. Elders Council (if any); or
 - iv. Directors and Elders Council (if any).
 - v. Any person who is or claims to be a common law holder.
- (b) This rule may not be used to resolve Disputes or issues regarding:
 - i. a disruption of a meeting under rule 8.14;
 - ii. an employee of the Corporation's employment; or
 - iii. Law and Custom (other than where an Expert Determination is required under rule 15.7.5).
- (c) When passing any resolution about a Dispute, the Members in the General meeting are subject to the CATSI Act, the Native Title Act, the PBC Regulations and this Constitution.

24.2 Informal Dispute Resolution

If a Dispute arises, any one or more of the persons involved in the Dispute ("**Parties**") must try to resolve it themselves on an informal basis, in good faith, having regard to the spirit and intent of the Corporation.

24.3 Formal Dispute Resolution

- (a) If the Dispute is not resolved in accordance with rule 25.2 then any Party to the Dispute may give the Corporation written notice identifying the particulars of the Dispute ("**Dispute Notice**").

- (b) If the Directors are unable to resolve the Dispute to the mutual satisfaction of the Parties within 30 days after the Dispute Notice is given, then the Directors or either Party to the Dispute may refer the matter to Expert Determination.

24.4 Expert Determination

- (a) If the Dispute is referred to Expert Determination in accordance with rule 25.3(b), the Parties must within 10 days agree to an Independent expert to determine the Dispute. Failing agreement, either Party may request the President of the Institute of Arbitrators and Mediators Australia, WA Chapter, to appoint an Independent expert having expertise in the matters the subject of the Dispute to determine the Dispute.
- (b) If the Independent expert appointed under rule 25.4(a) is unable to carry out the determination, another Independent expert must be appointed in accordance with rule 25.4(a) to determine the Dispute.
- (c) The Independent expert appointed under rule 25.4(a):
 - i. must act as an expert and not as an arbitrator;
 - ii. must have no interest or duty which conflicts with his or her function as the expert;
 - iii. must not be a former or current employee or representative of any Party; and
 - iv. must disclose fully to the Parties, before entering into an agreement to act as an expert, any interest or duty which may conflict with his or her position.

24.5 Procedure for Expert Determination

- (a) Each Party:
 - i. may be legally represented at any hearing before the Independent expert;
 - ii. will be entitled to produce to the Independent expert any materials or evidence which that Party believes is relevant to the Dispute; and
 - iii. will make available to the Independent expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (b) The Independent expert will not be bound by the rules of evidence.
- (c) Subject to any privileges under law, unless otherwise agreed by the Parties, all material and evidence made available for the purposes of the determination will be kept confidential, unless disclosure by a Party would be permitted under any provisions of this Deed.

- (d) The Independent expert will be entitled to refer aspects of the Dispute to a third person for the purpose of taking advice on a specific matter relating to the Dispute and must endeavour to ensure that any third party, servant, agent or consultant of the Independent expert will be subject to the same obligations of confidentiality as outlined above.
- (e) Subject to the Independent expert abiding by the rules of natural justice, the Independent expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.
- (f) The Independent expert may explore a resolution of the Dispute by consent of all Parties to the Dispute. If the Parties consent to a resolution of the Dispute, the determination of the Independent expert will be in accordance with the agreed resolution of the Dispute.

24.6 Determination of Expert

- (a) The determination of the Independent expert will:
 - i. be final and binding on the Parties;
 - ii. be made without delay and in any event within 28 days of being appointed as an expert unless the Parties otherwise agree in writing; and
 - iii. determine what, if any, adjustments may be necessary between the Parties.
- (b) Unless the Parties otherwise agree, the Independent expert will determine which Party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference or that the Party's conduct is vexatious or frivolous, and that Party will bear those costs accordingly.
- (c) Unless otherwise ordered by the Independent expert, the Independent expert's costs shall be paid by the Corporation.

24.7 Legal Proceedings

Subject to rule 6.2.5(e), no Party is entitled to commence or maintain legal proceedings relating to any Dispute until the processes outlined in this Chapter have been followed, except where that Party seeks urgent interlocutory or other urgent equitable relief.

25. CONFIDENTIAL AND CULTURALLY SENSITIVE INFORMATION

25.1 Confidential Information

Except as otherwise required by this Constitution or with the consent of the Affected Common Law Holders, the Corporation and its Members shall keep confidential any information which may come into its or their possession in the course of the exercise of the powers of the Corporation that is confidential in accordance with the Law and Custom of the Banjima People.

25.2 Culturally Sensitive Information

Notwithstanding any other provision of this Constitution, the Board must withhold Culturally Sensitive Information from all communications, reports, plans and other documentation required to be prepared by or for the Corporation under this Constitution unless strictly required for, and only to the extent necessary for, compliance with the terms of this Constitution or at law.

26. COMMUNICATION AND NOTICES

26.1 Communications with the Banjima People

All communications, reports, plans and other documentation required to be prepared by or for the Corporation or the Board under this Constitution that must or may be provided to the Members, Elders Council (if any) must be prepared using Plain English in a culturally appropriate manner, form and style, including diagrammatical representations, approved by the Elders Council (if any). The Elders Council (if any) may provide advice to the Board as to the manner, form and style that may be appropriate, however, the Board may use any manner, form and style that it considers fulfils the requirements of this rule 27.2.

26.2 General

- (a) Unless the CATSI Act or this Constitution otherwise requires, notice must be given in writing (including by fax).
- (b) Notices of Directors' meetings given under rule 15.2 can be given in writing, by email, by telephone or orally, if all the Directors agree to notice being given in that way.

26.3 How a notice to a Member may be given

Unless the CATSI Act or this Constitution require otherwise, a notice may be given by one of the following methods:

- (a) personally;
- (b) in accordance with Law and Custom;
- (c) left at a Member's address as recorded in the register or Members;
- (d) sent by pre-paid ordinary mail to the Member's address as recorded in the register of Members;

- (e) sent by fax to the Member's current fax number for notices (if the Member has nominated one); or
- (f) sent by email to the Member's current email address (if the Member has nominated one); and
- (g) for the AGM, by placing the notice in the local newspaper.

26.4 When notice is taken as 'been given'

Unless the CATSI Act or this Constitution require otherwise, if a notice or communication:

- (a) is given by post, it is taken to have been given 3 days after posting;
- (b) is given by fax, it is taken to have been given on the business day after it is sent; and
- (c) is given:
 - i. after 5:00pm in the place of receipt or;
 - ii. on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt;

it is taken as having been given at 9:00am on the next day which is not a Saturday, Sunday or public holiday in that place.

27. REVOCATION OF ENDORSEMENT AS A DEDUCTIBLE GIFT RECIPIENT

- (a) Upon the revocation of the Corporation's endorsement as a Deductible Gift Recipient, the Corporation will transfer any surplus gifts of money, property or Deductible Contributions and any money received because of such gifts of money, property or Deductible Contributions to another Deductible Gift Recipient that:
 - i. is incorporated in Australia;
 - ii. is a Registered Charity;
 - iii. has one or more objects similar to the objects of the Corporation;
 - iv. prohibits distributions or payments of its or their income and property among its members to an extent at least as great as is imposed on the Corporation under or by virtue of rule 6.4 of this Corporation; and
 - v. is approved by Special Resolution of the Members.
- (b) Where gifts to an institution, fund or authority are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the ITAA97 are satisfied, a transfer under this rule must be made in accordance with those conditions

28. WINDING UP

- (a) Subject to section 526-20 of the CATSI Act, the Corporation may be wound up if the Corporation so resolves by a Special Resolution of a General meeting convened for that purpose.
- (b) Where the Corporation is a Prescribed Body Corporate, subject to the proper vesting of any Native Title Rights and Interests held by the Corporation, in accordance with the Native Title Act, the winding up of the Corporation shall be in accordance with the CATSI Act, the Native Title Act and the PBC Regulations.
- (c) The Special Resolution proposed under rule 28(a) must specify another Prescribed Body Corporate to:
 - i. replace the Corporation;
 - ii. hold the Native Title Rights and Interests in trust for the Common Law Holders; and
 - iii. carry out the functions of the Prescribed Body Corporate, as prescribed by regulation 6 of the PBC Regulations.
- (d) If upon the winding up of the Corporation, there remains, after satisfaction of all its debts and liabilities, any assets, the assets must not be paid to or distributed among the Members but must be transferred to one or more institutions, funds or authorities which:
 - i. is incorporated in Australia;
 - ii. is a Registered Charity;
 - iii. has one or more objects similar to the Objects of the Corporation;
 - iv. is endorsed as a Deductible Gift Recipient; and
 - v. prohibits distributions or payments of its or their income and property among its members to an extent at least as great as is imposed on the Corporation under or by virtue of rule 6.4.
- (e) The Secretary or Contact Person must, within 3 weeks after the passing of a Special Resolution in accordance with rule 28(a), lodge with the Registrar a notice, in the prescribed form, of the passing of the resolution and a copy of the resolution.
- (f) Any surplus funds, property or assets shall, after payment of the Corporation's debts, be given or transferred to the corporation or fund specified in the Special Resolution proposed in accordance with rule 28(c).
- (g) No payment shall be made to a Member upon winding up other than as is authorised by this Corporation.

29. AMENDMENT OF THE CONSTITUTION

29.1 Review of Constitution

Without limiting the Corporation's rights to amend the Constitution at any time as set out in this rule, the Corporation shall review the terms of this Constitution, at an Annual General Meeting:

- (a) no later than 6 years following the registration of the Corporation; and
- (b) thereafter, every 6 years.

29.2 Corporation wants to change the Constitution

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) if, under the Corporation's Constitution, there are further steps that must also be complied with to make a change, those steps must be complied with;
- (c) the Corporation must lodge certain documents under rule 28.3
- (d) the Registrar must make certain decisions in respect of the change and, if appropriate, must register the change;
- (e) the Objects, the definition of Common Law Holders and rules must not be altered or amended in any way except as required by law or with the consent of the Common Law Holders given in accordance with this Constitution as if it were a Native Title Decision in relation to which all Common Law Holders were Affected Common Law Holders; and
- (f) the Objects must not be altered unless the alteration is consistent with the Native Title Act, the Corporation's status as a RNTBC under the Native Title Act and the PBC Regulations.

29.3 Corporation to lodge copy of changes

- (a) If there is no extra requirement, within 28 days after the Special Resolution is passed, the Corporation must lodge with the Registrar:
 - i. a copy of the Special Resolution;
 - ii. a copy of those parts of the minutes of the meeting that relate to the passing of the Special Resolution;
 - iii. a Directors' statement signed by:
 - A. 2 Directors; or
 - B. if there is only 1 Director, that Director,
 to the effect that the Special Resolution was passed in accordance with the CATSI Act and the Corporation's Constitution; and
 - iv. a copy of the change to the Constitution.
- (b) If a change is not to have effect until an extra requirement has been complied with, the Corporation must lodge:
 - i. the documents referred to in rule 29.3(a); and

- ii. proof that the extra requirement has been met,
within 28 days after it has been met.
- (c) If the Registrar directs the Corporation to lodge a consolidated copy of the Corporation's Constitution as it would be if the Registrar registered the change, it must do so.

29.4 Date of effect of change

A constitutional change under rule 30 takes effect on the day the change is registered.

Schedule 1 – Elders Council

This Schedule contains a proposal for the functions and composition of the Elders Council.

S1.1 Functions

- (a) The functions of the Elders Council shall include, but not be limited to:
 - i. making recommendations and providing guidance to the Corporation on matters including, but not limited to:
 - A. Law and Custom;
 - B. Native Title;
 - C. Country;
 - D. Heritage;
 - E. Environmental issues;
 - F. Language; and
 - G. Identification of the Banjima People;
 - ii. developing policy in relation to the above matters;
 - iii. assisting the Directors to develop the priorities and vision of the Corporation; and
 - iv. advocating and promoting the maintenance of language and culture amongst the Banjima People.
- (b) The Directors may refer any matters referred to in rule S1.1(a)(i) to the Elders Council for consideration and guidance.

S1.2 Composition

- (a) The Elders Council comprises up to 14 senior Banjima People who are:
 - i. recognised by the Banjima People as holding traditional authority and knowledge regarding Law and Custom; and
 - ii. recognised by the Banjima People as holding decision making authority on matters of Law and Custom.
- (b) The initial members of the Elders Council must be endorsed by the Board and thereafter the persons who comprise the Elders Council from time to time is a matter for the determination of the existing Elders Council.

S1.3 Removal from Elders Council

- (a) A person ceases to be a member of the Elders Council if:
 - i. the person dies;
 - ii. the person resigns by giving notice to the Elders Council;
 - iii. the term of the person's appointment expires;
 - iv. the person is removed by a majority vote of the Members at a General meeting;
 - v. the person is removed by the Elders Council on the grounds that the person has failed to attend 3 meetings of the Elders Council; or
 - vi. the person is no longer eligible to be on the Elders Council.

S1.4 Meetings of the Elders Council

S1.4.1 Frequency of meetings of the Elders Council

- (a) The Elders Council shall meet when it is requested to do so by the Corporation.
- (b) The Directors shall use reasonable endeavours to meet with the Elders Council at least annually to brief the Elders Council on the activities and issues involving the Corporation.

S1.4.2 Calling and giving notice of meetings of the Elders Council

- (a) When the Directors call a meeting of the Elders Council, it shall be called by giving reasonable notice individually to each member of the Elders Council.
- (b) The notice must state:
 - vii. the date, time and place of the meeting;
 - viii. the general nature of the business to be conducted at the meeting; and
 - ix. any proposed resolutions.
- (c) The date, time and place for a meeting of the Elders Council must not unreasonably prevent a member of the Elders Council from attending.

S1.4.3 Facilitation of Meetings

- (a) The Corporation shall make its administrative employees available to facilitate meetings of the Elders Council as reasonably required by the Elders Council.
- (b) The Elders Council may request the chair of the Directors to attend a meeting of the Elders Council.

S1.4.4 Communicating Recommendations to the Directors

- (a) The Elders Council must communicate its decisions to the Board or the Banjima People in the following manner:
- (b) The Corporation must provide administrative support from the employees of the Corporation in assisting the Elders Council to report to the Directors in accordance with item S1.8.6(a)
- (c) The Directors will use reasonable endeavours to give effect to recommendations of the Elders Council on matters of Law and Custom, to the extent that in doing so, the Directors and the Corporation will not be acting in breach of the CATSI Act, the Native Title Act, the PBC Regulations or this Constitution.

S1.5 Remuneration and Costs of Elders Council

- (a) The Elders Council may be paid such reasonable remuneration as the Banjima People in the General meeting decide.
- (b) The Corporation will reimburse the Elders Council for reasonable expenses associated with holding meetings related to the functions of the Elders Council for up to 4 meetings per year, unless further meetings are approved by the Directors.

Schedule 2 – PBC and RNTBC Rules

S2.1 Further functions of Corporation

- (a) Subject to the provisions of the Native Title Act, the PBC Regulations and this Constitution, the Corporation may:
- i. manage Native Title Rights and Interests;
 - ii. consult with the Common Law Holders on matters relating to their Native Title Rights and Interests, in accordance with regulation 8 of the PBC Regulations before making a Native Title Decision;
 - iii. consult with a Native Title Representative Body, in accordance with regulation 8 of the PBC Regulations;
 - iv. receive funds on behalf of the Common Law Holders (including payments received as compensation or otherwise related to the Native Title Rights and Interests) and to hold such payments in trust for Common Law Holders;
 - v. invest or otherwise apply money held in trust for the Common Law Holders;
 - vi. hold Native Title Rights and Interests in trust as directed by the Common Law Holders;
 - vii. enter into Agreements as trustee for the Common Law Holders; and
 - viii. any other function in relation to the Native Title Rights and Interests as directed by the Common Law Holders.
- (b) Without limiting the generality of item S2.1(a), The Corporation may:
- i. initiate and participate in transactions for, on, or relating to the Traditional Lands;
 - ii. receive and spend grants of money from the Commonwealth or State Governments or from any other source;
 - iii. consult other persons or bodies;
 - iv. enter into Agreements;
 - v. exercise procedural rights arising from the operation of the Native Title Act or other law of the Commonwealth of Australia or State of Western Australia; and
 - vi. accept notices required by any law of the Commonwealth of Australia or State of Western Australia to be given to the Common Law Holders.

S2.2 Native Title Decisions

- (a) The Corporation shall only make a **Native Title Decision** where it:
- i. has used its best endeavours to identify the Common Law Holders;
 - ii. is satisfied that the Common Law Holders understand the nature and purpose of the proposed Native Title Decision, and the extent, if any, of any claims, actions or debts to which the Common Law Holders may be liable as a result of the Native Title Decision;
 - iii. has consulted and considered the views of the Native Title Representative Body and, where it considers it to be appropriate and practicable, given notice of those views to the Common Law Holders; and
 - iv. is satisfied that the Common Law Holders as a group have given their consent to the making of the proposed Native Title Decision:
 - A. in accordance with a particular process of decision-making that must be followed in accordance with Law and Custom; or
 - B. if there is no particular process of decision-making that must be followed under Law and Custom, then in accordance with the process of decision-making agreed to, or adopted by them, for the proposed Native Title Decision, or for decisions of the same kind; and
 - v. the Common Law Holders have given a direction to the Corporation to make the Native Title Decision.
- (b) If the Corporation acts as trustee for, or agent or representative of, more than one group of Common Law Holders, the Corporation must consult with and obtain the consent of only those groups of Common Law Holders whose Native Title Rights and Interests would be Affected by the proposed Native Title Decision.

S2.3 Evidence of Consultation and Consent

- (a) The Corporation may only be taken to be satisfied that the Common Law Holders as a group consent to the proposed Native Title Decision if it has obtained a document that:
- i. is certified in accordance with item S2.3(b);
 - ii. where item S2.3(b)(i) applies – complies with item S2.3(c)
 - iii. where item S2.3(b)(ii) applies – complies with item S2.3(d); and
 - iv. is signed in accordance with item S2.3(e).

- (b) A document is certified in accordance with this rule if it certifies:
- i. that the Affected Common Law Holders have been consulted about, and consent to, the proposed Native Title Decision; or
 - ii. that:
 - A. the proposed Native Title Decision is of a kind about which the Affected Common Law Holders have been consulted; and
 - B. the Affected Common Law Holders have decided that decisions of that kind can be made by the Corporation.
- (c) A document complies with this rule if it contains:
- i. a description of the proposal that is the subject of the proposed Native Title Decision;
 - ii. a description sufficient to enable the identification of the Affected Area;
 - iii. a map showing the location and extent of the Affected Area;
 - iv. sufficient information to enable the impacts of the proposed Native Title Decision to be identified;
 - v. sufficient information to enable the effect on Native Title of the proposed Native Title Decision to be identified;
 - vi. details of the extent, if any, of any claims, actions or debts to which any Common Law Holder may be liable as a result of the proposed Native Title Decision;
 - vii. the identity of the Affected Common Law Holders and of those involved in the consideration of and the giving of any consent and direction in relation to the proposed Native Title Decision;
 - viii. a report setting out the involvement of Affected Common Law Holders in considering and making decisions about the proposed Native Title Decision;
 - ix. a statement by each person who signs the document that he or she believes that the conditions referred to in item S2.2 for the making of a Native Title Decision have been met; and
 - x. the identity, qualifications and signature of the person who prepared the document.

- (d) A document complies with this rule if it:
 - i. identifies the kind of decision involved in making the proposed Native Title Decision;
 - ii. identifies the decision of Common Law Holders relied upon in order to certify in accordance with item S2.3(b)(ii); and
 - iii. identifies a document that to the extent applicable would comply with item S2.3(c) in relation to the decision so relied upon if that decision were a proposed Native Title Decision required to be certified in accordance with item S2.3(b)(i).
- (e) A document is signed in accordance with this rule if:
 - i. it is executed by at least 5 Members of the Corporation who are Affected Common Law Holders; or
 - ii. where there are fewer than 5 Members of the Corporation who are Affected Common Law Holders, it is executed by:
 - A. at least 5 Members of the Corporation; and
 - B. each of the Members of the Corporation who is an Affected Common Law Holder.
- (f) The Corporation must comply with Law and Custom in obtaining the consent of the Common Law Holders.
- (g) Item S2.2(a)(ii) is taken to have been complied with if:
 - i. a document, signed by at least 5 Members of the Corporation, certifies that:
 - ii. a document is signed by an authorised member of the Native Title Representative Body which certifies that the Native Title Representative Body has been consulted about the proposed Native Title Decision by the Corporation.
- (h) An agreement that gives effect to a Native Title Decision of the Corporation (other than an indigenous land use agreement of a kind described in section 24EB or 24EBA of the Native Title Act) has no effect to the extent that it gives effect to the decision, if the Corporation does not comply with items S2.1(a) to S2.3(g).

Schedule 3 – IB Past Agreements and MIB Past Agreements

Item 1: IB Past Agreements

- Yandi Land Use Agreement between Hamersley Iron Pty Limited, Hamersley Iron – Yandi Pty Limited, Gumala Aboriginal Corporation, the Traditional Owners (as defined in that agreement) and the Registered Claimants (as defined in that agreement) dated March 1997.
- IBN MAC Agreement.
- Deed Relating to Project Facilities between Robe River Mining Co Pty Ltd and Chubby Jones and others on behalf of the Innawonga, Bunjima and Niapaili Peoples executed in or about 1999.

Item 2: MIB Past Agreements

- Yandi Land Use Agreement between Hamersley Iron Pty Limited, Hamersley Iron – Yandi Pty Limited, Gumala Aboriginal Corporation, the Traditional Owners (as defined in that agreement) and the Registered Claimants (as defined in that agreement) dated March 1997.
- MIB MAC Agreement.
- FMG – Martu Idja Banjima Land Access Agreement between Fortescue Metals Group Ltd and others, and Wobby Parker and Maitland Parker, dated 2005.
- Phil's Creek Land Access Deed between Iron Ore Holdings Ltd and Martu Idja Banjima People dated 8 December 2009.
- Phil's Creek IOH Agreement 7 December 2010 as varied 21 February 2011
- Rio Tinto Exploration Heritage Survey Agreement 13 June 2006 as varied.
- Pel Iron Ore Heritage Survey Agreement 18 May 2008.
- United Iron Heritage Survey Deed 18 February 2008.
- Hancock Prospecting Claim Wide Exploration Agreement 30 August 2010
- Iron Duyfken Heritage Survey Deed.
- Brockman Marillana Project Agreement 2008.
- Hemisphere Resources Heritage Agreements